

Decision D0122023 – Published in note form only

Re Threadgold and City of Busselton [2023] WAICmr 12

Date of Decision: 11 October 2023

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

On 1 August 2022, Stuart Threadgold (**the complainant**) applied to the City of Busselton (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to certain correspondence between the agency and two named individuals relating to a development application in respect of property previously owned by the complainant.

By notice of decision dated 19 September 2022, the agency refused access to the requested documents in relation to the first named individual under section 26 of the FOI Act on the ground that, having conducted searches, those documents could not be found or did not exist. In relation to the second named individual, the agency refused access to the requested documents under section 23(2) of the FOI Act, claiming the documents are exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

The complainant applied to the agency for internal review of its decision. By internal review decision dated 4 October 2022, the agency confirmed its initial decision in respect of section 26. The agency, in effect, varied its initial decision by no longer relying on section 23(2). However, the agency maintained that the requested correspondence between the agency and the second named individual (**the disputed documents**) were exempt under clause 3(1).

On 26 October 2022, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision of the agency to refuse access to the disputed documents under clause 3(1).

On 1 August 2023, one of the Commissioner's officers provided the parties with her initial assessment. It was the officer's assessment that the Commissioner was likely to be of the view, based on the information then before this office, that the disputed documents are exempt under clause 3(1). The complainant did not accept the officer's assessment and made further submissions, claiming that disclosure of the disputed documents was in the public interest.

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).

Based on her examination of the disputed documents, the Commissioner was satisfied that the disputed documents contain personal information about individuals which is, on its face, exempt under clause 3(1). In this case, the Commissioner considered that the relevant limit on the exemption was clause 3(6).

Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3), the onus was on the complainant, as

the access applicant, of establishing that disclosure would, on balance, be in the public interest.

The Commissioner was of the view that the complainant's interest in the disclosure of the disputed documents is a personal or private interest. The Commissioner observed that the public interest is not primarily concerned with the personal interests of the particular access applicant. Rather, the question is whether disclosure of the disputed documents would be of some benefit to the public generally, and whether that public benefit is sufficient to outweigh any public interest in the maintenance of the privacy of other individuals.

It is well established that disclosure of information under the FOI Act is disclosure to the world at large as no restrictions or conditions can be placed upon the release of documents under the FOI Act: see *Public Transport Authority* [2018] WASC 47 at [71]. Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world at large, rather than only to the particular access applicant.

The complainant submitted that disclosure of the disputed documents would allow transparency in the conduct of officers of the agency and would provide evidence in order to pursue concerns in this regard.

The Commissioner recognised that there are public interests in the actions and decisions of agencies and their officers being as transparent as possible and in the accountability of agencies and their officers for their decisions and actions.

However, having regard to the information the agency had already provided, and based on her examination of the disputed documents, the Commissioner did not consider that the public interest in holding agency officers to account in this case required the disclosure of the disputed documents.

The Commissioner was of the view that the agency had provided sufficient information to enable the complainant to pursue concerns about the conduct of officers 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.

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

In balancing the competing public interests, the Commissioner considered that the public interests favouring disclosure of the disputed documents were not sufficient to outweigh the strong public interest in the protection of personal privacy of other individuals. As a result, the Commissioner concluded that disclosure of the disputed documents would not, on balance, be in the public interest and therefore found that the limit on the exemption in clause 3(6) did not apply.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.