

Decision D0132017 – Published in note form only

Re Harvey and Public Sector Commission [2017] WAICmr 13

Date of Decision: 20 June 2017

Freedom of Information Act 1992 (WA): Schedule 1, clauses 3(1), 3(3), 3(5) and 3(6)

On 14 May 2016, Ms Deborah Harvey (**the complainant**) applied to the Public Sector Commission (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to ‘all evidence used [by the agency] to form its view that a breach of standard was not demonstrated’. The requested documents concern the complainant’s complaint to the agency that another agency breached grievance resolution standards by not properly investigating her complaint about a matter that occurred in her work place.

The agency gave the complainant access to edited copies of documents on the grounds that the deleted matter was exempt under clause 3(1) of Schedule 1 to the FOI Act, because it included personal information, as defined in the FOI Act, about other individuals. The agency also refused access to other documents on the grounds they were exempt under clause 5(2)(b) of Schedule 1 to the FOI Act. The complainant applied for internal review of that decision. On internal review, the agency varied its original decision by withdrawing the claim under clause 5(2)(b) and substituting a claim under clause 11(1)(c) of Schedule 1 to the FOI Act for certain documents. Otherwise, the agency confirmed its original decision.

On 6 September 2016, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application. Following communications with the Commissioner’s office, the agency agreed to give the complainant access to edited copies of additional documents. The agency also withdrew its claim under clause 11(1)(c) for certain documents and substituted a claim under clause 3(1). Therefore, the disputed matter was the edited matter in an email together with the edited matter in two reports compiled by an investigator, which the agency claimed was exempt under clause 3(1) (**the disputed matter**).

The Commissioner reviewed the disputed matter and considered the submissions made by the parties. The Commissioner was satisfied that the disputed matter would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed matter was, on its face, exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Commissioner also considered the application of the limit on the exemption in clauses 3(2) to 3(4) and clause 3(6). The Commissioner considered that the only relevant limit was clause 3(6), which provides that matter is not exempt under subclause (1) if its disclosure would, on balance, be in the public interest. In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in revealing personal information about third parties.

On 8 May 2017, the Commissioner provided the parties with the Commissioner’s preliminary view. It was the Commissioner’s preliminary view that the disputed matter was exempt

under clause 3(1). The complainant was invited to withdraw the complaint or to provide the Commissioner with further submissions.

The complainant did not withdraw the complaint and provided further submissions. The complainant submitted that disclosure of the disputed matter would, on balance, be in the public interest under clause 3(6) because it would promote the public interest in ensuring that public officers, particularly an officer named by the complainant, acted with integrity in the service of the public.

The Commissioner accepted there was a strong public interest in ensuring that public officers acted with integrity in the service of the public. However, on the information before him, the Commissioner did not consider that disclosure of the disputed matter would promote that public interest. The Commissioner was also of the view that the public interest in ensuring public officers act with integrity was served by the grievance procedures in place and the agency's ability to enquire into the conduct of public officers.

The complainant also submitted that the disputed matter was 'prescribed details' as described in clause 3(3) and that the individuals concerned had consented to disclosure of personal information to the complainant as described in clause 3(5). On the information before him, the Commissioner did not consider that the disputed matter was prescribed details under clause 3(3) or that the individuals concerned had consented to disclosure of personal information to the complainant as described in clause 3(5).

Therefore, the Commissioner was not dissuaded from his preliminary view.

As a result, the Commissioner confirmed the agency's decision and found the disputed matter was exempt under clause 3(1) of Schedule 1 to the FOI Act.