

Decision D0132020 – Published in note form only

Re ‘A’ and City of Subiaco [2020] WAICmr 13

Date of Decision: 24 November 2020

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

On 10 October 2019, an individual (**the access applicant**) applied to the City of Subiaco (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to allegations about the conduct of local government councillors (**councillors**) at the agency.

The requested document contained information about untested allegations made against a number of councillors. That document was not a register of complaints as described in section 5.121 of the *Local Government Act 1995 (WA)*.

In the circumstances of this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant or the access applicant by name.

On 31 October 2019, in accordance with its obligations under section 32 of the FOI Act, the agency first sought the views of the complainant in relation to giving access to information about the complainant included in the disputed document (**the disputed information**).

By notice of decision dated 20 November 2019, the agency decided that the disputed information was not personal information under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**), because it was ‘prescribed details’ of the complainant as an officer of the agency under clause 3(3) of Schedule 1 to the FOI Act (**clause 3(3)**). Therefore, the agency decided to give edited access to the disputed information.

On 10 December 2019 the complainant sought internal review of the agency’s decision.

On 18 December 2019 the agency confirmed its decision to give edited access to the disputed information under clause 3(3). The agency claimed that the disputed information is prescribed details, under clause 3(3), of the complainant who was an officer of the agency.

On 28 January 2020 the complainant sought external review of the agency’s decision. Following receipt of the complaint, the Commissioner obtained the disputed document from the agency together with the agency’s FOI file maintained in respect of the access application. In the course of the Commissioner’s office dealing with the matter, the access applicant was joined as a party to the complaint.

On 2 September 2020 after considering the material then before her, the Commissioner provided the parties with her preliminary view of the matter. It was her preliminary view that the disputed information was exempt under clause 3(1) because it was personal information about the complainant.

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 limits in clauses 3(2) to 3(6).

Clause 3(3) provides that matter is not exempt under clause 3(1) merely because it would reveal prescribed details about an officer of the agency. The Commissioner was of the view that disclosing the disputed information about the complainant would go beyond merely revealing things done by the complainant in the course of performing or purporting to perform their functions or duties as an officer.

Finally, the Commissioner considered the limit on exemption in clause 3(6). In balancing the competing public interests, the Commissioner was of the view that the access applicant had not shown that, on balance, disclosure of the disputed information would serve a public interest.

The parties were invited to accept the Commissioner's preliminary view or to provide additional submissions for her consideration. The access applicant made further submissions. However, the Commissioner considered that most of the access applicant's further submissions were either not relevant to the matter for her determination or were assertions about improper conduct, which were not relevant to the disputed information.

The access applicant also made further submissions about the conduct of other officers of the agency, but the Commissioner did not consider that matter was relevant to the disputed information being considered.

Having reviewed all of the material before her, the Commissioner was not dissuaded from her preliminary view that the disputed information is exempt under clause 3(1). Therefore, the Commissioner set aside the decision of the agency to give access to the disputed information and found that the disputed information is exempt under clause 3(1).