

Decision D0132022 – Published in note form only

Re ‘P’ and City of Stirling [2022] WAICmr 13

Date of Decision: 22 December 2022

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

On 14 May 2021, ‘T’ (**the access applicant**) applied to the City of Stirling (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to correspondence between the agency and the owners of a specific property, or their lawyers, relating to a particular issue (**the disputed documents**).

On 28 June 2021, the agency sought the views of a number of third parties including ‘P’ (**the complainant**), pursuant to section 32 of the FOI Act. The complainant objected to disclosure and made submissions claiming that the disputed documents are exempt from disclosure. Among other things, the complainant submitted that disclosure of the disputed documents would breach their privacy.

To protect the identity of the individuals in this matter, the Acting Information Commissioner (**the A/Commissioner**) decided not to identify the complainant or the access applicant.

On 16 July 2021, the agency provided the complainant with its notice of decision advising, in summary, that it had decided to give the access applicant access to some of the disputed documents by inspection only and to give the access applicant access to an edited copy of the remaining documents with all personal information removed.

On 13 August 2021, the complainant sought internal review of the agency’s decision. By letter dated 3 September 2021, the agency confirmed its decision.

On 29 September 2021, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. The Commissioner obtained the disputed documents from the agency, together with the FOI file maintained by the agency in respect of the access application. The Commissioner’s office made further inquiries with the agency to assist with her deliberations in this matter. The access applicant was joined as a party to the matter, pursuant to section 69(3) of the FOI Act, and provided submissions to this office.

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 an agency. On 13 October 2021, after considering the material then before her, the Commissioner provided the parties with her preliminary view of the matter. It was the Commissioner’s preliminary view that the disputed documents were exempt in their entirety under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

The agency and the complainant accepted the Commissioner’s preliminary view. The access applicant did not accept the Commissioner’s preliminary view and made further submissions. After considering all of the material before her, including the access applicant’s further submissions, the A/Commissioner was not dissuaded from the Commissioner’s preliminary view.

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.

The A/Commissioner was of the view that disclosure of the disputed documents would reveal personal information, as defined in the FOI Act, because they contain information about individuals including the complainant whose identities can reasonably be ascertained from the information. Further, having regard to the nature of the access application in this case – which was, in effect, a request for correspondence between the agency and other specific private individuals – the A/Commissioner considered that it was not possible for any of the disputed documents to be edited in a way so as not to disclose personal information about those private individuals: see *Re Ninan and Department of Commerce* [2012] WAICmr 31 at [82].

As a result, the A/Commissioner considered that the disputed documents were *prima facie* exempt in their entirety under clause 3(1).

The relevant limit on the exemption in this matter was clause 3(6) of Schedule 1 to the FOI Act. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

The A/Commissioner was of the view that the access applicant’s interest in the disclosure of the disputed documents is a personal or private interest. The A/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.

In favour of disclosure, the A/Commissioner recognised that there are public interests in people being informed of the actions taken, and decisions made, by the agency in relation to issues in dispute and in the accountability of agencies for their actions and decisions in these situations. The A/Commissioner was satisfied, having examined the material provided by the agency, that these public interests had been satisfied in this case by the information that the agency has already disclosed.

Weighing against disclosure, the A/Commissioner recognised a strong public interest in maintaining personal privacy and noted that this public interest 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 A/Commissioner was of the view 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 including the complainant.

Accordingly, the Commissioner set aside the agency’s decision and, in substitution, found that the disputed documents are exempt in their entirety under clause 3(1) of Schedule 1 to the FOI Act.