

Decision D0142014 – Published in note form only

Re ‘F’ and Department of Fisheries [2014] WAICmr 14

Date of Decision: 4 July 2014

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

On 17 October 2012, the complainant applied to the Department of Fisheries (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents relating to her deceased son. To protect the privacy of the complainant and the complainant’s family, I have decided not to identify them by name in my published decision.

In a notice of decision dated 15 February 2013 the agency decided to refuse the complainant access in full to all the documents it had identified as coming within the scope of the complainant’s access application under clause 3 of Schedule 1 to the FOI Act.

Following receipt of the complaint, the Commissioner obtained the requested documents from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application.

The parties attended a conciliation conference conducted by the Commissioner’s office. As this matter was not resolved at that stage, it was referred for external review.

On 20 May 2014, the Information Commissioner advised the parties in writing of his preliminary view and his reasons. The Commissioner’s preliminary view was that the agency’s decision to refuse access to the requested documents under clause 3(1) of Schedule 1 to the FOI Act was justified. The complainant was invited to accept the Commissioner’s preliminary view and withdraw the complaint, or to make further submissions to support the claim that the disputed documents are not exempt under clause 3(1).

The complainant made three detailed submissions to the Commissioner which all contained similar information. The complainant submitted that it was in the public interest to disclose the disputed documents in order for issues surrounding the death of her son to be resolved. In addition, the complainant, in effect, submitted that it was in the public interest to disclose the disputed documents so that the complainant could obtain information to assist in explaining the circumstances surrounding the death of her son.

The Commissioner reviewed the requested documents and carefully considered the detailed submissions made by the complainant. The Commissioner was satisfied that the disputed documents would, if disclosed, reveal personal information, as defined in the FOI Act, about people other than the complainant. The Commissioner considered that the disputed documents were on their face exempt under clause 3(1).

The Commissioner considered the application of the limits on the exemption in clauses 3(2) to 3(6). The Commissioner considered the only limit on exemption relevant to this matter was the limit in clause 3(6), which provides that matter is not exempt under clause 3(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 interests in protecting the privacy of third parties outweighed the public interest in the complainant obtaining access in this

case. The Commissioner considered that the latter public interest had largely been satisfied by the investigations conducted by the Coroner and Western Australia Police into the death of her son.

The Commissioner also considered it was not necessary for the agency to consult with third parties under section 32 of the FOI Act, including the closest living relative of the complainant's son, given that the agency had decided not to grant access to the disputed documents. In any event, the Commissioner considered that section 3 of the *Guardianship and Administration Act 1990* is a relevant guide to interpreting the term 'closest relative' for the purposes of the FOI Act: see the Commissioner's decision in *Re U and Department of Health* [2010] WAICmr 3 at [61] to [69]. Based on this, the Commissioner considered that the complainant is not the closest living relative of her son. Further, there was evidence before the Commissioner that the closest living relative did not consent to disclosure of the disputed documents to the complainant.

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

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