

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2014198
Decision Ref: D0142015**

Participants:

Seven Network (Operations) Limited
Complainant

- and -

Western Australia Police
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – traffic infringement notices issued to senior public office holders, including Ministers – clause 3(1) – personal information – clause 3(3) – prescribed details – clause 3(5) – whether third parties consent to disclosure of the disputed information – clause 3(6) – whether disclosure would, on balance, be in the public interest.

Freedom of Information Act 1992: sections 3(1), 10(1), 15, 32, 74 and 102(3); Schedule 1, clauses 3(1)-3(6), 5(1)(e) and 5(1)(f); Glossary

Freedom of Information Regulations 1993: regulation 9(1)

Criminal Procedure Act 2004: section 16

Freedom of Information Act 1982 (Cth): Section 11A(5), 41(1)(repealed), 47F

Government Information (Public Access) Act 2009 (NSW)

AK and the Department of Finance and Deregulation [2013] AICmr 64

Albanese and Chief Executive Officer of the Australian Customs Service [2006] AATA 900

DPP v Smith [1991] 1 VR 63

Einfeld and Human Rights and Equal Opportunity Commission [2009] AATA 414

Manly v Ministry of Premier & Cabinet (1995) 14 WAR 550

Re Hancock Prospecting Pty Ltd and Department of Industry and Resources [2005] WAICmr 1

Re K and the City of Canning and L [2012] WAICmr 3

Re Leighton and Department of Local Government and Regional Development [2008] WAICmr 50

Re McGowan and Department of the Premier and Cabinet [2015] WAICmr 3

Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University and Others [2001] WAICmr 1

Re Pearson and Real Estate and Business Agents Supervisory Board [2008] WAICmr 49

Re V and Department of the Premier and Cabinet [2010] WAICmr 7

Re V and Legal Profession Complaints Committee [2012] WAICmr 36

Re Watmore and WA Country Health Service – Great Southern [2012] WAICmr 29

Re West Australian Newspapers Ltd & Anor and Salaries and Allowances Tribunal [2007] WAICmr 20

DECISION

The agency's decision is set aside. In substitution, I find that the disputed information is not exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

Sven Bluemmel
INFORMATION COMMISSIONER

24 August 2015

REASONS FOR DECISION

1. This complaint arises from a decision made by Western Australia Police (**the agency**) to give Seven Network (Operations) Limited (**the complainant**) access to edited copies of documents under the *Freedom of Information Act 1992* (**the FOI Act**).

BACKGROUND

2. On 5 May 2014, the complainant applied to the Department of Transport (**the Department**) under the FOI Act for access to:

[D]ocuments relating to traffic infringements or parking fines involving government vehicles assigned to the Premier, Treasurer, Ministers or the Commissioner of Police since March 27, 2011.
3. The complainant paid the \$30.00 fee payable under the FOI Act for applications for non-personal information.
4. On 15 May 2014, the Department transferred the application, in part, to the agency under section 15 of the FOI Act. The transfer related to documents in respect of traffic infringements (**the traffic infringement information**) involving government vehicles assigned to the Premier, Treasurer, Ministers or the Commissioner of Police.
5. On 4 June 2014, the complainant provided the agency the names of 18 individuals about whom it was seeking the traffic infringement information.
6. By notice of decision dated 2 July 2014, the agency decided to give the complainant access to edited copies of 60 documents, which included traffic infringement notices issued to individuals (**the third parties**), notices requesting information, cheques and payment slips (collectively, **the released documents**). The information deleted from the released documents includes the names of the third parties, private addresses and vehicle registration numbers. The agency claimed that the majority of the deleted information was exempt under clause 3(1) of Schedule 1 to the FOI Act. It also claimed that vehicle registration details and details of vehicles (**the vehicle information**) was exempt under clauses 5(1)(e) and 5(1)(f) of Schedule 1 to the FOI Act. The notice of decision indicated the number of infringements received by each third party without identifying the individual third parties.
7. On 13 July 2014, the complainant applied for internal review of the agency's decision. By letter dated 16 July 2014, the agency confirmed its decision to give the complainant access to edited copies of documents on the basis that the majority of the deleted information was exempt under clause 3(1) and the vehicle information was exempt under clauses 5(1)(e) and 5(1)(f).
8. By letter dated 27 July 2014, the complainant applied to me for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

9. Following my receipt of this complaint, the agency produced to me complete and unedited copies of the released documents together with its FOI file maintained in respect of the complainant's access application.
10. On 22 October 2014, the parties attended a conciliation conference conducted by one of my officers. Although the matter was not resolved at the conference, the complainant confirmed that the only information remaining in dispute in this matter is the names of the third parties deleted from the traffic infringement notices (**the disputed information**). Accordingly, as the private addresses of the third parties and the vehicle information deleted from the disputed documents is no longer in dispute, I have not considered that information further, including whether or not the vehicle information is exempt under clauses 5(1)(e) and 5(1)(f) as the agency initially claimed.
11. On 6 November 2014, my officer invited the parties to provide further submissions regarding whether or not the disputed information is exempt. Those further submissions were provided to my office by the complainant on 20 November 2014 and by the agency on 21 November 2014. The agency maintained its claim that the disputed information is exempt under clause 3(1).
12. By letter dated 31 March 2015, I provided the parties with my preliminary view in relation to this matter (**my preliminary view letter**). It was my preliminary view, for the reasons given, that the disputed information is not exempt under clause 3(1) of Schedule 1 to the FOI Act. I invited the agency to withdraw its claim for exemption and to give the complainant access to the disputed information or to provide me with further submissions by no later than 17 April 2015.
13. In my preliminary view letter, I also advised the agency that, if it decided to release the disputed information, it would be necessary for it take reasonable steps to obtain the views of third parties under section 32 of the FOI Act before disclosing the disputed information and to advise the third parties of their right to be joined as parties to this complaint and to make submissions to me. I asked the agency to advise the third parties that submissions or requests to be joined should be made to me by no later than 28 April 2015.
14. I understand that the agency advised the third parties of my preliminary view and to make submissions to me or request to be joined as parties to this complaint, or both, by 28 April 2015.
15. By letter dated 22 April 2015, the agency provided further submissions to me in response to my preliminary view letter, maintaining its claim that the disputed information is exempt under clause 3(1).
16. Two of the third parties, by separate emails dated 15 April 2015, advised both the agency and my office that they consented to disclosure of their personal information in the disputed information. None of the third parties have requested to be joined as parties to this complaint or provided submissions to my office objecting to the disclosure of the disputed information or otherwise.

17. Section 74(1) of the FOI Act requires the Information Commissioner to ensure that exempt matter is not disclosed during the course of dealing with a complaint and section 74(2) places a further obligation on the Commissioner not to include exempt matter in a decision on a complaint or in reasons given for a decision. The Supreme Court in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at 556-557 recognised the difficulties faced by complainants and the constraints placed on the Commissioner by such provisions in the FOI Act but took the view that those provisions should be construed strictly according to their tenor.
18. In providing my reasons for this decision, it is necessary that I describe certain matters in general terms only in order to avoid breaching my obligation under section 74(2) of the FOI Act not to reveal exempt matter. In particular, I neither confirm nor deny that the third parties include any particular Ministers or the Commissioner of Police.

THE DISPUTED DOCUMENTS AND THE DISPUTED INFORMATION

19. The documents in dispute consist of the 24 traffic infringement notices issued to the third parties (**the disputed documents**). The complainant has been given access to edited copies of the disputed documents. As noted at [10], the disputed information consists of the names of the third parties deleted from the address line of the disputed documents.
20. The folios that contain the disputed information are: 1, 3, 5, 7, 9, 11, 18, 20, 22, 24, 26, 28, 29, 31, 38, 40, 42, 46, 48, 50, 52, 54, 56 and 58. The numbering is based on the folio numbers assigned to the released documents provided to the complainant.

THE THIRD PARTIES

21. As I have stated at [18], I neither confirm nor deny that any of the 18 individuals named in the complainant's access application have received a traffic infringement notice. However, I consider that it is appropriate to note that the scope of the access application means that the third parties in this matter may come within three categories:
 - individuals who, at the time of the incidents for which the traffic infringements were issued (**the relevant time**), were Ministers;
 - individuals who at the relevant time were Members of Parliament and were subsequently appointed Ministers and were named in the complainant's access application; and
 - the Commissioner of Police.

CLAUSE 3 – PERSONAL INFORMATION

22. The agency claims that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act.
23. Clause 3, insofar as is relevant provides:
 - (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*
 - (2) ...

- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
 - (a) *the person;*
 - (b) *the person's position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*
- (4) *...*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.*

24. In the Glossary to the FOI Act the term 'personal information' is defined to mean:

[i]nformation or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead –

- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.*

25. The definition of 'personal information' makes it clear that any information or opinion about an individual whose identity is apparent – or whose identity can reasonably be ascertained from the information or opinion – is, on the face of it, exempt information under clause 3(1).

26. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies.

The agency's submissions

27. The agency's submissions are set out in a letter dated 21 November 2014 from the State Solicitor's Office, acting on behalf of the agency, and the agency's letter of 22 April 2015, in response to my preliminary view letter. The submissions of 21 November 2014 are summarised below.

- The disputed information is prima facie exempt under clause 3(1) of Schedule 1 to the FOI Act.
- Clause 3(3) does not apply to limit the exemption in clause 3(1) because disclosure of the disputed information would reveal more than 'prescribed details'

about the third parties. The complainant has already been given access to edited copies of a number of documents including the disputed documents. Accordingly, disclosure of the disputed information would disclose the following personal information:

- (a) *the fact that certain persons had received a speeding infringement notice;*
 - (b) *the details of that infringement, including the amount of the penalty to be paid;*
 - (c) *the date, time and location of the infringement indicating that person's whereabouts at a particular time on a particular date; and*
 - (d) *significantly, potentially the identity of the authors of the redacted cheques disclosed to the access applicants.*
- Clause 3(5) does not apply to limit the exemption in clause 3(1) because the complainant has not provided evidence to establish that the third parties consent to disclosure of the disputed information.
 - Clause 3(6) does not apply to limit the exemption in clause 3(1) because disclosure of the disputed information is, on balance, not in the public interest. The onus is on the complainant to establish that the disclosure of the disputed information would be in the public interest.
 - My decision in *Re V and Legal Profession Complaints Committee* [2012] WAICmr 36 at [71] supports the view that:

[i]n essence, the public interest is not primarily concerned with private interests of any individual or with public curiosity. Rather, the question is whether disclosure of personal information about third parties is of some benefit to the public generally and whether the public benefit is sufficient to outweigh any public interest in maintaining the privacy of those third parties.
 - There is a strong public interest in maintaining personal privacy, which can only be outweighed where there is a strong or compelling countervailing public interest favouring disclosure: see *Re Pearson and Real Estate and Business Agents Supervisory Board* [2008] WAICmr 49 and *Re Watmore and WA Country Health Service – Great Southern* [2012] WAICmr 29.
 - The importance of protecting the personal privacy of the individual is equally applicable to officers of an agency, including Ministers:

[w]hich is demonstrated by the limited range of work related information that is ‘prescribed details’. There may be additional countervailing public interest factors when considering the personal information of such an individual, but the starting point must be that, absent a demonstrable public interest, the FOI Act is not intended to open the private and professional lives of individuals to public scrutiny.

- The public interest in officers of agencies being accountable for their actions in using government resources is partially served through the disclosure of the number and content of the traffic infringement notices. ‘Accordingly, the public can be informed generally as to whether Ministers or former Ministers are using government resources, such as taxpayer funded vehicles, appropriately.’ It is ‘further mitigated by the fact that public monies are not used to pay the infringements’.
 - The issue for my determination is whether the narrower public interest in the public knowing the specific names of the Ministers or former Ministers ‘is sufficient to countermand the strong public interest in the protection of personal privacy’.
 - Disclosure of the disputed information will reveal the personal banking information of at least two individuals because edited copies of personal cheques have already been disclosed to the complainant. It is not in the public interest to disclose that personal and private information.
 - The broader public interest in relation to accountability has been adequately served by the existing disclosure. On that basis, the public interest in this case favours non-disclosure of the disputed information and the protection of personal privacy.
28. In its submissions in response to my preliminary view letter, the agency maintained its original submissions and made additional submissions that are summarised below.
- The issue for my determination is whether the public interest factors in favour of disclosure of the disputed information ‘outweigh the strong public interest in protection of privacy, evident in the terms of the FOI Act’.
 - *[T]he public interest favours non disclosure despite the countervailing factors favouring disclosure on the following bases:*
 - (a) *the information currently provided is sufficient to inform the public about Ministers’ use of taxpayer funded resources and provide a basis for discussion on the general subject of Minister’s benefits and Ministerial responsibility; and*
 - (b) *[the third parties] have already been held accountable for their use of government funded resources through the applicable legal process.*
- Accordingly, ... the [complainant has] failed to discharge the onus of demonstrating that disclosure of the disputed information, above and beyond what has already been disclosed, is in the public interest.*
- Members of Parliament, who are not Ministers, are provided a government vehicle under the *Determination of the Salaries and Allowances Tribunal for Remuneration for Members of Parliament* (June 2014) Part 3, Section 4. Under that determination, a Member of Parliament may elect between the use of a Government provided motor vehicle or an allowance of \$25,000.00. In effect,

‘those persons were driving government vehicles that were provided for private use in exchange for those persons foregoing a \$25,000 cash payment’.

- The Commissioner of Police is provided a government vehicle according to the *Determination for Clerks and Deputy Clerks of the Parliament; Public Service Officers Holders Included in the Special Division of the Public Service; and Persons Holding Offices Prescribed in Salaries and Allowances Regulation Number 3* (June 2014) Part 3.1 and 3.4, and in effect, ‘in electing to make use of a Government provided vehicle has foregone \$22,650.00 in salary pursuant to the relevant determination of the Salaries and Allowances Tribunal’.
- In effect, the third parties who, at the relevant time, were driving government vehicles held under a relevant Determination of the Salaries and Allowances Tribunal (**a SAT Determination**), ‘were not provided a Government motor vehicle at no cost. Rather [those third parties] forewent payments of over \$20,000 in exchange for the private use of such vehicles’.
- Those third parties who were Ministers at the relevant time have also, in effect, forgone payments on the following basis:

The Department of Premier and Cabinet have advised that although the Department maintains a fleet of motor vehicles for the use of Ministers, such Ministers may elect to access a vehicle under the relevant Salary and Allowances Tribunal determination or, alternatively, the allowance provided for by the determination.

The Department of Premier and Cabinet have advised that, currently, there are at least two Ministers who have elected to take the allowance provided for by the determination, as opposed to a Ministerial vehicle or a vehicle provided under the determination.

[It] cannot be said that the use of the vehicle is provided at no cost. Such persons effectively forego the opportunity to elect to take the allowance by choosing a Ministerial vehicle. Although the connection is not as direct for Ministers, the Ministers have still foregone the opportunity of electing between a vehicle provided under the determination or the allowance by receiving a Ministerial vehicle.

- Infringement notices are regulated by the *Criminal Procedure Act 2004*. Payment of a penalty specified by an infringement notice is not an admission of guilt for the purpose of any proceedings, whether they be civil or criminal. The agency maintains a record of traffic infringement notices for each person issued with such a notice for the previous five years, but that record can only be accessed by the agency and the person the subject of the infringement notice.
- In considering the public interest, it is necessary to distinguish categories of the disputed information, which include:
 - (a) disputed information that relates to the use of government vehicles provided to third parties who were Ministers at the relevant time (**Ministerial vehicles**);

(b) disputed information that relates to the use of government vehicles provided to third parties under a SAT Determination (**non-Ministerial vehicles**).

- In relation to the use of Ministerial vehicles, the public interest in the public being informed about the Ministers' use of taxpayer funded resources, and in so doing providing a basis for discussion on the general subject of Ministers' benefits and Ministerial responsibility, has already been served by 'the disclosure of the number of traffic infringements issued and the reasons why they were issued'.
- The agency is prepared to provide a breakdown of the number of persons issued traffic infringements whilst serving as a Minister, and the number of traffic infringements issued to those persons.
- The public interest in relation to Ministerial benefits or responsibility is not served by disclosure of the disputed information related to the use of non-Ministerial vehicles. 'Given the limited number of persons that the request is applicable to, it cannot be said that disclosure of the information could inform the general subject of Parliamentary benefits as the sample size is too small and unrepresentative.'
- A public interest in the accountable use of public resources can be satisfied by means other than disclosure of the disputed information. In *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 it was noted that 'there may be other means by which that level of accountability can be carried into effect, such as through law enforcement agencies'.
- The third parties have been held accountable for the use of government vehicles 'through the issuing of infringement notices, the payment of the modified penalties and the application of any relevant demerit point penalties'.
- The third parties have not escaped accountability for their use of government vehicles as the disputed documents clearly demonstrate that the third parties have been held responsible for the legal consequences of the incidents giving rise to the traffic infringement notices. This can be contrasted with:

[A] situation where the documents reveal a lack of accountability or the avoidance of personal accountability by elected officials or senior public servants. In those cases there would be a very strong public interest favouring the disclosure of the documents. However, in circumstances where the documents demonstrate that such accountability has been achieved appropriately through the appropriate processes, there is a less pressing need for disclosure.

- The third parties who were driving non-Ministerial vehicles have foregone a significant cash entitlement for the private use of a government vehicle. This means that:

[A]ny public interest favouring disclosure that relates to the use of publicly funded resources is lessened by the fact that a very real cost is paid by the relevant person in exchange for the private use of a government vehicle.

- ‘There is nothing in the traffic infringement notices that indicate that traffic safety was in issue’ in relation to particular traffic infringement notices issued for allegedly exceeding the speed limit by not more than 9 kilometres per hour.
- Where there are public interest factors in favour of disclosure of the disputed information, the strength of those factors is reduced by:
 - (a) *the material that has already been released to the access applicant;*
 - (b) *the fact that the relevant persons have been held accountable for their actions through the normal legal process, and*
 - (c) *in relation to [the third parties holding non-Ministerial vehicles], that the persons concerned effectively paid for the private use of Government provided vehicles.*
- In considering the strong public interest in maintaining personal privacy, which is recognised by the inclusion of clause 3(1) in the FOI Act, it is not appropriate to differentiate between ‘privacy’ and ‘personal information’. The FOI Act:

[P]rotects the privacy of an individual through the protection of personal information. Similarly, the strong public interest in the protection of privacy is drawn from the [FOI] Act’s protection of an individual’s “personal information”.

Accordingly, it is artificial for the Information Commissioner to distinguish between personal information and personal information regarded as being private. The starting point from the terms of the [FOI] Act is that personal information is private, subject to the exceptions contained in clause 3. To ascribe certain personal information the characteristic of private over other personal information ignores the presumption in the [FOI] Act that all personal information is private, unless an exception to the exemption applies.

- The clause 3(3) limitation on the exemption supports the contention that the strong public interest against disclosure of personal information is equally applicable to officers of an agency, ‘except in certain narrowly prescribed circumstances’, particularly ‘when read in the context of the presumption evident in clause 3(1), that personal information is private subject to certain defined exceptions or limitations’.
- If the information is personal information that is not within clauses 3(2) to 3(5),

then it is considered private and there is a strong public interest in its non-disclosure. To hold otherwise undermines the presumption in clause 3(1) and would, in effect, expand the limitation in clause 3(3) beyond its statutory terms.
- There is a strong public interest in the protection of the personal information of officers of an agency where that information does not fall within the exception contained in clause 3(3).

- The disputed information is private information because it can only be accessed by the agency and the person the subject of the infringement notices. It is not a matter of public record in the same way that a criminal offence is.
- The third parties who were not Ministers at the relevant time ‘have effectively paid for the private use of ... government vehicles’. As such, the disputed information is:

[P]rivate information, in the sense that it is information personal to an individual that is not otherwise available to a broader section of the public, and the [FOI] Act demonstrates that there is a strong public interest that favours non-disclosure by virtue of the nature of the information as personal information.

- The onus is on the complainant to establish that disclosure of the disputed information would, on balance, be in the public interest. The complainant has not demonstrated that the diminished public interest factors favouring disclosure of the disputed information outweigh the strong public interest favouring non-disclosure, the protection of personal privacy. This is particularly the case in relation to those third parties who were not Ministers at the relevant time.

The complainant’s submissions

29. The complainant’s submissions are set out in its letter to me seeking external review dated 27 July 2014 and in further submissions made on 20 November 2014. The complainant’s submissions are summarised below.

- Ministers and other people in public positions are driving taxpayer-funded vehicles and should be accountable for their actions while using them.
- When the individuals named in the infringements undertook their roles they understood ‘that they would be subjected to more public scrutiny than had they decided not to take on the roles’.
- If a Minister crashes a government car, ‘taxpayers still foot the bill regardless of the circumstances’.
- ‘[T]he people of Western Australia are interested in whether their elected representatives break the road rules in vehicles that they fund’.
- The interest of the public is demonstrated by:

[t]he interest the people of WA, and indeed the people of Australia, took in not only the story detailing how former Treasurer Troy Buswell crashed his car, but the number of speeding fines he had accumulated.

The stories always topped the list as most viewed when they appeared on the newspaper websites.

- The public interest ‘includes scrutiny and accountability of public officials’.

- It is not accurate to state that driving a government vehicle is not part of a Minister's job description given that the Ministers are provided a car for 'parliamentary, electorate and private use within Western Australia' according to the *Determination of the Salaries and Allowances Tribunal for the Remuneration of Members Parliament*.
- It is likely that the speeding fines occurred while the third parties were performing their official duties.
- Public figures are public figures all the time. Colin Barnett said in response to Troy Buswell's resignation, '[o]ne of the facts of life is you cannot disassociate your personal life – you are a public figure 24-7'. If the Premier does not draw a distinction between public and private, 'the law must be applied on this basis'.
- Several third parties have more than one speeding fine. 'In Mr Buswell's case, his erratic driving eventually led to an accident.' It is unclear whether Mr Buswell would have been held responsible for the insurance costs associated with the accident if there had not been media attention regarding the accident.
- Public scrutiny is necessary to ensure that politicians do the right thing – 'public backlash – aired in the media – can often lead to different decisions in the public's favour.'
- Ministers are elected leaders driving taxpayer funded vehicles and are relied upon to act responsibly in their roles. 'Much of the pressure to do so is due to public scrutiny facilitated by the media. A speeding fine may not seem like a big deal, but the Government spends millions of dollars on campaigns to reduce speeding every year.'
- A press release issued by Rob Johnson, the then Road Safety Minister, dated 4 February 2012, states that while the WA Police was doing everything it could to stop people from speeding, motorists needed to take responsibility for their own driving behaviour and make a conscious effort to obey the speed limit. The complainant submits that '[d]oing all it can should include the naming and shaming of public figures who speed. Otherwise this is just hypocrisy.'
- This information is routinely disclosed in other jurisdictions including Queensland and New South Wales.

CONSIDERATION

30. The disputed information in this case consists of the names of the third parties deleted from the edited copies of the traffic infringement notices (the disputed documents) that have been disclosed to the complainant. Having examined the disputed information, I consider that its disclosure would reveal personal information about the third parties because the identities of the third parties is apparent from that information. On that basis, I am satisfied that the disputed information is, on its face, exempt under clause 3(1) of Schedule 1 to the FOI Act.

31. I have considered the agency's submission that disclosure of the disputed information would reveal information about the banking details of certain individuals and therefore would reveal personal information on that basis. In giving effect to its initial decision in this matter, the agency gave the complainant access to edited copies of two cheques, which included the bank account details of individuals. The names of the individuals who wrote the cheques are not within the scope of this complaint. The agency's initial notice of decision indicates the folios of the traffic infringement notices that can be attributed to particular third parties. The notice of decision does not connect the infringements with the cheques. There is nothing in the cheques themselves to identify the person who holds the account against which each cheque is issued. I understand that it is not a requirement that a cheque paying an infringement must be from the individual who received the infringement. In my view, neither the writer of the cheque nor the individual who holds the bank account from which the cheque was issued is apparent nor could it be reasonably ascertainable from disclosure of the disputed information. Consequently, I do not consider that disclosure of the disputed information would reveal the banking details of any individuals.
32. The exemption in clause 3(1) is subject to a number of limits that are set out in clauses 3(2)-3(6) of Schedule 1 to the FOI Act. In my view, the only limits that are relevant in this matter are clauses 3(3), 3(5) and 3(6). Accordingly, I have considered whether those limits on exemption apply to the disputed information.

Clause 3(3) – prescribed details

33. Clause 3(3) provides that information is not exempt merely because its disclosure would reveal 'prescribed details' in relation to officers or former officers of agencies (**officers**). In my opinion, the use of the term 'merely' in clause 3(3), according to its ordinary dictionary meaning, means 'solely' or 'no more than' prescribed details about an officer.
34. The FOI Act makes a distinction between private information – such as an officer's home address or health details – and information that relates solely to the officer's performance of functions, duties or services for an agency. The type of information that amounts to the latter, known as prescribed details, is set out in regulation 9(1) of the *Freedom of Information Regulations 1993* (**the Regulations**).
35. In effect, the Regulations provide that certain specified work-related information about an officer – even though it is 'personal information' as defined in the FOI Act – will not be exempt under clause 3(1). The prescribed details covered by the limit include the name and title of an officer and anything done by an officer in the course of performing or purporting to perform their functions or duties as an officer. Consequently, information of that kind is usually 'prescribed details' that is not exempt under clause 3(1) by virtue of the limit on exemption in clause 3(3).
36. In the present case, the disputed information consists of the names of the third parties. However, even if I accepted that some of the third parties incurred the relevant traffic infringement in the course of performing their functions, duties or services as an officer, I consider that, having regard to the context of the disputed information and the details in the disputed documents already disclosed, the disclosure of the disputed information would reveal more than prescribed details. As a result, I am of the view that clause 3(3) does not operate to limit the exemption in clause 3(1) in this case.

Clause 3(5) – consent

37. Clause 3(5) provides that matter is not exempt under clause 3(1) if the applicant provides evidence to establish that the individual concerned consents to disclosure of the matter. In this case the agency submits that clause 3(5) does not apply because the complainant, as the applicant in this matter, has not provided evidence to establish that the third parties consent to the disclosure of the disputed information.
38. Although a literal interpretation of clause 3(5) provides some support for the agency's submission, I am of the view that where there is evidence that an individual consents to the disclosure of their personal information, the limit in clause 3(5) applies and that information is not exempt under clause 3(1): see also *Re Hancock Prospecting Pty Ltd and Department of Industry and Resources* [2005] WAICmr 1 at [37]; *Re West Australian Newspapers Ltd & Anor and Salaries and Allowances Tribunal* [2007] WAICmr 20 at [258]; and *Re McGowan and Department of the Premier and Cabinet* [2015] WAICmr 3 at [52].
39. As noted at [16], on 15 April 2015 two of the third parties advised me that they consent to the disclosure of their personal information contained in the disputed information. On that basis, I consider that the limit on the exemption in clause 3(5) applies to the disputed information that relates to those two third parties and that that information is not exempt under clause 3(1). On that basis, I consider the disputed information contained in folios 28, 29, 31 and 32 is not exempt under clause 3(1).
40. However, even if it were the case that clause 3(5) does not apply in the circumstances of this case, I consider that clause 3(6) applies to all of the disputed information in any event, for the reasons set out below.

Clause 3(6) – the public interest

41. Clause 3(6) provides that matter will not be exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3) of the FOI Act, the access applicant – that is, the complainant in this case – bears the onus of establishing that it would, on balance, be in the public interest for the agency to disclose personal information about the third parties.
42. The term 'public interest' is not defined in the FOI Act. In my view, the term is best described in the decision by the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63 at page 65, where the Court said:

[t]he public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals... There are, ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.

43. The public interest is not primarily concerned with the personal interests of a particular applicant or with public curiosity. Rather, the question is whether disclosure of the information would be of some benefit to the public generally.
44. Determining whether or not disclosure would, on balance, be in the public interest involves identifying the relevant competing public interests for and against disclosure, weighing them against each other and making a judgment as to where the balance lies in the circumstances of the particular case. I have carefully reviewed and considered all of the submissions made by the agency and the complainant concerning the public interest test in clause 3(6).
45. Favours non-disclosure of the disputed information, I recognise that there is a strong public interest in maintaining personal privacy. That public interest is recognised by the inclusion in the FOI Act of the exemption in clause 3(1). My predecessors and I have consistently expressed the view that the public interest in maintaining personal privacy may only be displaced by some other strong or compelling public interest that requires the disclosure of personal information about one person to another person. I continue to hold this view.
46. In *Manly v Ministry of Premier & Cabinet* (1995) 14 WAR 550, Owen J considered the meaning of the term 'public interest' and the former Commissioner's consideration of this term when balancing the interests of the accountability and privacy of a public official. At pages 569-571, His Honour said:

[w]hat is this rather nebulous and elastic concept called "the public interest"? At the outset it must be distinguished from what is 'of interest to the public': see Director of Public Prosecutions v Smith (1991) 1 VR 63 at 75. This is a distinction that is often overlooked. The public interest presents itself in a myriad of guises, many of which are conflicting. Almost inevitably, questions of balance and degree will arise. The public's right to know does not arise simply because something is likely to catch the eye or to satisfy curiosity. No hard and fast rules can be promulgated. Each case which involves a determination of the public interest must be decided on its own facts.

....

The Commissioner has taken into account the need for accountability among public officials. That is itself a manifestation of representative democracy. It would be going too far to suggest that once a person puts his or her name forward for public office that the person forfeits the right to privacy. Nor could it be said that thereafter anything and everything that touches upon the person's financial and business dealings must necessarily be relevant to his or her fitness for office and thus be liable to public disclosure by way of political discussion. The very nature of the party politics means that more and more that would generally be regarded as private matter will come to the notice of the public. However, it does not follow that recognition in the freedom of information regime of the maintenance of privacy must give way to the right of, for example, a newspaper, to gain access to information which would otherwise be exempt in the course of its brief to inform its readers. Often that will be the case. An individual application for access to information will fall to be decided within the context of its own particular fact situation.

47. In my view, election to office or appointment as a Minister, or appointment to a senior public office, does not mean that the office holder forfeits the right to privacy. I agree with the view expressed by the Acting Information Commissioner in *Re Leighton and Department of Local Government and Regional Development* [2008] WAICmr 50 at [40] where he rejected the contention that ‘once a person has put themselves forward for public office, they significantly dilute their right to privacy’.
48. In the present case, the agency submits that the ‘starting point from the terms of the [FOI] Act is that personal information is private, subject to the exceptions contained in clause 3’ and that there is a ‘presumption evident in clause 3(1) ... that personal information is private subject to certain defined exceptions or limitations’. I do not agree. Clause 3 provides that personal information is ‘exempt’ from disclosure unless one of the limits on the exemption in clauses 3(2)-3(6) applies. It does not say that personal information is ‘private’ unless one of those limits applies (my emphasis).
49. The agency submits that there is a strong public interest in the non-disclosure of personal information that is not subject to the limits in clauses 3(2)-3(5). However, in my view, there is a strong public interest in the protection of the privacy of individuals, not in the protection of all personal information about individuals. Likewise, I do not accept the agency’s submission that there is necessarily a strong public interest in the protection of personal information about an officer of an agency where that information does not consist of prescribed details. However, I accept that details of a traffic infringement issued to a driver are not generally or publicly known and is information of a private nature. I note there has been a recent media report¹ that purports to identify a number of Ministers who have advised a particular journalist of the number of traffic infringements that they have received in the last two years and some of the details of those infringements. On its face, the scope of the complainant’s access application in this case is not the same as the information requested of the Ministers named in that media report.
50. On the information before me, I consider that disclosure of the disputed information in the present case would disclose details that are not currently publicly known. As already noted, the agency has already given the complainant edited copies of the traffic infringement notices. The released documents disclose details of the nature of the infringement; the amount of the penalty to be paid; and the date, time and location of the infringement. Disclosure of the disputed information will identify the individual to whom each traffic infringement was issued and to whom each of that detail relates. On that basis, I consider that the disputed information is of a private nature as the agency contends.
51. In my view, this matter turns on whether the strong public interest in the protection of personal privacy in the present case is outweighed by the public interest factors in favour of disclosure of the disputed information.
52. In favour of disclosure, I recognise that there is a public interest in applicants being able to exercise their right of access to documents under the FOI Act. However, that right is not an absolute right. Section 10(1) of the FOI Act provides that a person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with the FOI Act. The right created by section 10(1) is

¹ published in *The Sunday Times* newspaper on 5 July 2015, at page 16.

subject to a range of exemptions designed to protect significant public interests – including the protection and maintenance of personal privacy – that compete with the public interest in the openness and accountability of State and local government agencies.

53. I consider that there is a public interest in senior government officers being accountable, and being seen to be accountable, for acting in accordance with the law.
54. I consider that the objects of the FOI Act and the Ministerial Code of Conduct (**the Ministerial Code**) reflect a public interest in Ministers being individually accountable to the public for acting in accordance with the law and particularly when they are using publicly funded resources.
55. Section 3(1) of the FOI Act provides that the objects of the Act are to:
- (a) *enable the public to participate more effectively in governing the State; and*
 - (b) *make the persons and bodies that are responsible for State and local government more accountable to the public.*
56. The Ministerial Code includes the following provisions.

1. *Introduction*

Ministers have significant discretionary power and make decisions that can greatly affect individuals and the community. Consequently, it is necessary to set higher standards of conduct for them than for other categories of elected office holders.

Being a Minister of the Crown demands the highest standards of probity, accountability, honesty, integrity and diligence in the exercise of their public duties and functions. They must ensure that their conduct does not bring discredit upon the Government or the State.

...

3. *Conformity with the Westminster principles of accountability and collective and individual responsibility*

Under the Westminster system of government, Ministers have both collective and individual responsibilities.

A Minister's responsibility to act as a trustee of the public interest should always be paramount in the performance of their functions.

The Westminster system requires that Ministers are answerable to Parliament and through Parliament to the people.

...

4. *Official Conduct*

Ministers have a high standing in the community and they should provide leadership by striving to perform their duties to the highest ethical standards.

....

They are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities.

...

Guidelines for use of official vehicles

Ministers and certain Parliamentary Office Holders are provided with a government vehicle to assist in carrying out the functions of their offices.

The following guidelines should be observed in the use of these vehicles:

...

- *the primary reason for the provision of the vehicle is for the use of the person to whom it has been allocated. The car should always be available for official purposes.*
- *at other times, the vehicle may be used in the same manner as those vehicles allocated to Senior Officers covered by the Salaries and Allowances Determination. This provides for private usage by the Minister/Office Holder and others authorised by him or her.*
- *it is the responsibility of the Minister/Office Holder to ensure that any private usage of the vehicle is appropriate.*

...

- *the Minister/Office Holder is responsible for the proper care of the vehicle.*

...

57. In favour of disclosure, I consider that disclosure of the disputed information in relation to the third parties who were Ministers at the relevant time would provide a basis for discussion on the general subject of Ministers' benefits and individual Ministerial responsibility. I recognise a public interest in members of the public having access to that kind of information.

58. I do not accept the agency's submission that disclosure of the number of traffic infringement notices issued to individual unidentified Ministers satisfies the public interest in relation to individual Ministerial accountability. The information already disclosed may go some limited way towards satisfying the public interest in discussion of the general subject of Ministerial benefits. However, I consider that disclosure of the disputed information that relates to the third parties who were Ministers at the relevant time would go significantly further in satisfying this public interest in Ministerial accountability.

59. I consider that the public interest in Ministerial accountability gives considerable weight in favour of disclosure of the disputed information where it relates to third parties who were Ministers at the relevant time. However, I consider that some weight can also be given to this public interest in relation to disclosure of the disputed information where it relates to third parties who became Ministers after the relevant time.
60. While the third parties who were not Ministers at the relevant time were not at that time subject to the Ministerial Code, I consider that there is a public interest in those individuals being individually accountable for their use of publicly funded resources. I consider that the past driving conduct of those third parties, which occurred while they were elected Members of Parliament, is relevant to their accountability for use of publicly funded resources. I consider that Members of Parliament are required to use tax-payer funded resources responsibly and it is in the public interest for the public to be satisfied that those individuals have used taxpayer funded resources appropriately in the past. I also consider that senior public officers who are provided vehicles at expense to the taxpayer should be accountable to the public for their use of publicly funded resources.
61. In light of my obligations under section 74(2), I neither confirm nor deny whether or not the Commissioner of Police is a third party in this matter. The Commissioner of Police is the head of the agency responsible for traffic enforcement. The agency's website contains a number of pages about the dangers of speeding. One such page, entitled 'Cameras and speeding' concludes with the sentence '[t]here is no such thing as safe speeding'². I consider that if the Commissioner of Police receives a traffic infringement, there is a public interest in him being individually accountable for his driving while using a government vehicle, which is a publicly funded resource.
62. The agency submits that, to the extent that there are public interests in the accountability of the third parties, those public interests are satisfied by the third parties being issued infringements and individually dealing with the obligations imposed by those infringements. I accept that a public interest may be satisfied in ways other than disclosure under the FOI Act.
63. I accept that disclosure of edited copies of the disputed documents demonstrates that the third parties have received infringements and that a penalty has been imposed. I acknowledge that the individual third parties, like members of the public, have been held responsible for speeding by the issuing of infringements to the individuals; that there is no evidence to suggest that they have not been held individually accountable within the infringement process; and that payment of the amount due pursuant to a traffic infringement notice is, in effect, payment of a modified penalty, which under section 16 of the *Criminal Procedure Act 2004*, is not regarded as an admission for the purposes of any proceedings, whether civil or criminal.
64. I consider that the public interest in discouraging speeding may be satisfied in part by the third parties, like any members of the public, being issued with infringements and being subject to the processes associated with dealing with those notices. However, the infringements in this case were incurred by the third parties, who are senior public

² <http://www.police.wa.gov.au/Traffic/CamerasCutCrashes/Camerasworkwhy/tabid/1761/Default.aspx> accessed on 8 June 2015.

office holders, while they were using publicly funded government vehicles. I do not accept that being subject to the process of issuing and enforcing infringements satisfies the public interest in the third parties, as senior public office holders, being accountable to the public for acting lawfully, particularly when using a publicly funded resource. At the relevant time the government vehicles were provided to the third parties at a cost to the taxpayer and, in my view, accountability to the public extends beyond payment of fines associated with any infringements issued while using those government vehicles, which they held under a variety of arrangements.

65. In a number of decisions, my predecessors and I have recognised that there is a public interest in the accountability of State and local government agencies for expenditure of public funds: see *Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University and Others* [2001] WAICmr 1 at [62]; *Re V and Department of the Premier and Cabinet* [2010] WAICmr 7 at [34]; and *Re K and the City of Canning and L* [2012] WAICmr 3 at [48]. Similarly, I consider that there is a public interest in the accountability of Ministers and State and local government agencies for their use of publicly funded resources. I consider that this public interest extends to officers of agencies and Members of Parliament.
66. The agency submits that if, at the relevant time, a third party was not a Minister, the public interest in disclosure is diminished because the third party at that time held a non-Ministerial vehicle at their own cost having forgone a cash payment.
67. I accept that the third parties could fall within one of the three categories listed at [21] of this decision and that the agency has correctly identified which of the categories applied to the individual third parties at the relevant time.
68. Some third parties were Ministers at the relevant time. The Ministerial Code provides that Ministers 'are provided with a government vehicle to assist in carrying out the functions of their office'. The Ministerial Code allows private usage of a Ministerial vehicle by the Minister or others authorised by him or her. I understand that a Ministerial vehicle is provided at no cost to the Minister and State government resources are expended to provide and administer the provision of those vehicles to Ministers.
69. Some third parties were not Ministers at the relevant time and were in possession of a non-Ministerial vehicle. The SAT Determination in relation to Members of Parliament provides 'the motor vehicle provided to Members under Section 4 of this Part forms part of the Electorate Allowance and not part of the remuneration package'. A member who forgoes his entitlement to a motor vehicle 'shall be paid an amount of \$25,000 per annum, payable monthly or twice monthly with the Base Electoral allowance'. The SAT Determination in relation to special office holders provides that 'where a person elects not to be provided with a motor vehicle through State Fleet he/she is entitled to the cash value being paid fortnightly as additional remuneration.'
70. The provision of a government vehicle under those SAT Determinations can be contrasted with the Senior Officers Vehicle scheme, where Senior Executive Officers pay a fortnightly contribution from their net salary to be entitled to use an operational government vehicle for limited private purposes.

71. Government vehicles provided under a SAT Determination and Ministerial vehicles are not subject to the WA Government Fleet Policy and Guidelines. I understand that the State government is a self insurer and that misuse of those government vehicles has potential consequences to expenditure of public funds.
72. I acknowledge that an officer of an agency or a Member of Parliament holding a non-Ministerial vehicle has chosen to forego an electorate allowance or a cash payment for that privilege. However, they also possess the non-Ministerial vehicle at the expense of the taxpayer. The cost of a non-Ministerial vehicle and the costs associated with the provision of that vehicle are financed by the taxpayer whether or not there is a difference in the amount of salary or allowance the individual receives.
73. I do not accept that a third party's decision to take a government vehicle rather than a financial payment under a SAT Determination is the equivalent of using a privately funded vehicle. I do not consider that the weight in favour of disclosure given to the public interest in the accountability of the third parties for their use of publicly funded resources is diminished in relation to those third parties that held a non-Ministerial vehicle at the relevant time.
74. In *AK and the Department of Finance and Deregulation* [2013] AICmr 64, the Australian Information Commissioner, Professor John McMillan, considered whether personal information about a Member of Parliament (AK), which was included in documents related to AK's use of Parliamentary entitlements, was exempt under the *Freedom of Information Act 1982 (Cth)* (the **Cth FOI Act**). In effect, section 47F of the Cth FOI Act provides that information is prima facie exempt if it would involve the unreasonable disclosure of personal information about an individual. At [21] Professor McMillan stated that the central facts disclosed in the documents were that:

[T]here may have been an incident with non-compliance with government guidelines on Parliamentary entitlements, that AK's office identified this non-compliance; and that AK took steps to remedy the possible non-compliance.

75. Professor McMillan went on to state at [22-23] that:

Members of Parliament would be aware that their enjoyment of Parliamentary entitlements must comply with relevant rules or guidelines, and that this will be independently scrutinised. Members would, I am satisfied, have an expectation that this scrutiny may extend to public scrutiny, either in response to a request made under the FOI Act or through the proactive release of information by a government agency. In that event, it could reasonably be expected that information would be released as to whether the enjoyment of Parliamentary entitlements complied with government guidelines, including whether the enjoyment of those entitlements by a family member complied with the guidelines.

I am further satisfied that disclosure of this information in response to an FOI Act request would serve a public purpose. Disclosure supports the effective oversight of public expenditure, and may shed light on the workings of government in administering entitlements and repayments.

76. Under section 11A(5) of the Cth FOI Act, Professor McMillan considered whether disclosure of the personal information about AK would, on balance, be contrary to the

public interest. At [29] Professor McMillan states that ‘the proper use of publicly-funded Parliamentary entitlements is a matter of public importance and is bolstered by transparency concerning the use of those entitlements’. At [38] he states that ‘Members of Parliament would reasonably expect public scrutiny of their use of Parliamentary entitlements occurring at any time during their Parliamentary career’.

77. In *Einfeld and Human Rights and Equal Opportunity Commission* [2009] AATA 414 (***Re Einfeld***), Professor GD Walker, Deputy President of the Administrative Appeals Tribunal, considered whether documents relating to expense claims of the Honourable Justice Einfeld, which included personal information about Justice Einfeld and his former wife, were exempt under the Cth FOI Act. Professor Walker considered whether disclosure of the documents was unreasonable. He refers to Member Webb in *Albanese and Chief Executive Officer of the Australian Customs Service* [2006] AATA 900 who states at [32]:

The public interest in the administration of government is in sharp focus when the probity and behaviour of senior public officials are in issue: the more senior the public official, the greater the public interest. Senior public officers are not simply expected to conduct their public office and official duties properly and according to law, the public interest is served if they are seen to do so.

78. In *Re Einfeld*, Professor Walker found that the public interest in non-disclosure of the personal information was outweighed by the public interest in knowledge of the contents, which concerned the conduct and expenditure of public money by a senior official. On that basis he found that disclosure was not unreasonable under section 41(1)(repealed) of the Cth FOI Act.
79. While the decisions I have considered above in relation to the Cth FOI Act include a consideration of whether disclosure of personal information is unreasonable, I consider that they are relevant to my consideration of the public interest in the accountability of senior officials. I consider there is a public interest in senior public officers being seen to be accountable for their conduct, particularly in circumstances involving the expenditure of public funds or the use of entitlements received as a result of holding public office.
80. I accept that a matter of public curiosity is not the same as a public interest. I do not accept the complainant’s submissions that topping the list as most viewed on a website demonstrates in itself a public interest. Neither, in my view, does media attention on its own demonstrate a public interest in favour of disclosure of the disputed information. However, in *Re V and Department of the Premier and Cabinet* [2010] WAICmr 7, I considered whether the names and amounts of itemised expense claims, including travel expenses, for former WA State Parliamentarians were exempt under clause 3(6). I concluded at [29]-[35] that:

[T]he way in which a government spends public money is a matter of legitimate public interest and is not simply a matter of public curiosity... the identities of persons receiving entitlements for performing or having performed functions on behalf of the public of Western Australia – as well as the amounts of those entitlements – are matters of legitimate public interest.

81. I consider the fact that the third parties were issued traffic infringement notices is not simply a matter of public curiosity. The third parties at the time of the access application were senior public officers in influential positions and I consider that their lawful conduct, particularly when using publicly funded resources, is more than a matter of public curiosity.
82. I have considered the complainant's submission that information of this kind is routinely released in other jurisdictions. I am aware of a Disclosure Log from the NSW Department of Premier and Cabinet under the *Government Information (Public Access) Act 2009* (NSW), with a decision dated 14 July 2014, in response to a request for documents concerning 'traffic infringements or parking fines involving government vehicles assigned to the Premier, Treasurer or Ministers between 21 June 2013 and 26 May 2014'. The disclosed documents include edited copies of traffic infringement notices. The names of the recipients of those notices were not deleted. A Commonwealth Department of Finance Disclosure Log for FOI 12 114 includes details of infringements issued to the then Prime Minister while using a government vehicle. Nevertheless, even if information of the type in dispute in this case is disclosed in other jurisdictions, I am required to make a decision applying the law of this State and on the facts before me.
83. In my view, there is a public interest in appropriate administration of the costs of providing Ministerial and non-Ministerial vehicles to Ministers, Members of Parliament and senior public servants. Based on the information currently before me, I consider that the accountability of the agencies and officers responsible for the administration of infringements that have been issued to the third parties driving Ministerial and non-Ministerial vehicles has been satisfied by the information that has already been disclosed. Those documents demonstrate that, in accordance with government policy, where an agency has received traffic infringement notices relating to the third parties, those notices have been referred to the appropriate third party and those third parties have been required to take financial and legal responsibility for those infringements.
84. While I consider that the protection of the personal privacy of an individual is a strong public interest against disclosure of the disputed information, I consider that the weight of this public interest is lessened in the particular circumstances of this matter because the disputed information concerns the conduct of senior public office holders, including Ministers, when using publicly funded resources. I consider there is a strong public interest in the third parties in this case being accountable for their conduct, particularly when they are using publicly funded resources.
85. In balancing the competing public interests, on the information presently before me and based on my examination of the disputed documents, I consider that the public interest factors in favour of disclosure of the disputed information outweigh those public interest factors against disclosure in this case. Consequently, I am of the view that the disputed information is not exempt under clause 3(1), pursuant to the limit on the exemption in clause 3(6).

CONCLUSION

86. The agency's decision is set aside. In substitution, I find that the disputed information is not exempt under clause 3(1) of Schedule 1 to the FOI Act.
