

Decision D0142023 – Published in note form only

Re Rosser and Department of Mines, Industry Regulation and Safety [2023] WAICmr 14

Date of Decision: 26 October 2023

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

On 31 July 2021 Leanne Rosser (**the complainant**) applied to the Department of Mines, Industry Regulation and Safety (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to an investigation report completed by the agency in relation to the death of a worker at a worksite (**the disputed document**).

On 14 September 2021, the agency was deemed to have refused access to the disputed document, pursuant to section 13(2) of the FOI Act, as it had not provided the complainant with a notice of decision before the end of the permitted period as prescribed by the FOI Act.

By notice of decision dated 5 November 2021, the agency refused the complainant access to the disputed document in full pursuant to clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**) on the grounds the disputed document contained the personal information of individuals other than the complainant.

Clause 3(1) provides that matter is exempt 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 set out in clauses 3(2) to 3(6).

On 19 November 2021, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision.

The Commissioner obtained the disputed document from the agency, together with the FOI file maintained by the agency in respect of the complainant's access application.

On 18 August 2023, after considering the information before her, the Commissioner provided the parties with a letter setting out her preliminary view of the matter. It was the Commissioner's preliminary view that the disputed document is exempt in its entirety under clause 3(1).

The complainant did not accept the Commissioner's preliminary view and made further submissions. In particular, the complainant contended that the limit on the exemption in clause 3(6) applied because it would, on balance, be in the public interest for the disputed document to be disclosed.

Under section 102(3), the onus was on the complainant, as the access applicant, to establish that disclosure would, on balance, be in the public interest.

After considering all of the material before her, including the complainant's further submissions, the Commissioner was not dissuaded from her preliminary view.

In favour of disclosure, the Commissioner recognised that there is a public interest in people being informed of the actions taken, and decisions made, by an agency in relation to the investigation of workplace fatalities. The Commissioner also recognised there is a public interest in agencies being accountable for their actions and decisions in these situations.

Weighing against disclosure, the Commissioner recognised that there is a strong public interest in maintaining personal privacy, which 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.

Although the Commissioner acknowledged there is a general public interest in transparency, she noted that this must be balanced against other considerations, including the privacy of individuals. The Commissioner observed that the agency is subject to oversight in various ways, including its requirement to table an annual report in Parliament; the agency is subject to scrutiny by bodies such as Parliamentary oversight committees; and prosecutions brought by the agency are tested in open court.

The Commissioner was not persuaded by the complainant's submission that the fact the disputed document is a report written by a safety regulator necessarily outweighs the strong and well-established public interest in the protection of the personal privacy of individuals.

The complainant asserted that, as the disputed document related to the death of a worker on the site of another government agency, there was a conflict of interest in the agency's investigation and, as such, disclosure of the disputed document was in the public interest, to maintain the rule of law and public confidence in both the agency and the State Government. The Commissioner considered that the fact that the agency is a government entity with responsibilities for oversight of other government entities is not of itself sufficient to establish that there is a conflict of interest. The Commissioner observed that the agency has a legislative mandate to carry out various functions related to workplace safety and considered there was no evidence before her of a conflict of interest in this matter.

The complainant also claimed that the agency's internal review decision-maker in this case was both unqualified and had a variety of personal conflicts of interest. The Commissioner considered that there was insufficient information before her to support those assertions. In any event, as the Commissioner is empowered on external review to 'stand in the shoes' of the agency's decision-maker under section 76(1) of the FOI Act, the Commissioner considered that the complainant's submissions in this regard were not relevant to the matter before her to determine.

In balancing the competing public interests, the Commissioner was not persuaded that the public interests favouring disclosure of the disputed document outweighed the strong public interest in the protection of personal privacy. The Commissioner therefore found that the limit on the exemption in clause 3(6) did not apply to the disputed document.

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