

Decision D0152016 – Published in note form only

Re Jones and Department of Transport [2016] WAICmr 15

Date of Decision: 28 October 2016

Freedom of Information Act 1992 (WA): section 26; Schedule 1, clause 3.

On 21 December 2015, Iside (Liz) Jones (**the complainant**) applied to the Department of Transport (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents in relation to the investigation of a grievance she had lodged with the agency. After discussion with the agency the scope of her application was refined to 17 specific categories of documents to which she sought access, including statements and interview notes of other employees.

By notices of decision dated 4 March 2016 and 15 March 2016 the agency decided to refuse the complainant access to certain documents on the ground that they are exempt under clause 3(1); gave the complainant access to copies of other documents, edited to delete matter that is exempt under clause 3(1); and refused the complainant access to additional documents on the ground that such documents do not exist, pursuant to section 26 of the FOI Act.

On 11 April 2016 the complainant applied for internal review of the agency's decisions. By letter dated 26 April 2016 the agency confirmed its decisions.

By letter dated 23 June 2016 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decisions.

Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the agency's FOI file maintained in respect of the complainant's access application. The Commissioner reviewed the disputed documents and carefully considered the submissions made by the complainant and the agency.

During the external review the agency was required to undertake further searches for documents on the basis that there were reasonable grounds to believe additional documents should exist. In particular the agency was asked to search for an email that was referred to briefly in a report as containing information from a senior manager to another manager. Despite the Commissioner requiring the agency to undertake additional searches, it was unable to identify such a document. The agency provided information to the Commissioner that the individuals concerned believed the instruction to have been communicated verbally, rather than by email. The agency reviewed its claims in relation to some of the information it had deleted from some of the documents as exempt under clause 3(1) and provided the complainant with access to that information.

On 30 September 2016 the Commissioner provided the parties with his preliminary view. It was his preliminary view that the remaining information that had been deleted from the disputed documents was personal information about other individuals and was exempt under clause 3(1). As the documents related to the investigation of a grievance, while much of the information was about the complainant, it was intertwined with information about other individuals. The complainant had been provided with a great deal of information about the investigation, including the findings of the investigation. The Commissioner was not

persuaded that the disclosure of personal information about other individuals to the complainant was in the public interest. For the same reasons the Commissioner considered that the documents to which access had been refused were exempt under clause 3(1). Further, the Commissioner was of the view that the agency had taken all reasonable steps to find the requested email. He considered it was reasonable to conclude that either the document did not exist, or if it did exist it could not be located. Accordingly, in the Commissioner's preliminary view the agency's decision to refuse access to the requested document under section 26 of the FOI Act was justified.

The complainant was invited to withdraw her complaint or to provide the Commissioner with further submissions relevant to the matter for the Commissioner's determination. The complainant made further submissions to the Commissioner.

Having reviewed all of the material before him, including the complainant's further submissions, the Commissioner was not dissuaded from his preliminary view that the documents to which access had been refused and the edited information in the disputed documents is exempt under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner was also not dissuaded from his preliminary view that the decision of the agency to refuse access to the requested document under section 26 of the FOI Act, on the basis that the document does not exist or cannot be found, was justified.