

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

**File Ref: F2016141
Decision Ref: D0152017**

Participants:

**Jewish Community Council of
Western Australia Incorporated**
Complainant

- and -

Curtin University of Technology
Agency

-and-

'T'
Third Party

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to and including a PhD thesis – section 6 – access rights do not apply to documents that are publicly available – clause 3 – personal information – clause 3(3) – prescribed details – clause 3(4) – prescribed details – clause 3(6) – the public interest – section 32 – consultation – section 69(2) – third party entitled to be joined.

Freedom of Information Act 1992 (WA): sections 6, 10, 24, 32, 34, 69, 72, 74, 76 and 102;
Schedule 1, clauses 3, 5 and 8; Glossary

Freedom of Information Regulations 1993 (WA): regulations 9(1) and 9(2)

Malik and Office of the Public Sector Standards Commissioner [2010] WAICmr 25

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

Re Kobelke and Minister for Planning [1994] WAICmr 5

Re Whitely and Curtin University of Technology [2008] WAICmr 24

Ryder v Booth [1985] VR 869

Searle Australia Pty Ltd v Public Interest Advocacy Centre [1992] FCA 241

DECISION

The agency's decision is varied. I find that:

- Documents 2 and 3 described in my Reasons for Decision, after the deletion of signatures, are not exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* (WA).

Sven Bluemmel
INFORMATION COMMISSIONER

29 June 2017

REASONS FOR DECISION

1. This complaint arises from a decision made by Curtin University of Technology (**the agency**) to refuse the Jewish Community Council of Western Australia (Incorporated) (**the complainant**) access to documents under the *Freedom of Information Act 1992* (WA) (**the FOI Act**).
2. I have decided in the circumstances of this case to anonymise the identity of the third party.

BACKGROUND

3. On 11 February 2016 the complainant applied to the agency under the FOI Act for access to:
 - (a) *Thesis (Doctor of Philosophy) dated 2010 by Sandra Nasr, Curtin University of Technology, Department of Social Sciences, entitled 'Tactical Terror: Israel in the Palestinian Territories'. The thesis supervisors were Professors Eamon Murphy and Bob Pokrant.*
 - (b) *All reports concerning the thesis which were prepared by the two external examiners who were required under rule 12 cl 12(b) to comprise a Portfolio Examining Panel and to provide a written report on the academic merit of the thesis.*
4. By notice of decision dated 23 March 2016 the agency decided to refuse the complainant access to the documents on the ground that they are exempt under clause 5(1) of Schedule 1 to the FOI Act.
5. By letter dated 15 April 2016 the complainant applied for internal review of the agency's decision. By letter dated 22 April 2016 the agency varied its decision, claiming that the documents are exempt under clause 5(1)(e) but not exempt under clause 5(1)(f) of Schedule 1 to the FOI Act, as stated in the initial decision.
6. By letter dated 6 May 2016 the complainant applied to me for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

7. Following my receipt of this complaint, the agency produced to me copies of the disputed documents together with its FOI file maintained in respect of the complainant's access application.
8. My Principal Legal Officer (**PLO**) held a conciliation conference with the parties on 8 September 2016. The agency withdrew its claim for exemption under clause 5(1)(e) in respect of the disputed documents, advised that it had decided to lift an embargo on the thesis after deleting the acknowledgements page and make it available to the public, and agreed to review a copy of the thesis provided to it by its author to confirm that it was the same as the agency's library copy.

9. I received further submissions from the complainant dated 31 August 2016 in respect of clause 3(6) and a letter dated 15 September 2016 from Dr Michael Abrahams-Sprod of the University of Sydney on behalf of the complainant.
10. My PLO also inquired of the complainant by email dated 1 December 2016 whether it had accessed a copy of the thesis, and whether it maintained its claim for the names of the examiners in the examination reports. The complainant responded that it had only recently accessed a copy of the thesis and would require more time to examine the document before confirming whether or not it would also seek disclosure of the acknowledgements page of the thesis. The complainant subsequently confirmed that it maintained its claim for the whole of the acknowledgments page of the thesis.
11. I issued my preliminary view letter to the parties on 2 May 2017. It was my preliminary view that the majority of the information in the acknowledgements page of the thesis was exempt. However, there was a very small amount of information on that page that is not exempt under clause 3(3) but it is not practicable for the agency to give access to an edited copy of that page with the exempt matter deleted in accordance with section 24 of the FOI Act. It was also my preliminary view that the examination reports are not exempt under clause 3(1).
12. Following the issuing of my preliminary view letter to the parties, the complainant indicated that it accepted my preliminary view. I therefore understand the complainant no longer seeks access to the acknowledgements page of the thesis, so I have not considered it further.
13. My office took the necessary steps to consult with two individuals whose personal information I consider is not exempt. By letters dated 2 May 2017, I sought the views of the individuals as to whether they wished to be joined as parties, to make submissions, to be joined as parties and make submissions, or to take no further part in the matter. I also took the opportunity to state that third parties do not have a right of veto over the release of documents. Their views, in this case relevant to clause 3 claims under Schedule 1 to the FOI Act, are but one factor to be taken into account in determining whether documents are exempt or not. One of the two individuals wished to be joined as a third party and they have been so joined. The other individual made submissions to me but did not wish to be joined to the complaint as a third party. I have taken both sets of submissions into account in reaching my final decision.
14. In these circumstances therefore, by section 34(1)(e) of the FOI Act, the agency deferred giving access to the disputed documents until the matter is finalised.

SECTION 6 – ACCESS RIGHTS DO NOT APPLY TO DOCUMENTS THAT ARE PUBLICLY AVAILABLE

15. Section 6 of the FOI Act provides that the access rights set out in Parts 2 and 4 of the FOI Act do not apply to documents that are publicly available. Publicly available documents are those which are:
 - (a) *available for purchase by the public or free distribution to the public; or*
 - (b) *available for inspection (whether for a fee or charge or not) under Part 5 or another enactment; or*

- (c) *State archives to which a person has a right to be given access under Part 6 of the State Records Act 2000 despite this Act; or*
- (d) *publicly available library material held by agencies for reference purposes; or*
- (e) *made or acquired by an art gallery, museum or library and presented for public reference or exhibition purposes.*
16. The document to which the complainant sought access under part (a) of its application is the PhD thesis entitled ‘Tactical Terror: Israel in the Palestinian Territories’ (**the thesis**). The thesis was placed under permanent embargo by the agency in 2010. On 31 August 2016 the agency advised my PLO that the agency had decided to lift the embargo on the thesis and make it available to the public through its John Curtin Prime Ministerial Library (**the Library**). By telephone call from the agency on 7 September 2016, my PLO was further advised that the thesis would be available in the Library that day with the Library catalogue updated accordingly on 8 September 2016.
17. On 8 September 2016 the agency confirmed to my PLO that the thesis was available for access by members of the public, subject to any requestor completing administrative requirements set out in the Curtin University Library Rules.
18. Following the conciliation conference, the agency conducted a page by page review of the thesis and a copy of it which was supplied to the agency by the author and which purported to be an identical document. Upon inspection the agency confirmed that it was identical in all respects to the agency’s copy of the document save that the copy supplied to the agency by the author had:
- the acknowledgments page removed;
 - a copyright statement added to the first page; and
 - the reference pages removed.
19. The agency decided to reinstate the reference pages to the thesis.
20. The agency provided the complainant with a statutory declaration dated 10 October 2016 attesting to the differences between the original and the copy of the thesis.
21. The agency has provided me with information to confirm that on 3 November 2016 a person physically accessed a copy of the thesis at the Library. On 7 November 2016 a request for document delivery of a copy of the thesis was received via the National Library of Australia. This resulted in the agency making a scanned copy of the thesis and posting it to the National Library of Australia on 24 November 2016. On 11 November 2016 the complainant applied to the Library for a copy of the thesis.
22. I am satisfied on the information currently before me that the thesis, except for the acknowledgements page, is now publicly available library material held by agencies for reference purposes. Therefore, under section 6(d) of the FOI Act, access rights under Parts 2 and 4 of the FOI Act no longer apply to the thesis except the acknowledgements page, and I have not considered it further.

THE DISPUTED DOCUMENTS

23. As the complainant has confirmed that it accepted my preliminary view and no longer seeks access to the acknowledgements page of the thesis, that document is out of scope and I have not considered it further.
24. The documents now remaining in dispute, Documents 2 and 3, are two required examination reports for the assessment of a PhD candidate's thesis except for the signatures of an officer of the agency contained in each document (**the disputed documents**). These reports are used to determine whether the degree of PhD should be awarded or not. They were prepared by members of the academic staff of two other universities.
25. The agency withdrew its exemption claim for the disputed documents under clause 5(1)(e) but confirmed to my PLO by email dated 31 August 2016 that it considers the names and signatures contained in Documents 2 and 3 are exempt under clause 3(1) of Schedule 1 to the FOI Act.
26. The complainant advised my PLO that it does not seek access to the signatures of individuals contained in Documents 2 and 3. The signatures of individuals are therefore out of scope and I have not considered them further.

SECTION 32 – CONSULTATION

27. Had the agency originally considered that Documents 2 and 3 are not exempt under clause 3 of Schedule 1 to the FOI Act, because they each contain some personal information about third parties, under section 32 of the FOI Act, the agency would have been required to take such steps as are reasonably practicable to obtain the views of those third parties as to whether the information about them is exempt under clause 3(1). Under section 69(2), any third party is also entitled to be joined as a third party to the complaint.
28. As section 76(1)(b) provides that the Commissioner may decide any matter in relation to the access application, I decided to seek the views of the named individuals prior to deciding whether the disputed documents are exempt.

CLAUSE 3 – PERSONAL INFORMATION

29. Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The term 'personal information' is defined in the Glossary to the FOI Act 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.*

30. 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 definition of ‘personal information’ in the Glossary makes it clear that ‘personal information’ is information about an identifiable person. Information of that kind is exempt under clause 3(1), subject to the application of any of the limits on exemption in clauses 3(2)-3(6).

The agency’s submissions – clause 3

31. The agency did not make any submissions in respect of clause 3 in its notice of decision or in its internal review decision. However, during negotiations with my office the agency advised my PLO by email dated 18 August 2016 that it maintained an exemption claim under clause 3 for certain personal information contained in the disputed documents. By email dated 18 August 2016 from my PLO, the complainant was advised of the agency’s position.
32. In an email dated 31 August 2016 the agency advised my office that ‘[a]part from the examiners’ names and the signature of the examinations officer, I do not consider anything else exempt.’

The complainant’s submissions – clause 3

33. The complainant’s submissions are set out in its letter to me seeking external review dated 6 May 2016 and its letters dated 16 and 19 September 2016, together with a letter from Dr Michael Abrahams-Sprod, Roth Foundation Lecturer in Israel, Jewish Civilisation and Holocaust Studies, University of Sydney, dated 15 September 2016. In brief, the complainant submits as follows:
- Although the complainant accepts that disclosure of the names of the examiners would reveal personal information about them, namely their identities and the fact that they had prepared the subject reports, this category of personal information is not exempt: clause 3(4) of the Schedule and regulation 9(2)(a) of the *Freedom of Information Regulations 1993 (the Regulations)* and separately by operation of clause 3(6).
 - Clause 3(4) applies to any person who performs or has performed services for an agency under a contract for services: *Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25 (*Malik*) at [34] and [36]. Each of the examiners was a person who performed services for the agency under a contract for services.
 - By reason of clause 3(4) and regulation 9(2) the agency is required to disclose the names of the examiners who assessed the third party’s thesis.
 - Under section 102(1) of the FOI Act the agency bears the onus of proof to establish the absence of a contract for services.
 - If the agency is not prepared to proffer the relevant documents to the Commissioner, the complainant asks the Commissioner to exercise his powers

under section 72 of the FOI Act to require production of the relevant documents referable to the appointment of the examiners.

- Public interest factors against disclosure include the protection of the privacy of the examiners who undertook the tasks on the basis that their identities would remain confidential and that people might be unwilling to undertake these tasks if confidentiality were not to be preserved.
- The FOI Act overrides an absolute right to privacy: *Re Whitely and Curtin University of Technology* [2008] WAICmr 24 at [138] in which the Commissioner stated that ‘the deliberative process, particularly once completed should be able to withstand scrutiny and that there is a public interest in the disclosure of documents that will enable that to occur.’ The Commissioner also cited with approval in that decision *Re Kobelke and Minister for Planning* [1994] WAICmr 5 which in turn cited *Searle Australia Pty Ltd v Public Interest Advocacy Centre* [1992] FCA 241 as authority for the proposition that ‘previous understandings of confidentiality may not be sufficient to protect information from disclosure under FOI since it is the specific requirements of clause 8 that must be applied rather than any long standing convention of confidentiality.’
- *We seek the names (but not the signatures) of the examiners because this will enable us to research the academic background of the examiners in relation to the specific subject-matter of the thesis and thereby have a better insight into their comments. This in turn will assist in any external academic review of the merits of the thesis.*
- The names of the examiners would come within the provisions of clauses 3(3) and 3(4) of Schedule 1 as relating to activities performed for an agency by present and former officers and independent contractors.
- The persons concerned may not want their identities disclosed out of concern that they may be subject to criticism. Academics should not be immune from criticism and scrutiny. Academic work ‘must be subject to probing debate and scrutiny.’
- If the agency had previously promised confidentiality to the examiners who relied on that promise, the complainant refers to *Ryder v Booth* [1985] VR 869 at [872]:

There may well be feelings of resentment amongst those who have given information ‘in confidence’ at having the confidence arbitrarily destroyed by the operation of the legislation, but it is another thing altogether to say that they or others will not provide such information in the future. It is not sufficient to show that some people may be inhibited from reporting so frankly if they know that their report may be disclosed.

Third parties’ submissions – clause 3

34. Submissions were received by the agency from both of the examiners. One of those examiners chose to be joined as a party to this complaint. The other examiner chose not to be joined but made the following submissions:

- The examiner agrees to the release of their examiner's report with the thesis author's name and any reference to the thesis author's abilities and the quality of their thesis removed.
- The examiner's report is exempt under clause 3(1) as it contains personal information of the candidate. The report is about them and the quality of their work. Disclosure should only be with the candidate's consent. There is no legitimate public interest in the disclosure of their personal information.
- The examiner's report is exempt under clause 8(1) and (2) – confidential information. The release of the third party's name would be a breach of confidence and would prejudice the third party's future supply of information to the agency. The public interest in protecting the candidate's work outweighs the public interest in this report.

35. Further submissions made by one or both of the examiners are summarised below:

- International standards of academic peer review maintain the confidentiality of the peer review process, whereby only editors and authors see the reviews provided by academic reviewers. Academics would be reluctant to provide reports if there was a prospect of them being released to the public. Examiners often give permission for their identities to be shared with the candidate but not for personal information to be released more widely, as was the case in this matter.
- The examiners expected that the agency would keep the examiners' personal information confidential.
- In other FOI jurisdictions, examiners' reports would not be released, because they contain personal information about a student's work and disclosure is not in the public interest.
- Curtin did not provide information that the reports might be public documents. If the examiners had been told the documents could be made public they might have declined the opportunity.
- The examiners do not believe they entered into contracts for the provision of services as they were paid only an honorarium for the work they undertook.
- The Commissioner should consider disclosing an edited form of the examination reports, edited to delete any content that would reveal the identities of the examiners. This would protect and uphold international peer review standards and avoid potential harassment by third parties.
- The contents of postdoctoral thesis examinations were not intended to be 'scrutinised by members of the public under the FOI Act.' The content of the reports has nothing to do with the governance of the State or accountability for it.
- Frank assessment of students' work would be distorted by publication of examiners' reports.

- Preparation of examination reports is done as a community service rather than as a fee for service, so no contractual obligation arises.

Consideration – clause 3

36. The right of access to documents is not an absolute right but is subject to and in accordance with the FOI Act, which includes a range of exemptions designed to protect other public interests.
37. The complainant submits that it requires the full text of Documents 2 and 3 and the names of the examiners (but not their signatures) in order to undertake an analysis of the thesis and

[b]ecause this will enable us to research the academic background of the examiners in relation to the specific subject-matter of the thesis and thereby have a better insight into their comments. This in turn will assist in any external academic review of the merits of the thesis.

38. Section 10(2) of the FOI Act states that

A person's right to be given access is not affected by –

- (a) any reasons the person gives for wishing to obtain access; or*
- (b) the agency's belief as to what are the person's reasons for wishing to obtain access.*

39. As noted above, Documents 2 and 3 are reports by external examiners, who provide independent assessments and appraisals of the thesis, as required by the agency. I consider that both these documents are prima facie exempt as disclosure would reveal personal information about individuals.

Limits on exemption

40. Clause 3(1) is subject to certain limits on exemption. I consider that the relevant limits in this matter are clauses 3(3), 3(4) and 3(6).

Prescribed details

41. The FOI Act makes a distinction between purely private information, such as a person's home address or health details, and information that relates solely to the person's performance of functions, duties or services for the agency. However, the latter is limited to the specific information listed as 'prescribed details' in regulations 9(1) and 9(2) of the Regulations. Regulation 9(1) provides that prescribed details of an officer of an agency includes the name and title of an officer and things done by an officer or former officer of an agency in the course of performing their functions as an officer. Regulation 9(2) provides that prescribed details of contractor include the name and title of the contractor and anything done by the contractor in the course of performing their functions as described in the contract.

Clause 3(3) – prescribed details – Documents 2 and 3

42. 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 an agency.
43. Documents 2 and 3 contain the names and titles of academic and administrative staff who are employees of the agency, and carry out administrative functions for the examination of theses. This information will not be exempt under clause 3, by virtue of clause 3(3).

Clause 3(4) – prescribed details – Documents 2 and 3

44. Clause 3(4) provides that matter is not exempt matter merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to the person, the contract or things done by the person in performing services under the contract.
45. The two external examiners are engaged by the agency to supervise the preparation of the thesis and to review and validate the thesis for the awarding of a higher degree.
46. I agree with the complainant’s submission that clause 3(4) applies to any person who performs or has performed services for an agency under a contract for services: *Malik* [34] and [36].
47. Both examiners made submissions to me on this point. Those submissions are set out at [34] and [35] above.
48. Following a request from my PLO, the agency provided my office with a copy of the standard engagement document for one of the two examiners. The document set out details of the task to be undertaken and the arrangements to be made for payment of a fee to the individual upon receipt by the agency of the examiner’s report.
49. While the term ‘contract for services’ is not defined in the FOI Act, I am satisfied that the agreement I have reviewed contains all the necessary elements for it to be construed as a contract for services, notwithstanding the third parties’ submissions about a modest honorarium being payable, and their statements that they participated in the review of the thesis as ‘a contribution to a community of scholars’ and as ‘an act of academic goodwill’. The value of the remuneration is not determinative of whether a contract exists or not. This is confirmed by the well-established ‘peppercorn rent’ principle whereby, for example, a property may be purchased or leased for a token amount of money such as one dollar.
50. Based on the information before me, I am satisfied that it is likely that both examiners were engaged under similar arrangements with the agency to provide the services described above.
51. I am also satisfied that Documents 2 and 3, being reports providing a critical analysis of the draft thesis, and suggested amendments, consist of ‘things done by the person in performing services under the contract’.

52. I have noted that the examiners both made submissions to me objecting to disclosure of the reports, suggesting that, had they known that their identities might be disclosed to the public, they may have reconsidered the agency's offer of an engagement. I have considered those submissions. However, if one is engaged on a contract for services by a public university, then, under clause 3(4) of Schedule 1 to the FOI Act, things done by such a person in performing services under such a contract, as in this case, preparing a report in return for a fee, will not be exempt.
53. In the circumstances of this matter, I consider that clause 3(4) applies to the entirety of Documents 2 and 3 (other than the signatures) and they are not exempt under clause 3 of Schedule 1 to the FOI Act. That being so, there is no need for me to consider whether the limit on exemption under clause 3(6) applies to Documents 2 and 3. However since the parties made submissions to me on the public interest, I have also considered the application of clause 3(6) to the disputed documents below.

Clause 3(6) – the public interest – Documents 2 and 3

54. Clause 3(6) provides that information is not 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 onus lies with the complainant to establish that disclosure of personal information about third parties would, on balance, be in the public interest.
55. Determining whether or not disclosure would, on balance, be in the public interest involves identifying the public interests for and against disclosure, weighing them against each other and deciding where the balance lies.
56. The term 'public interest' is not defined in the FOI Act, nor is it a term that is easily defined. However, it is not merely something that may be of curiosity to the public; rather, it is something which is of concern or benefit to the public. In *DPP v Smith* [1991] 1 VR 63, at 75, the Victorian Supreme Court said:

The 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 wellbeing of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals ...

57. In favour of disclosure, I recognise a public interest in people being informed of the reasons for decisions made by State and local government authorities. Balanced against that public interest is a public interest in maintaining the privacy of persons about whom personal information is contained in documents held by State and local government agencies.
58. The complainant submitted that the FOI Act overrides an absolute right to privacy. It also stated that it requires the examiners' names to enable it to research the academic backgrounds of those examiners in relation to the subject matter of the thesis which will assist in any external academic review and provide insight into the examiners' comments.
59. The examiners have both stated that there are internationally accepted peer review guidelines that require anonymity. While I have been unable to find any such

guidelines, I can appreciate that there might well be a long established custom and practice in the academic community with respect to examiners' reports that presumes a level of confidentiality for such reports. However, I also note that for some years a practice and policy of open peer review has been gaining ground, particularly with respect to academic journals. I accept that these may be distinguished from thesis examiners' reports.

60. In the standard engagement document dated 7 December 2009 to one of the third parties the agency said:

It is the expectation of the University that the thesis will be examined confidentially and independently, and in particular, that your report will not be made available to other examiners. There is a question on the examination Report Form asking whether you approve the release of your identity to the candidate. The University will release your anonymised report to the candidate's Thesis Committee. However, please note that, under the Freedom of Information Act, it may not be possible to prevent disclosure of your identity. [my emphasis]

61. I accept that there may be a custom and practice of anonymity in the preparation and issuing of such reports. However, in my view the agency clearly set out in its arrangements for the preparation of the examiners' reports the possibility of certain information in the reports becoming public due to the application of the FOI Act. I note that both submissions indicate that, had this been brought to their attention, they may well have declined the invitation to examine the thesis.
62. However, there is also information available in the public domain to suggest that, with the growth of online access to research, at least two well regarded organisations have commenced a process called 'Open Peer Review'.
63. I also accept that such a process refers to the publication of academic papers and not reports on PhD theses. However, it is indicative of a growing pro-disclosure movement with respect to referee reports and reviews, prepared largely by academics, that bears further examination.
64. The Royal Society of London is described on its website as 'the independent scientific academy of the United Kingdom and the Commonwealth, dedicated to promoting excellence in science'.
65. It has developed an open online journal called 'Royal Society Open Science' that publishes referee reports for journal articles. Referee reports are made public under a creative commons open access licence. There are four possible scenarios for disclosure as outlined on the Royal Society's website¹, which are:
- Author agrees to open peer review; referee agrees to open peer review – signed referee report made public
 - Author does not agree to open peer review; referee agrees to open peer review – referee name only disclosed to author, referee report is not made public

¹ <http://rsos.royalsocietypublishing.org/open-peer-review> accessed on 16 May 2017

- Author agrees to open peer review – referee does not agree to open peer review – referee name not disclosed to author or made public, referee report made public
 - Author does not agree to open peer review; referee does not agree to open peer review – referee name not disclosed to author, referee report is not made public.
66. The offer of open peer review is made to authors. However the Royal Society’s Editorial standards and processes also state that:

[W]e offer authors the option of open peer review. Unless you have opted for open peer review, the referee reports and other correspondence relating to your paper must remain confidential and should not be shared or made publicly available.

67. Elsevier is an organisation described as providing information and analytics that help institutions and professionals progress science, advance healthcare and improve performance. One of its businesses is that of publishing research. It has a number of research platforms including Scopus, Science Direct and Mendeley. It also publishes over 2 500 journals including in the field of social science, which also covers the disciplines of sociology and political science.
68. Elsevier has run an ‘open peer trial’ for over two years and on 16 September 2016 published a review of the trial on its website².
69. The goals of the pilot were to make the peer review process more transparent and improve the recognition reviewers receive for their work. Five journals were involved in the pilot and when invited to review for these journals, reviewers were told about the pilot.

The review reports are made freely accessible, interlinked to the original articles and are given a separate Digital Object Identifier (DOI)... This means the reviewers who choose to publish the report with their name can claim the report as a publication and include it on their ORCID profile.

70. ORCID is short for Open Researcher and Contributor ID. ORCID is described on its website as a non-profit organization supported by a global community of organizational members, including research organizations, publishers, funders, professional associations, and other stakeholders in the research ecosystem.
71. Its service is described as follows:

ORCID provides an identifier for individuals to use with their name as they engage in research, scholarship, and innovation activities. We provide open tools that enable transparent and trustworthy connections between researchers, their contributions, and affiliations. We provide this service to help people find information and to simplify reporting and analysis.

² <https://www.elsevier.com/reviewers-update/story/innovation-in-publishing/is-open/peer-review-the-way-forward> accessed on 16 May 2017

72. The review of the trial stated that, of the reviewers who accepted the open peer review invitations:
- 95% said publishing review reports did not influence their recommendation;
 - 76% said the fact that their reports will be publicly available did not change their wording;
 - 45% gave the Royal Society consent to reveal their names;
 - 36% of those who wished to stay anonymous said they will reveal their names next time they review for the journal; and
 - 98% said they will accept further review invitations for the journal.
73. These examples illustrate that, in a climate where open data access and transparency are increasingly desirable, there appears to be a move, at least among publishers of academic journals, towards open access to review reports, citing benefits both for author, via increased transparency of the process, and the reviewer being acknowledged for their contribution and able to claim a review as a publication, for their own academic record. I consider that open data access and transparency are public interest factors in favour of disclosure.
74. While I do not wish to place undue weight on these two examples, as I again note that they relate to the publication of academic papers rather than examiners' reports on PhD theses, I have considered them as indicative of the changing landscape of access and transparency in the digital era in which academics increasingly find themselves. Further, as noted above at [60], the agency itself advises intending examiners 'that, under the Freedom of Information Act, it may not be possible to prevent disclosure of your identity'.
75. I note also that the disputed documents are now some seven years old, and the thesis was passed, the degree awarded, and a copy of the thesis is available in the Library for the public to access. Therefore, I consider that the public interest in maintaining personal privacy is less compelling in the circumstances of this case.
76. In balancing the public interest factors for and against disclosure, I find that disclosure of the disputed documents is in the public interest.

CONCLUSION

77. I find that:
- Documents 2 and 3 described in my Reasons for Decision, after the deletion of signatures, are not exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992 (WA)*.
