

Decision D0152021 – Published in note form only

***Re Graham and Shire of Toodyay* [2021] WAICmr 15**

Date of Decision: 29 November 2021

Freedom of Information Act 1992 (WA): Schedule 1, clause 3, section 24

On 2 November 2020, Larry Graham (**the complainant**) applied to the Shire of Toodyay (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to the last two employment contracts of a former officer of the agency and the current employment contract of a current officer of the agency.

By notice of decision dated 16 December 2020, the agency refused access to the three documents identified in the decision (**the disputed documents**) under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**), clause 8(2) of Schedule 1 to the FOI Act (**clause 8(2)**) and clause 11(1)(c) of Schedule 1 to the FOI Act (**clause 11(1)(c)**).

On 17 December 2020 the complainant applied for internal review of the agency’s decision. By letter dated 23 December 2020 the agency confirmed its decision.

By letter dated 19 January 2021 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. On 25 August 2021, after considering the material then before her, the Commissioner provided the parties with her preliminary view of the matter.

It was the Commissioner’s preliminary view that the information in the disputed documents about: remuneration packages, residential addresses, superannuation contributions, housing allowances, relocation expenses, professional development fees, motor vehicles and signatures (**the disputed information**) was exempt under clause 3(1). Under clause 3(1), matter is exempt if its disclosure would reveal ‘personal information about an individual (whether living or dead).’

The definition of personal information makes it clear that any information or opinion about an individual whose identity is apparent – or whose identity can be reasonably ascertained from the information or opinion – is, on its face, exempt under clause 3(1). The Commissioner also considered the limits on clause 3(1) in clauses 3(3) and 3(6).

Clause 3(3) provides that matter is not exempt under clause 3(1) ‘merely because its disclosure would reveal... prescribed details.’ Prescribed details are defined in regulation 9(e) of the *Freedom of Information Regulations 1993* and include the name of an officer of an agency and ‘anything done by the person in the course of performing ... the person’s functions...’

The word ‘merely’ in clause 3(3), according to its ordinary dictionary meaning means ‘solely’ or ‘no more than’ prescribed details about an officer. The Commissioner was of the view that the disputed information was more than merely prescribed details. Consequently, the Commissioner was of the view that the limit in clause 3(3) did not apply to the disputed information.

Clause 3(6) provides that matter is not exempt under clause 3(1), if its disclosure would, on balance, be in the public interest. In balancing the competing public interests, the Commissioner was of the view that the complainant had not shown that, on balance, the disclosure of the disputed information would serve a public interest which outweighed the need to protect an individual's privacy. As a result, the Commissioner considered that the limit in clause 3(6) did not apply to the disputed information.

The Commissioner considered that, under section 24 of the FOI Act, it was reasonably practicable for the agency to give the complainant access to the disputed documents from which the disputed information was deleted. It was the Commissioner's further preliminary view that the disputed documents are not exempt under either clause 8(2) or clause 11(1)(c), as claimed by the agency.

In response to the preliminary view, the agency submitted that matter in the disputed documents about Key Result Areas (**the disputed matter**) was exempt under clause 3(1) because '...it is the role of Council to appoint a CEO and manage the employee's performance annually, and not the role of the public'. The Commissioner did not consider that the agency had explained how disclosure of the disputed matter could oust the role of the agency in conducting performance reviews.

The agency also submitted that 'the intent of removing' section 5.94(t) of the *Local Government Act 1995 (WA) (LG Act)* was 'due to concerns about allowing [the officers' contracts] to be freely available ... as a contract is confidential...' The Commissioner was not satisfied that the agency had established why the LG Act had been amended. In any event, the Commissioner did not consider that the LG Act should determine her consideration under the FOI Act, although persuasive information on that point may be relevant to the public interest consideration under clause 3(6).

The complainant provided further submissions about how specific legislation required local government to be transparent and accountable about remuneration packages for Chief Executive Officers. However, the Commissioner observed that the total reward package figures for Chief Executive Officers was publicly available through the Salaries and Allowances Tribunal determinations applicable to each of the three contracts. The agency also published further information about the reward packages of Chief Executive Officers in the agency's annual reports. The Commissioner considered that the availability of that information satisfied the public interest in the disclosure of information about the remuneration of Chief Executive Officers.

The complainant's further submissions referred to a right of inspection under the LG Act which he considered relevant to two of the three disputed documents. The Commissioner considered the particular sections of the LG Act referred to and found that the right of inspection did not apply in these specific circumstances.

After considering all of the information before her, including the complainant's and the agency's further submissions, the Commissioner was not dissuaded from her preliminary view about either the disputed matter or the disputed information. Further, the Commissioner confirmed that, under section 24 of the FOI Act, it was reasonably practicable for the agency to give the complainant access to the disputed documents from which the disputed information was deleted.

The Commissioner set aside the agency's decision. The Commissioner found that the disputed information was exempt under clause 3(1). Further, the disputed documents are not exempt in their entirety under clauses 3(1), 8(2) or 11(1)(c) of Schedule 1 to the FOI Act, as claimed by the agency.