

Decision D0152023 – Published in note form only

Re Standen and Western Australia Police Force [2023] WAICmr 15

Date of Decision: 27 October 2023

Freedom of Information Act 1992 (WA): section 6; Schedule 1, clause 5(1)(e) and clause 5(1)(f)

On 14 April 2022, Travis Standen (**the complainant**) applied to the Western Australia Police Force (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to copies of certain maps provided to inform the media in relation to the location of registered firearms (**the disputed documents**). Versions of the disputed documents were subsequently published by multiple news outlets.

On 6 July 2022, the agency provided the complainant with a notice of decision advising that, pursuant to section 6(a) of the FOI Act, access rights do not apply to the disputed documents because those documents are available for purchase by the public or free distribution to the public on account of the maps being published by various news outlets.

On 12 July 2022 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision.

The agency provided the Commissioner with a copy of the disputed documents and the FOI file maintained in respect of the access application. The Commissioner's office made further inquiries with the agency to assist with her deliberations in this matter. The Commissioner's office also attempted to resolve the matter informally which was unsuccessful.

On 21 August 2023, 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, because the disputed documents had been altered by the media outlets prior to their publication, the disputed documents – being documents held by the agency – were not publicly available; that section 6(a) did not apply to them; and that Part 2 of the FOI Act therefore applied.

The agency accepted there was a degree of variation between the disputed documents as held by the agency compared to the documents published by the media and accepted the Commissioner's preliminary view that access rights under, and subject to, the FOI Act applied to the disputed documents. The agency made submissions claiming that the disputed documents were exempt pursuant to clause 5(1)(e) and clause 5(1)(f) of Schedule 1 to the FOI Act (**clauses 5(1)(e)-(f)**).

On 2 October 2023, one of the Commissioner's officers provided her assessment of the agency's exemption claims. It was the officer's assessment that the Commissioner was likely to decide the disputed documents are exempt under clauses 5(1)(e)-(f). The complainant did not accept the assessment and provided submissions. The Commissioner gave careful consideration to those submissions and determined they were not relevant to the issue in dispute.

Clause 5(1)(e) provides that matter is exempt if its disclosure could reasonably be expected to endanger the life or physical safety of any person. Clause 5(1)(f) provides that matter is exempt if its disclosure could reasonably be expected to endanger the security of any property.

In *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 the Full Federal Court of Australia said, at page 190, that the words 'could reasonably be expected to' in the Commonwealth FOI Act were intended to receive their ordinary meaning. That is, they require a judgment to be made by the decision maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the relevant outcome. The Commissioner observed that this was accepted as the correct approach in *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASCA 167.

As no restrictions or conditions can be placed upon the release of documents under the FOI Act, it is well established that disclosure of information under the FOI Act is disclosure to the world at large: see *Public Transport Authority* [2018] WASC 47 at [71]. Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.

The agency submitted that the disputed documents, as held by the agency, were of higher resolution and quality than those published by media outlets. The agency claimed that there is a real risk that individuals could use the disputed documents to identify particular addresses at which firearms are registered and that this would present a threat to the life and physical safety of persons and the security of property. The Commissioner accepted the agency's submissions and considered that disclosure of the disputed documents could pose a significant concern to public safety and property security.

After examining the disputed documents and considering all of the material before her, including the agency's decision, the submissions made by both parties during the external review, and her officer's assessment, the Commissioner was satisfied that disclosure of the disputed documents could reasonably be expected to endanger both the life or physical safety of a person and the security of property.

Accordingly, the Commissioner varied the agency's decision and found that the disputed documents are exempt under clause 5(1)(e) and clause 5(1)(f) of Schedule 1 to the FOI Act.