

Decision D0162017 – Published in note form only

Re Event Health Management and City of Busselton [2017] WAICmr 16

Date of Decision: 29 June 2017

Freedom of Information Act 1992 (WA): Schedule 1, clauses 4(3) and 8(2)

On 10 November 2016 an access applicant applied to the City of Busselton (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to '[a] copy of the events application and all supporting documentation made by the events organiser for the Southbound Festival 2016'.

By letter dated 6 December 2016 the agency contacted Event Health Management (**the complainant**) to seek its views under sections 32 and 33 of the FOI Act as to whether the document 'Event Health Plan Southbound 2016 Document' (**the Plan**), to which it proposed to give access, contained matter that is exempt under clauses 3 or 4 of Schedule 1 to the FOI Act.

The complainant advised the agency that it considered the Plan to be exempt under clause 4(1) and claimed that its disclosure would reveal trade secrets of the complainant. After taking the complainant's views into account the agency decided to give the access applicant access to the Plan with all personal information deleted, and notified the complainant accordingly.

On 20 January 2017 the complainant applied for internal review of the agency's decision. By letter dated 3 February 2017 the agency varied its decision and decided that some information on pages 5 and 10 of the Plan is exempt under clause 4(2) of Schedule 1 to the FOI Act. It confirmed its decision that the remaining information (**the disputed information**) is not exempt, and that the access applicant should be given access to an edited copy of the document, with the exempt information and personal information deleted.

By letter dated 4 April 2017 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision claiming that the disputed information is exempt under clauses 4(3) and 8(2) of Schedule 1 to the FOI Act.

Following receipt of the complaint, the Commissioner obtained the Plan from the agency, together with the FOI file maintained by the agency in respect of the access application.

On 29 May 2017, after considering all the information before him, the Commissioner provided the parties with his preliminary view of the matter. It was his preliminary view that the disputed information is not exempt. The agency requires the organisers of public events to provide certain information to it, when such an event is arranged, before approval can be given for that event to take place. There is a 154 page document on the website of the Department of Health, Western Australia titled 'Guidelines for concerts, events and organised gatherings'. This document sets out the type of information that should be included in an event health plan.

The Commissioner was of the view that there was nothing remarkable in the disputed information as compared with the guidelines. While the Commissioner was satisfied on the

information before him that the disputed information comprised matter that, if disclosed, would reveal information about the business, professional, commercial or financial affairs of the complainant, he was not persuaded that disclosure of the disputed information could reasonably be expected to have an adverse effect on those affairs.

Further, as the holding of events is dependent upon this type of information being provided to an agency, the Commissioner was of the view that disclosure of the disputed information was unlikely to prejudice the future supply of information of this kind to the Government or to an agency. In fact, the Commissioner was of the view that it was more likely that if such information were not supplied, then this would have an adverse effect on the business, professional, commercial or financial affairs of the complainant, as permission to hold the event would not be granted.

The Commissioner was of the view that, as the agency had consulted the complainant as a third party pursuant to sections 32 and 33 of the FOI Act, he was not obliged to consider the complainant's submissions in relation to clause 8(2). However, he did consider those submissions but was not persuaded that the agency had given the complainant any reason to believe that the information was provided to it on a confidential basis. Accordingly, he did not consider that disclosure of the disputed information would reveal information of a confidential nature obtained in confidence.

The complainant was invited to provide the Commissioner with further submissions or to withdraw its complaint. By letter dated 19 June 2017, the complainant made further submissions to the Commissioner for his consideration. The submissions largely reiterated the submissions made to the Commissioner by the complainant in its application for external review to the Commissioner. The Commissioner considered the complainant's further submissions and reviewed all of the information before him, but was not dissuaded from his preliminary view.

Accordingly, the Commissioner did not find the disputed information to be exempt under clauses 4(3) or 8(2) of Schedule 1 to the FOI Act and confirmed the agency's decision to give the access applicant access to an edited copy of the Plan.