

Decision D0162023 – Published in note form only

Re Pandevski and Main Roads Western Australia [2023] WAICmr 16

Date of Decision: 1 November 2023

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

On 31 August 2022, Steve Pandevski (**the complainant**) applied to Main Roads Western Australia (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents associated with valuation advice received and relied upon by the Commissioner of Main Roads and the agency in its acquisition of certain land owned by named individuals.

The agency identified one document which was a valuation report (**the disputed document**). By notice of decision dated 15 October 2022, the agency refused the complainant access to the disputed document, on the grounds it was exempt under clauses 8(2) and 10(3) of Schedule 1 to the FOI Act. The complainant sought internal review of the agency's decision and the agency confirmed its decision.

On 17 November 2022, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision.

The Commissioner obtained the disputed document from the agency, together with the FOI file maintained by the agency in respect of the access application. One of the Commissioner's officers made further inquiries with the agency. As a result, the agency withdrew its exemption claims under clauses 8(2) and 10(3) and, in substitution, claimed that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

On 4 September 2023, after considering all of the information before her, the Commissioner provided the parties with her preliminary view. It was her preliminary view that the disputed document is exempt under clause 3(1).

The complainant did not accept the Commissioner's preliminary view and provided further submissions, claiming that the disputed document did not contain personal information and that disclosure of the disputed document was in the public interest.

After considering all of the material before her, including the complainant's further submissions, the Commissioner was not dissuaded from her preliminary view.

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). Personal information is exempt under clause 3(1) subject to the application of the limits on the exemption set out in clauses 3(2) to 3(6).

The Commissioner considered that a valuation report commissioned by a government agency, where that agency has ultimate power to compulsorily acquire the relevant land, is highly personal to the owners of the land and that information relating to the land valuation in those circumstances is of a private nature vis-à-vis the land owners.

While the Commissioner accepted that some information in the disputed document may not be of a particularly sensitive nature, and that some land details in the document are already publicly available, the Commissioner observed that the disputed document also contains compensation assessments and other information relating to the acquisition process the land owners were subjected to, which is not publicly available.

The Commissioner was satisfied that disclosure of the disputed document, in its entirety, would reveal personal information about the land owners and found that the disputed document was, on its face, exempt under clause 3(1).

The Commissioner considered that the only relevant limit on the exemption in this case was clause 3(6), which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3), the onus was on the complainant, as the access applicant, to establish that disclosure would, on balance, be in the public interest.

Among other things, the complainant relied on comments made by the former Information Commissioner in *Re McKay and Water Corporation* [2009] WAICmr 35 (*Re McKay*) in support of his claims that disclosure of the disputed document was in the public interest. The Commissioner accepted that there is a public interest in the accountability and transparency of the agency in the way it makes decisions and discharges its functions, including the process it follows when acquiring land from private citizens. However, unlike *Re Mackay*, in this case, the complainant was not the land owner, nor did he have the consent of, or act on behalf of, the land owners. Therefore, the Commissioner considered that the weight attached to the above public interests was considerably less than it would be if the land owners were the applicants.

The Commissioner recognised the public interest in the agency providing information to the public about the relevant infrastructure project generally. However, she was not persuaded that disclosure of the disputed document in this case would further that public interest.

Weighing against disclosure, the Commissioner recognised a strong public interest in maintaining personal privacy and noted that this public interest may only be displaced by some other strong or compelling public interest or interests that require the disclosure of personal information about one person to another person.

In balancing the competing public interests, the Commissioner was of the view that the public interests favouring disclosure of the disputed document were not sufficient to outweigh the strong public interest in the protection of the personal privacy of other individuals. Therefore, the Commissioner was not persuaded that disclosure of the disputed document would, on balance, be in the public interest and found that the limit on the exemption in clause 3(6) did not apply.

Accordingly, the Commissioner varied the agency's decision and found that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act.