

Decision D0172011 - Published in note form only

***Re Farina and Treasurer No.6* [2011] WAICmr 17**

Date of Decision: 29 April 2011

Freedom of Information Act 1992: section 26(1); Schedule 1, clause 3(1)

The background facts in this matter are similar to those in *Re Farina and Treasurer* [2011] WAICmr 12 (*'Re Farina No.1'*).

When the complainant lodged this complaint, the position of Treasurer was held by the Hon.Troy Buswell MLA ('the former Treasurer'). In the course of dealing with the complaint, the position of Treasurer came to be held after December 2010 by the Hon. Christian Porter MLA ('the Minister').

In March 2009, the complainant applied to the former Treasurer for access under the *Freedom of Information Act 1992* ('the FOI Act') to all documents on the Busselton Jetty Restoration, the Busselton Foreshore Redevelopment and the Busselton Foreshore Steering Committee from 20 February 2009 until 29 April 2009.

By decision dated 13 June 2009, the former Treasurer identified ten documents within the scope of the application. The former Treasurer gave the complainant access to edited copies of all ten documents, after deleting personal information under clause 3(1) of Schedule 1 to the FOI Act.

On 3 July 2009, the complainant applied to the Information Commissioner for external review of the former Treasurer's decision on the ground that further documents within the scope of her application existed or should exist pursuant to s.26 of the FOI Act. The complainant did not seek external review of the former Treasurer's decision to refuse access to documents in part under clause 3(1).

Following the receipt of this complaint, the Commissioner's office obtained the FOI file maintained in respect of the complainant's application and further information from the former Treasurer concerning, among other things, the searches made for the requested documents. After reviewing that information and the initial searches conducted by the former Treasurer's office, the Commissioner requested the Department of the Premier and Cabinet ('DPC') to conduct further searches for emails within the scope of the complainant's application using specific search terms. Those searches located further documents which the DPC provided to the Commissioner.

As in *Re Farina No.1* at paragraphs 12-13, in light of the further documents located, the Commissioner considered that the former Treasurer had not taken all reasonable steps to locate documents within the scope of the application in the first instance, as required by s.26(1). However, following those further searches, the Commissioner was satisfied that all reasonable steps had been taken to locate emails within the scope of the complainant's access application.

The Commissioner's office reviewed the further documents located by the DPC and identified nine additional documents as coming within the scope of the application. In

addition, after reviewing the material on the former Treasurer's FOI file, the Commissioner's office identified 14 further documents within the scope of the application, which had been located by the former Treasurer's initial searches but which had not been identified as within the scope of the application. Accordingly, the Commissioner's office identified a total of 23 further documents ('the disputed documents').

The Commissioner invited the Minister to make a decision on access in respect of the disputed documents. The Minister subsequently gave the complainant edited copies of those documents, deleting a small amount of personal information under clause 3(1) and a small amount of information on the basis that it was outside the scope of the complainant's application. The complainant did not withdraw her complaint.

At that point, the only information remaining in dispute was information deleted from eleven of the disputed documents. That information consisted of the direct work telephone numbers, including mobile phone numbers, of persons who each is or was at the relevant time an 'officer' of an agency, as that term is defined in the FOI Act; the home address of a person who is or was an officer of an agency; and the private, non-government email addresses or details of two officers or former officers ('the disputed information').

The Commissioner found that the telephone numbers, home address and private email addresses or details deleted from the disputed documents are personal information, as defined in the FOI Act, which is *prima facie* exempt under clause 3(1). The Commissioner considered that none of that information was 'prescribed details' pursuant to clause 3(3) for the same reasons as set out in paragraphs 21-26 of *Re Farina No.1*. The Commissioner considered that the public interest in the protection of personal privacy outweighed any public interest in favour of disclosure and that the limit on exemption in clause 3(6) did not apply to the disputed information.

For the same reasons given in paragraphs 20 to 37 of the Commissioner's decision in *Re Farina No.1*, the Commissioner found the disputed information exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the Minister's decision to refuse access to it.