

Decision D0172014 - Published in note form only

Re Matthews and Shire of Augusta-Margaret River [2014] WAICmr 17

Date of Decision: 13 August 2014

Freedom of Information Act 1992: Schedule 1, clause 4(3)

In three separate emails in August 2013, Ms Heather Matthews (**the complainant**) applied to the Shire of Augusta-Margaret River (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to certain documents concerning the proposed subdivision and development of land the subject of the Karridale Concept Plan.

The agency identified a number of documents coming within the scope of the complainant's access application, including a document to which it referred as 'Market Research' (**the disputed document**). In the course of making its decision on whether to grant access, the agency consulted with Nutan Pty Ltd (**the third party**). On 4 September 2013, the agency's Chief Executive Officer refused the complainant access to the disputed document under clause 4(3) (business and commercial information) of Schedule 1 to the FOI Act.

As the decision on access was made by the principal officer of the agency, in accordance with section 39(3) of the FOI Act, internal review was not available.

On 15 October 2013, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse her access to the disputed document. Following receipt of the complaint, the Commissioner obtained the original of the disputed document – which consist of six parts – together with the agency's FOI file in relation to the complainant's access application.

A conciliation conference was held between the complainant and the agency. As a result of that conference, it was agreed between those parties that the agency would reconsider its decision and provide the complainant access by way of inspection to an edited copy of the disputed document with personal information, as that term is defined in the FOI Act, and certain business information deleted under clauses 3(1) and 4(3), respectively, of Schedule 1 to the FOI Act.

However, the complainant advised this office and the agency that she was not able to attend at the agency offices to inspect the document and sought access to a copy of the disputed document.

In the course of the Commissioner's office dealing with the matter, the third party was joined as a party to the complaint.

After examining all the material before her, the A/Commissioner wrote to the parties setting out her preliminary view of the complaint and her reasons. It was the A/Commissioner's preliminary view that the disputed document was not exempt under clause 4(3) of Schedule 1 to the FOI Act.

The parties were invited to accept the Commissioner's preliminary view or provide further submissions to her in support of their respective positions. The third party consented to the disclosure of certain parts of the disputed document, which the agency subsequently disclosed to the complainant. However, the third party maintained its claim that the balance of the disputed document is exempt under clause 4(3) and made further submissions. The agency advised the A/Commissioner it accepted her preliminary view and agreed to provide the complainant with access by way of inspection to an edited copy of the disputed document, with only personal information deleted. The complainant confirmed she was not satisfied with the access provided and wished to pursue access to a copy of the disputed document.

The Commissioner reviewed all of the information before him and was not dissuaded from the A/Commissioner's preliminary view. On the information before him, the Commissioner was satisfied that, if disclosed, the disputed document would reveal information about the business and commercial affairs of the third party. The requirements of clause 4(3)(a) were therefore satisfied. However, the Commissioner was not persuaded, on the information before him, that disclosure of the disputed document could reasonably be expected to have an adverse effect on the business or commercial affairs of the third party or any other person, as required by clause 4(3)(b).

Accordingly, the Commissioner set aside the agency's decision and, in substitution, found that the disputed document was not exempt under clause 4(3) of Schedule 1 to the FOI Act. In addition, the Commissioner decided that access to an edited copy of the disputed document, with personal information about third parties deleted under clause 3(1) of Schedule 1 to the FOI Act, should be provided to the complainant.