

Decision D0172015 – Published in note form only

Re Krieg and Minister for Local Government [2015] WAICmr 17

Date of Decision: 24 September 2015

Freedom of Information Act 1992: Schedule 1, clauses 3(1), 3(3) and 3(6)

Freedom of Information Regulations 1993: regulation 9(1)

Julian Krieg (**the complainant**) applied to the Minister for Local Government (**the Minister**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to ‘a copy of the “Minority Report” to the Shire of York Show Cause Notice issued on 18 November 2014’. The Minister decided to refuse access to the requested document on the ground that it was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainant applied to the agency for external review of the Minister’s decision. Following receipt of the complaint the Information Commissioner (**the Commissioner**) required the Minister to produce the original of the disputed document and his FOI file maintained in respect of the complainant’s access application. The Minister and complainant provided further submissions on the matters in dispute.

The Minister notified the third party that the complainant had sought external review of his decision, and advised him of his rights to be joined to the complaint as a third party, under section 69(2) of the FOI Act. On 11 June 2015 the third party notified this office that he wished to be joined as a third party to the complaint, and subsequently provided submissions to this office. The third party submitted that the disputed document was exempt under clause 3(1) and that disclosure of the document was not in the public interest pursuant to clause 3(6).

On 3 September 2015 after considering the information before him, the Commissioner provided the parties with his preliminary view of the matter.

It was the Commissioner’s view that, except for a small amount of personal information about third parties that is exempt under clause 3(1) (**the edited matter**), the disputed document is not exempt from disclosure because any personal information in the disputed document about the third party amounts to prescribed details under clause 3(3) in relation to the third party’s functions as a local government councillor.

No further submissions were made by the Minister or the third party in response to the Commissioner’s preliminary view.

Clause 3(1) provides that matter is exempt if its disclosure would reveal information about an individual (whether living or dead). Clause 3(3) provides that information is not exempt under clause 3(1) merely because its disclosure would reveal prescribed details relating to an officer’s or former officer’s functions as an officer.

Regulation 9(1)(e) of the *Freedom of Information Regulations 1993* (**the Regulations**) provides that, in relation to an officer of an agency, prescribed details include ‘anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer...’

Section 74(2) provides that the Commissioner must not include exempt matter in any decision. As the Commissioner considers that this obligation extends to matter that is claimed to be exempt, he is constrained from describing the disputed document in detail. However, in his notice of decision the Minister described the disputed document as ‘the Report’.

The Commissioner considered that the subject matter of the disputed document and the circumstances in which it was created by the third party indicated that the disputed document was written in the third party’s capacity as a local government councillor.

In *Re K and the City of Canning* [2012] WAICmr 3 at [29], the Commissioner concluded that a local government councillor was a ‘member of an agency’ and therefore an ‘officer of the agency’ where the agency was a local government.

Having examined the disputed document, the Commissioner considered that, except for the edited matter, the information in the disputed document would do no more than ‘merely’ reveal prescribed details about the third party. Matter that is not exempt under clause 3(3) is not subject to consideration about whether or not disclosure is in the public interest.

The A/Commissioner considered all of the material before her and was not dissuaded from the preliminary view that the disputed document amounted to prescribed details as provided by clause 3(3). Therefore, except for the edited matter, the disputed document was not exempt.

Accordingly, the A/Commissioner set aside the Minister’s decision.