

Decision D0172021 – Published in note form only

Re ‘B’ and Shire of Ravensthorpe [2021] WAICmr 17

Date of Decision: 23 December 2021

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

On 5 February 2021, ‘B’ (**the complainant**) applied to the Shire of Ravensthorpe (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to the termination of his employment.

In the circumstances of this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant by name.

By notice of decision dated 18 March 2021, the agency decided to give the complainant access to four documents and refused him access to seven documents (**the disputed documents**). As the decision was made by the principal officer of the agency there was no right to internal review of the agency’s decision.

By email dated 25 April 2021, the complainant applied to the Commissioner for external review of the agency’s decision. The agency provided the Commissioner with its FOI file maintained in respect of the access application, together with a copy of the disputed documents.

The agency claimed that certain documents were exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**), and that all the documents were exempt under clauses 6(1), 8(2) and 11(1) of Schedule 1 to the FOI Act (**clause 6(1), clause 8(2) and clause 11(1)**).

On 15 October 2021, the Commissioner provided the parties with her preliminary view of the matter. Under section 76(1)(b) of the FOI Act, the Commissioner has the power to decide any matter in relation to an access application that could have been decided by the agency. It was the Commissioner’s preliminary view that the disputed documents were not exempt under clauses 6(1), 8(2) or 11(1), but that one document was exempt under clause 3(1). The Commissioner also considered that the remaining documents contained information that was exempt under clause 3(1), but that it was practicable for the agency to give the complainant access to edited copies of those documents.

By email dated 23 October 2021, the agency informed the Commissioner that it accepted her preliminary view. By email dated 30 October 2021, the complainant informed the Commissioner that he did not accept her preliminary view in relation to the information that was exempt under clause 3(1) (**the disputed information**) and made further submissions.

As the agency accepted the Commissioner’s preliminary view, the Commissioner was no longer required to consider the exemption claims in relation to clauses 6(1), 8(2) and 11(1).

The complainant accepted that the disputed information was personal information about other individuals, but claimed that it was in the public interest to disclose that personal information to him.

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 exemption.

The relevant limits to the exemption in this matter are clause 3(3) and clause 3(6) of Schedule 1 to the FOI Act.

The Commissioner considered whether the limit to the exemption at clause 3(3) of Schedule 1 to the FOI Act (**clause 3(3)**) applied; that is, whether the disputed information was prescribed details, as described in the *Freedom of Information Regulations 1993*. The Commissioner considered that in these circumstances, the individuals were volunteering information as part of an investigation which went beyond those individuals performing or purporting to perform their role as officers of the agency. Therefore, the limit under clause 3(3) did not apply.

Clause 3(6) of Schedule 1 to the FOI Act (**clause 3(6)**) provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

In his further submissions the complainant reiterated that he considered the process surrounding his termination had been flawed. He submitted that by obtaining access to the documents described as ‘staff statements in relation to conduct of [the complainant] in workplace’ in the agency’s notice of decision, he would be able to pursue the matter further. Therefore, the complainant claimed it was in the public interest to give him access to the personal information about other individuals. However, the Commissioner considered that was a private interest, rather than a public interest.

In considering the public interests for and against disclosure, the Commissioner considered that there is a public interest in the accountability of the agency in dealing with employment matters relating to its workforce. In this instance, the Commissioner considered that public interest had been largely satisfied. The complainant had been provided with the allegations made against him, as well as the outcome of the investigation into each of the allegations. As a result of the external review process, the agency had given the complainant access to additional information about the disciplinary process undertaken in relation to the complainant’s employment.

Additionally, in favour of disclosure, the Commissioner accepted that there is a public interest in individuals being able to access information about them that is held by an agency.

Favouring non-disclosure, the Commissioner recognised the strong public interest in maintaining personal privacy and the view that has been consistently expressed by Information Commissioners, that this public interest may only be displaced by some other strong, or compelling public interest that requires the disclosure of personal information about one person to another person.

In this matter the Commissioner considered that, on balance of the competing public interests, there was no demonstrable benefit to the public in disclosing personal information about other individuals to the complainant.

The Commissioner confirmed the agency’s decision that the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act.