

Decision D0182009 – Published in note form only

Re McClue and Department of Corrective Services [2009] WAICmr 18

Date of decision: 17 August 2009

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

In February 2009, the complainant applied to the agency, which is his employer, for access under the *Freedom of Information Act 1992* ('the FOI Act') to a report or reports prepared by a consultant in 1999-2000 relating to an incident at Casuarina Prison. The agency identified two reports and the complainant agreed to reduce the scope of his application to the executive summaries for each of those documents ('the disputed information').

The agency initially agreed to give the complainant access to the disputed information but a third party, who had been consulted in relation to the disclosure of personal information, objected and sought an internal review of the agency's decision. Following the internal review, the agency reversed its decision and refused the complainant access to the disputed information on the ground that it was exempt under clause 3(1), or in the alternative clause 12(b), of Schedule 1 to the FOI Act. In addition, the agency advised the complainant that it was not practicable to edit the disputed information pursuant to s.24 of the FOI Act. In May 2009, the complainant applied to the Information Commissioner ('the Commissioner') for external review of the agency's decision.

In June 2009, the Commissioner provided the parties to the complaint with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that the disputed information would, if disclosed, reveal personal information, as defined in the FOI Act, about people other than the complainant. Although the disputed information included personal information about the complainant, that could not be disclosed without also disclosing personal information about third parties. One third party did not consent to the disclosure of personal information about that third party and there was no evidence that the other third parties consented to the disclosure of personal information about them.

The Commissioner did not accept the complainant's submission - that because much of the information is publicly known it is not exempt - for the reasons given by Anderson J in *Police Force of Western Australia v Kelly and Smith* (1996) 17 WAR 9 at [14]. In weighing the competing public interests for and against disclosure, the Commissioner considered that the public interests favouring non-disclosure outweighed those favouring disclosure in this particular case. The Commissioner's preliminary view was that the disputed information was exempt under clause 3(1).

The complainant was invited to provide submissions in response and was granted an extension of time in which to do so. However, the complainant made no further submissions. Having again reviewed all of the information before him, the Commissioner was not dissuaded from his preliminary view and found that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act.