

**Decision D0192015 – Published in note form only**

***Re Twiby and Western Australian Land Information Authority (Landgate) [2015]*  
WAICmr 19**

**Date of Decision: 12 October 2015**

***Freedom of Information Act 1992: section 24, Schedule 1, clause 3***

On 7 April 2014 Peter Twiby (**the complainant**) applied to Western Australian Land Information Authority (Landgate) (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to a report prepared by an external investigator regarding his complaint against a named fellow employee (**the disputed document**).

The agency refused access to the disputed document on the grounds that it was exempt under clause 3(1) of Schedule 1 to the FOI Act because it included personal information, as defined in the FOI Act, about other individuals. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 4 August 2014 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained the disputed document from the agency together with the agency's FOI file maintained in respect of the complainant's access application. The Commissioner reviewed the disputed document and carefully considered the submissions made by the complainant and the agency.

The Commissioner was satisfied that the disputed document would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed document was on its face exempt under clause 3(1).

The Commissioner also considered that it was not 'practicable' for the agency to edit the disputed document to delete that personal information pursuant to section 24 of the FOI Act. Specifically, the Commissioner considered that any personal information about the complainant was inextricably intertwined with personal information of other individuals.

The Commissioner considered the application of the limit on the exemption in clause 3(6). In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in the complainant exercising a right of access in this case.

The complainant submitted that he had not been afforded procedural fairness by the agency. However, the Commissioner was satisfied that the agency had provided material which demonstrated that the complainant had been informed of the action the agency had taken and that it proposed to take in relation to dealing with his complaint against the fellow employee.

Therefore, the Commissioner considered that the public interests identified in favour of disclosure – including the public interest in affording the complainant procedural fairness – had largely been satisfied by the information provided to the complainant by the agency in the course of it dealing with the allegations made by the complainant.

On 18 September 2015 the Commissioner advised the complainant in a preliminary view that, in his view, the disputed document was exempt under clause 3(1) as claimed by the agency. The complainant was invited to withdraw the complaint or, alternatively, to provide further submissions relevant to the matters for his consideration.

The complainant made further submissions. After considering the complainant's further submissions, the A/Commissioner was not dissuaded from the Commissioner's preliminary view that the disputed document was exempt under clause 3(1) of Schedule 1 to the FOI Act.

Accordingly, the A/Commissioner confirmed the agency's decision to refuse access to the disputed document.