

Decision D0192023 – Published in note form only

Re ‘A’ and Local Government Standards Panel [2023] WAICmr 19

Date of Decision: 22 December 2023

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

On 2 December 2022, ‘A’ (**the complainant**) applied to the Local Government Standards Panel (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to the document, provided to the agency in response to the complainant’s complaint to the agency that a named local government councillor breached the *Local Government (Model Code of Conduct) Regulations 2021 (WA)* (**the disputed document**). In the particular circumstances of this matter, the Information Commissioner (**the Commissioner**) decided not to identify the complainant by name.

The agency is the primary complaints panel established under Part 5 Division 9 and Schedule 5.1 of the *Local Government Act 1995 (WA)* (**LG Act**). Its function is to receive and deal with complaints, made by any person, of alleged minor breaches by a council member of any rule of conduct in the *Local Government (Model Code of Conduct) Regulations 2021 (WA)* or a provision of a local government’s code of conduct.

By notice of decision dated 31 January 2023, the agency refused the complainant access to the disputed document on the ground it is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). As the decision was made by the agency’s principal officer, internal review was not available pursuant to section 39(3) of the FOI Act.

On 31 March 2023 the complainant applied to the Commissioner for external review of the agency’s decision.

The Commissioner obtained the disputed document from the agency, together with the FOI file maintained by the agency, in respect of the access application.

On 22 September 2023, after considering the material then before the Commissioner, one of the Commissioner’s officers provided the complainant with her initial assessment of the matter, which was that the Commissioner was likely to consider that the disputed document is exempt under clause 3(1).

The complainant did not accept the initial assessment and provided further submissions. In particular, the complainant made submissions contending that disclosure of the disputed document would, on balance, be in the public interest.

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 the exemption set out in clauses 3(2) to 3(6).

The Commissioner was satisfied that disclosure of the disputed document, in its entirety, would reveal personal information about individuals and found that the disputed document was, on its face, exempt under clause 3(1).

The Commissioner considered that the relevant limit on the exemption in this matter was clause 3(6). Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

Under section 102(3), the onus is on the complainant, as the access applicant, to establish that disclosure would, on balance, be in the public interest.

The Commissioner recognised that there is a public interest in ensuring the accountability of the agency for the manner in which it deals with complaints made to it and in the accountability of local government councillors and other elected officials for their actions and decisions. The Commissioner also considered that there is a public interest in the transparency of the decision-making processes of bodies such as the agency which, in this case, has authority to make binding decisions regarding allegations of minor misconduct. The Commissioner further recognised a public interest in the disclosure wherever possible of documents that inform the public of the basis for decision-making and of the material considered relevant to the decision-making process because such disclosure enhances accountability.

However, in this case, the Commissioner considered that the above public interests were satisfied by the information given to the complainant by the agency in its finding and reasons for finding in respect of the complainant's complaint, and that those public interests did not require the disclosure of the disputed document.

The Commissioner accepted that there is a public interest in elected officials being accountable, and being seen to be accountable, for acting in accordance with the LG Act. However, the Commissioner did not consider that election to office means that the office holder forfeits the right to privacy: *Re Leighton and Department of Local Government and Regional Development* [2008] WAICmr 50 at [40].

Weighing against disclosure, the Commissioner recognised a strong public interest in maintaining personal privacy and noted that this public interest may only be displaced by some other strong or compelling public interest or interests that require the disclosure of personal information about one person to another person.

In balancing the competing public interests, the Commissioner was of the view that the public interests favouring disclosure of the disputed document were not sufficient to outweigh the strong public interest in the protection of the personal privacy of other individuals.

Therefore, the Commissioner was not persuaded that disclosure of the disputed document would, on balance, be in the public interest and found that the limit on the exemption in clause 3(6) did not apply.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act.