

**Decision D0202013 - Published in note form only**

***Re 'C' and Western Australia Police [2013] WAICmr 20***

**Date of Decision: 8 August 2013**

***Freedom of Information Act 1992: Section 26; Schedule 1, clauses 3(1) and 3(6)***

In December 2012, 'C' ('the complainant') applied to Western Australia Police ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to various documents relating to an incident that involved the complainant and where officers of the agency attended on a particular date.

The agency identified three documents within the scope of the application and gave the complainant access to those documents either in full or by way of an edited copy, after deleting personal information about third parties as exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainant sought internal review of the agency's decision on the ground that additional documents should exist in the agency within the scope of his access application, in particular, the transcript of the '000 call' relating to the above incident ('the transcript'). On internal review, the agency located further documents and gave the complainant a copy of them. However, the agency did not address the complainant's claim about the existence of the transcript. Subsequently, in March 2013, the complainant applied to the Information Commissioner ('the Commissioner') for external review of the agency's decision to refuse him access to the transcript.

Following receipt of the complaint, the Commissioner obtained the relevant documents from the agency including the agency's FOI file maintained in respect of the complainant's access application. The Commissioner's office also made inquiries with the agency about its searches made for the requested documents. As a result, the agency conducted further searches which located an audio recording of the above 000 call made to the agency ('the audio recording'), to which the agency refused access under clause 3(1) of Schedule 1 to the FOI Act. However, the agency's searches did not locate the transcript of the audio recording and, in effect, the agency refused access to that document under section 26 of the FOI Act. Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document, and the agency is satisfied that the document is either in the agency's possession but cannot be found or does not exist.

In June 2013, after considering the information before him, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Commissioner's preliminary view that the audio recording is exempt under clause 3(1), as claimed by the agency. Based on his examination of the audio recording, the Commissioner was satisfied that, if disclosed, it would reveal personal information, as defined in the FOI Act, about people other than the complainant. Accordingly, the Commissioner considered that the audio recording was *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act. In balancing the competing public interests pursuant to clause 3(6), the Commissioner considered that the public interests favouring non-disclosure outweighed those favouring disclosure in this case. In addition, the Commissioner was of the preliminary view that the agency's decision to refuse access to the transcript under section 26 was justified. The

Commissioner was satisfied that the agency had taken all reasonable steps to find the transcript but that it does not exist. The agency advised that, while 000 calls are always recorded, they are not always transcribed. The Commissioner accepted the agency's advice that, in this case, a transcript was not created.

In light of the Commissioner's preliminary view, the complainant was invited to reconsider whether he wished to pursue his complaint or provide the Commissioner with further submissions relevant to the matters for his determination. The complainant did not withdraw his complaint and made no further submissions.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view. Accordingly, the Commissioner found that the audio recording was exempt under clause 3(1) of Schedule 1 to the FOI Act and that the agency's decision to refuse access to the transcript under section 26 of the FOI Act was justified and confirmed the agency's decision.