

Participants:

Desiré Edgar Michel Mallet
Complainant

- and -

Edith Cowan University
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access – section 26 – whether reasonable grounds to believe that a document exists or should exist – sufficiency of searches.

FREEDOM OF INFORMATION - clause 3(1) - personal information - information that is known by an access applicant - the application of the limits on the exemption in clauses 3(3) and 3(6) - whether disclosure would, on balance, be in the public interest.

Freedom of Information Act 1992: sections 26(1), 32, 102(3), 110; Schedule 1, clauses 3(1)- 3(6), 5(1)(b); Schedule 2, Glossary

Freedom of Information Regulations 1993: regulations 9(1)

Re Oset and Ministry of the Premier and Cabinet [1994] WAICmr 14

Re Mallet and Edith Cowan University [2005] WAICmr 19

Nazaroff and Department of Conservation and Land Management [1995] WAICmr 8

Re Doohan and Western Australia Police Force [1994] WAICmr 13

Re Rogerson and Department of Education and Training and Anor [2007] WAICmr 01

Ministry of Planning v Collins (1996) 93 LGERA 69

Police Force of Western Australia v Kelly and Anor (1997) 17 WAR 9

DECISION

The decisions of the agency to refuse access on the following grounds are confirmed:

- all reasonable steps have been taken to find the requested documents and any further documents either do not exist or cannot be found.
- the information deleted from the disputed document and claimed to be exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* is exempt under clause 3(1).

J LIGHTOWLERS
A/INFORMATION COMMISSIONER

21 December 2007

REASONS FOR DECISION

1. This complaint arises from a decision made by Edith Cowan University ('the agency') to give Mr Mallet ('the complainant') access to an edited copy of a document and to refuse him access to certain other documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The complainant is a former student of the agency. He was excluded from his doctoral studies by the agency in 2001. In a letter dated 17 April 2001, the complainant sought written confirmation from the agency of certain information relating to the decision of the agency to exclude him from his doctoral studies. By letter dated 23 April 2001 ('the Letter'), the agency wrote to the complainant and provided the requested information.
3. The foot of the Letter indicated that three copies were to be made and that one copy directed to each of an "Appeals File" and the "Personal File" of the complainant and one copy to be given to an officer of the agency, Associate Professor Dolley. In an access application dated 11 April 2007, the complainant applied under the FOI Act for access to all copies of the Letter. In particular, he sought access to each of three copies of the Letter as was indicated at the foot of the Letter.
4. By letter dated 23 May 2007, Mr Jon Porter, A/Manager, Governance and A/FOI Coordinator at the agency advised the complainant that the agency had located one document within the scope of the complainant's access application. The document was the copy of the Letter on his student file, which I understand, is the "Personal File" described above. However, before making a decision on whether to give the complainant access to a copy of that document, Mr Porter sought the views of various third parties identified in the document in accordance with the requirements of section 32 of the FOI Act.
5. By letter dated 30 May 2007, Mr Porter made the decision on access. Mr Porter advised that after conducting searches of the "Appeals file" and the relevant Secretariat files, no other copies of the requested document could be found. In addition, Mr Porter advised the complainant that the officer named as having been given a copy of the requested document had searched his files and had not found a copy of the document.
6. Mr Porter further advised the complainant that three of the third parties who had been consulted by the agency, in accordance with the agency's statutory obligations under section 32 of the FOI Act did not consent to their personal information being disclosed to him and, accordingly, the agency deleted their personal information from the edited copy of the document given to the complainant, on the ground that the deleted matter was exempt matter under clause 3 of Schedule 1 to the FOI Act.

7. On 1 June 2007, the complainant sought internal review of Mr Porter's decision and, on 18 June 2007, Ms Alison Thair, Manager, Equity & Quality Unit at the agency, confirmed Mr Porter's decision. Thereafter, on 18 June 2007, the complainant made a complaint to the Information Commissioner seeking external review of the agency's decision on access.

REVIEW BY THE A/INFORMATION COMMISSIONER

8. The agency produced the FOI file relating to the complainant's access application and other documents relevant to this matter to the former A/Information Commissioner ('the former Commissioner'). Following receipt of that material, the former Commissioner's Senior Investigations Officer made further inquiries with the agency in relation to the requested documents and sought further information about the nature and extent of the initial searches conducted by the agency in an endeavour to locate all of the documents described in the complainant's access application, including the three documents specifically identified by the complainant.
9. Following those initial inquiries, the Senior Investigations Officer had a telephone discussion with the complainant on 17 August 2007. He advised the complainant of the details of the additional searches that had been conducted by the agency, following receipt of this complaint. The Senior Investigations Officer advised the complainant that, in his opinion, those additional searches appeared to have been reasonable and, although it could not be confirmed, the "missing" copies of the Letter were most likely destroyed as part of normal procedure to do so at that time. The complainant was advised that the agency would not then be required to conduct further searches for the requested documents.
10. The Senior Investigations Officer also advised the complainant that, having examined the information which the agency had deleted from the edited copy of the document released to him by the agency, it appeared to the Senior Investigations Officer that that information was personal information about people other than the complainant which may be exempt under clause 3(1) of Schedule 1 to the FOI Act, as claimed by the agency. The Senior Investigations Officer advised the complainant he held that view because there was information on the agency's FOI file establishing that the three third parties concerned had been consulted by the agency and, in response, had advised the agency that they did not consent to their personal information being disclosed to him. The complainant requested a written preliminary view on the matter by the A/Information Commissioner.
11. Between 21 June 2007 and 7 November 2007, the complainant sent 10 separate written submissions (consisted of 73 pages of material and information) to this office, by facsimile transmission. All of those submissions, so far as they were relevant, were taken into account when I gave the parties my preliminary view of this complaint on 7 November 2007. It was my preliminary view that, following the further searches and inquiries requested by my office, the agency had then taken all reasonable steps to find the requested documents but they

either did not exist or could not be found. It was also my preliminary view that the matter deleted from the edited document released to the complainant by the agency was, on its face, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

12. On 19 November 2007, the complainant declined to withdraw from his complaint and he gave me a further 34 page written submission in support of his complaint, for my consideration before I made my final decision. The agency did not seek to make any further submissions to me, in response to my preliminary view.
13. As the complainant has not withdrawn his complaint, there are two issues which require my determination in relation to this matter. The first issue is whether the agency's decision to refuse the complainant access to all of the requested documents, on the ground that the "missing" documents either did not exist or could not be found, was justified. The second issue is whether the matter deleted from the edited document released to the complainant by the agency, on the ground that it is exempt matter under clause 3(1) of Schedule 1 to the FOI Act, was also justified.

THE FIRST ISSUE - DOCUMENTS THAT DO NOT EXIST OR CANNOT BE FOUND

14. Section 26(1) of the FOI Act deals with the obligations of an agency in circumstances where it is unable to locate the documents sought by an access applicant or where those documents do not exist. Section 26 provides as follows:

"26. Documents that cannot be found or do not exist

(1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if —

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency is satisfied that the document -*

(i) is in the agency's possession but cannot be found; or

(ii) does not exist.

(2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document."

15. The former Information Commissioner and the former A/Information Commissioner ('the former Commissioners') discussed their respective views of the requirements of section 26 in a number of their previous decisions relating to decisions made by agencies in circumstances where the requested documents either could not be found or did not exist (see: *Re Oset and Ministry of the*

Premier and Cabinet [1994] WAICmr 14; *Re Mallet and Edith Cowan University* [2005] WAICmr 19).

16. It was the view of the former Commissioners that, when dealing with a complaint against a decision of an agency to refuse an applicant access to documents in accordance with section 26 of the FOI Act, on the ground that the requested documents could not be found or did not exist, there are two questions that must be answered. The first question is whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question, in the former Commissioners' view, is whether the agency has taken all reasonable steps to find those documents.
17. The former Commissioners also said in their respective decisions, including in the decisions in *Re Oset* and *Re Mallet*, that it is not the function of the Information Commissioner or the function of officers assisting the Information Commissioner in dealing with complaints of this kind, to physically search for the requested documents on behalf of a complainant. The former Commissioners said that provided they were satisfied that the requested documents exist, or should exist, they took the view that it was the Information Commissioner's role to inquire into the adequacy of the searches conducted by an agency and, if necessary, to require further searches to be conducted by the agency (see: *Nazaroff and Department of Conservation and Land Management* [1995] WAICmr 8, at paragraph 27). I agree with the views expressed by both former Commissioners in relation to this issue.

Is it reasonable to believe that the requested documents exist or should exist in the agency?

18. In this instance, the complainant sought access to all copies of the letter sent to him by the agency in April 2001 that are in the possession or control of the agency, including the three versions of the Letter he described in his access application. In order to assist the office with its inquiries into this complaint, one of my officers asked the complainant to provide the former Commissioner with a copy of the Letter. He did so, by facsimile transmission.
19. Given that the Letter indicates, on its face, that three copies of that document were supposed to have been made and placed on the complainant's personal file, the "Appeals file" and a copy to be given to Associate Professor C Dolley, in my opinion, it appears reasonable for the complainant to have expected that those copies were made by an officer of the agency, at the relevant time, and that those copy documents were then forwarded to the locations described in the Letter. On that basis, it is also my view that it appears reasonable to believe that those copy documents exist or would have once existed as documents of the agency. Accordingly, it remains to be considered whether, in the circumstances of this matter, all reasonable steps were taken by the agency in order to find the requested documents.

The searches and inquiries made by the agency

20. After conducting its initial searches for the requested documents, the agency found only one document, being the copy filed on the complainant's personal file. In its initial notice of decision, the agency advised the complainant that searches had also been made of the "Appeals file" and of relevant Secretariat files but that no other copies of the Letter had been found. The agency further advised the complainant that Associate Professor Dolley had searched his files and had not found a copy of the Letter.
21. Following receipt of this complaint, further inquiries were made with the agency in relation to the initial searches that were undertaken of the files and the locations where, if the copy documents exist, they should be found. The agency states that it searched the "Appeals file" and other relevant files in the Secretariat of the agency, but that the copy documents could not be found. In addition, inquiries were made with Associate Professor Dolley, who stated that he also could not find a copy of the document.
22. I have examined the agency's FOI file relating to this complaint. Although the complainant was not given specific and detailed information about the nature and extent of the agency's initial searches, the documents on the agency's FOI file establish that during the initial stages of dealing with the complainant's access application, the agency's FOI Coordinator not only consulted with all relevant third parties but also sought advice from ten different individuals, including all of the individuals identified in the Letter, as to whether he or she was aware of any other copies of the letter that were held by the agency. As a result of those initial inquiries, no copies of the Letter, other than the one released to the complainant in edited form, were located by the agency.
23. Additional information was sought from the agency about the searches undertaken and the procedures and practices of the agency at the time the relevant documents would have been created. A summary of the information provided to me by the agency, in response to that inquiry, is set out below.
 - it is clear from other documents on the Student file that the information in the Letter was compiled by the signatory, in discussion with the former Manager, Student Administration Services. However, both of those officers are no longer employed at the agency;
 - the Manager, Assessments/Student Records indicated that she succeeded the author of the document in the area where the Letter would have been created (on the Churchlands campus of the agency) and she can recall the practices in place at the time. She provided the following information –
 - if more than one copy of a letter was made, the destinations of all copies were marked on the Letter as "cc's". This means that initially there would have been

3 copies in total, not 1+3. In this case, the main file copy would have been sent to the "Personal File" (now often referred to as the Student file). This copy would have been forwarded by internal mail to the then Student Central (now part of Student Services Centre) on the Mt Lawley campus. The internal envelope would have been opened by one of the staff and the document filed. It is no longer possible to identify the member of staff concerned;

- the copy to "Appeals File" would have been placed in a suspension file in the Churchlands office so that it could be retrieved easily if the student phoned with questions or to ask for further information. The file was kept for current matters only and copies were kept there on a temporary basis. After a period (not a set period but probably after about a semester) the older copies were destroyed;
- the copy to Associate Professor Dolley would have been forwarded to him in the internal mail and was for his personal information. He would not have been expected to retain this beyond his own needs as the copy on the Personal File would normally be retained as the main copy;
- the Manager, Records & Archives Management Services confirmed that, in accordance with records management policies and procedures, copies made for temporary purposes can be disposed of provided the main copy is retained and the temporary copies do not contain annotations of additional information that would create a "new" document;
- if it is the case that the temporary copies to "Appeals file" and "A/Pro Colin Dolley" have not been retained, then the only outstanding copy is the copy "given to Alana for Secretariat file" as noted at the top of page 1 of the document. The relevant Secretariat files have been searched and no further copy has been found;
- Associate Professor Dolley advised that:
 - he recalled receiving a copy of the document;
 - he has a file where he normally places documents such as the Letter;
 - he clears copies of documents in that file when cases have been finalised and he would have done this by the end of 2001;
 - he has checked and re-checked his file and confirmed that he does not have a copy of the Letter.

24. In my preliminary view letter to the parties, I advised the complainant that I held the view that, on the basis of the information then before me, the searches that had been undertaken to that point by the agency had been reasonable and that the additional copies of the Letter may once have existed, but that they either no longer existed or cannot now be found. I also advised the complainant that the agency's explanation about what may have happened to the copies of the Letter that were supposed to have been directed to the "Appeals file" and to Associate Professor Dolley is a reasonable explanation of what may have occurred at the agency. The material then available to me indicated that the agency had acted in accordance with its obligations under the FOI Act as regards the processes for searching for documents.
25. In response to my preliminary view, on 19 November 2007, the complainant made a 34 page submission to me, containing a detailed analysis of various passages of the Letter and the procedures of the agency. However, in my view, very little of the complainant's submissions directly address the issue that requires determination by me, that is, whether the agency had taken reasonable steps to find the requested documents. In my view, most of the complainant's submissions consist of an expansive analysis of irrelevant matters or of a critique of individual officers of the agency and the administrative processes of the agency, including the manner in which the agency has dealt with his many inquiries over the last 7 years. The following is a summary of submissions made to me by the complainant:
- the University claims that searches have been made of other relevant files without providing any further details or information about those in its decision letter;
 - the former Commissioner has explained why it was important for an agency to provide enough information to an applicant when it claims that "all reasonable steps have been taken to find the document" when the former Commissioner said "...before an agency can refuse access under s.26 of the FOI Act, it must have taken all reasonable steps to find the requested document. For an applicant to be able to be satisfied that all reasonable steps have been taken the applicant needs some information as to the searches conducted. If an applicant is merely told by an agency that its records have been searched and no documents found, the applicant will not be in a position to assess whether or not, in his or her view, all reasonable steps have been taken and to accept the decision or to seek a review of it and perhaps suggest additional searches that could be made or give further information that may assist in locating documents;
 - the former Information Commissioner also said that, when an agency is unable to locate requested documents, an adequate statement of reasons may go some way towards reassuring a skeptical applicant and that, in the former Information Commissioner's view, the minimum requirement was a brief explanation of the steps taken by the agency to satisfy the request, including details of the locations

searched, why those locations were chosen and a description of how the searches were conducted;

- the agency did not provide the complainant with an adequate statement of reasons in either of its notices of decision, sufficient to satisfy the complainant that it had taken all reasonable steps to find the requested documents, including a brief explanation of the steps taken by an agency to locate the requested documents such as the locations searched, why those locations were chosen and a description of how the searches were conducted.

26. The complainant submitted that there may have been more than three copies of the Letter made for administrative use and filing at the agency but provided no probative material to support that claim. The complainant states that he was unaware that the agency's "Appeal File" was a temporary file and that, as recently as 2004, he was given a copy of another related document that he claims was sourced from his "Appeals File". The complainant asserts that as the agency says that the "Appeal File" no longer exists, an offence may have been committed by an officer of the agency under section 110 of the FOI Act by disposing of that file.
27. Whether the "Appeals File" was disposed of, on an unknown date after 2004, but before the agency conducted its search to identify it for the purpose of the complainant's access application may be relevant if it could be shown that the file was disposed of contrary to the agency's obligation to retain it. The advice of the agency is that the "Appeals file" was a temporary file and that it was disposed of in accordance with normal agency practice. In the absence of any probative evidence to the contrary, I accept that is the case. In reaching that view, I note that the complainant has provided no more than his assertion that an officer of the agency may have committed an offence to prevent him gaining access to the document. In my view the agency's advice is an adequate answer to the complainant's assertion.
28. I acknowledge the complainant's submission that the agency did not provide him with an adequate statement of reasons in either of its notices of decision, sufficient to satisfy him that it had taken all reasonable steps to find the requested documents. In hindsight, I consider that the agency could have provided him with some additional information of the kind referred to by the former Information Commissioner at paragraph 29 of her decision in *Re Doohan and Western Australia Police Force* [1994] WAICmr 13. However, the agency did provide him with some information of that kind about the searches that had been undertaken. Given that the Letter refers to three places the copy documents were supposed to have been sent to, in my opinion, it was not unreasonable for the agency to have directed its searches to those locations, in the first instance, as there is nothing on the face of the Letter or in the other information provided to me by the complainant to establish that any additional copies of the Letter were provided to any other persons.
29. Moreover, there is nothing in the submissions made to me by the complainant, in response to my preliminary view of his complaint, that specifically addresses

the question I am required to determine in relation to this aspect of his complaint, that is, whether there is sufficient information before me to be satisfied that the agency has taken all reasonable steps to find the documents described in his access application. In my preliminary view letter, I provided the complainant with detailed information on this issue, including an outline of the searches carried out by the agency, before he made his complaint to the Information Commissioner and after the complaint was accepted.

30. In the absence of any further information or evidence from the complainant as to the reasons why he claims that the agency has not now taken all reasonable steps to find the requested documents, I remain of the view that there is no evidence to indicate that any further documents exist or can be found by the agency and I also remain of the view that the agency has taken all reasonable steps to find the requested documents. Accordingly, I confirm the agency's decision to refuse the complainant access to any other copies of the Letter, in accordance with section 26 of the FOI Act, on the ground that such documents either do not exist or cannot be found.

CLAUSE 3 – PERSONAL INFORMATION

31. The information to which the complainant has been refused access by the agency ('the disputed matter') is claimed by the agency to be exempt matter under clause 3 of Schedule 1 to the FOI Act because it consists of the personal information about individuals other than the complainant.

32. Clause 3 provides, insofar as it is relevant:

“(1) Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).”

Limits on exemption

(2) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.

(3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to —

(a) the person;

(b) the person's position or functions as an officer; or

(c) things done by the person in the course of performing functions as an officer.

(4) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to —

- (a) *the person;*
 - (b) *the contract;*
 - (c) *or things done by the person in performing services under the contract.*
 - (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
 - (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*
33. Under clause 3(1) of the Schedule 1 to the FOI Act, matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The phrase “personal information” is defined in the Glossary in Schedule 2 to the FOI Act to mean information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead, whose identity is apparent or can reasonably be ascertained from the information or opinion.
34. I have examined the disputed matter, together with the other material before me. The disputed matter consists of details of the names and other information about individuals other than the complainant. That kind of information is, *prima facie*, exempt matter under clause 3(1), subject to the application of the limits on exemption in clauses 3(2) to 3(6). Accordingly, I am satisfied that the disputed matter is, on its face, exempt under clause 3(1).
35. In this instance, none of the disputed matter consists of personal information about the complainant. Therefore, the limit on exemption in clause 3(2) does not apply. Similarly, there is nothing before me to indicate that the third parties are individuals of the kind described in clause 3(4) and, accordingly, the limit on exemption in clause 3(4) does not apply. Finally, there is nothing before me to establish that the complainant has provided any evidence the third parties consent to their personal information being disclosed to the complainant. To the contrary, they do not consent. Accordingly, the limit on exemption in clause 3(5) does not apply. In this complaint, only the limits on exemption in clauses 3(3) and 3(6) are relevant.

Clause 3(3)

36. In response to my preliminary view, the complainant made submissions to me expressing the view, among other things, that the disputed matter consists of prescribed details of the kind set out in regulation 9(1) of the *Freedom of Information Regulations 1994* (‘the Regulations’) about individuals who are, or have been, officers of the agency. The prescribed details are set out in regulation 9(1) of the Regulations as follows:

“In relation to a person who is or has been an officer of an agency, details of -

- (a) the person’s name;*
- (b) any qualifications held by the person relevant to the person’s position in the agency;*
- (c) the position held by the person in the agency;*
- (d) the functions and duties of the person, as described in any job description document for the position held by the person; or*
- (e) anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person”.*

37. Regulation 9(1) relates to individuals who are or have been officers of ‘an’ agency. That is, it is not restricted to the prescribed details that relate to this particular agency but may also cover prescribed details relevant to officers of the agency in connection with their service with another government agency. In this case, it appears on the face of the disputed document that the personal information about the third parties merely discloses certain prescribed details about a person who is or has been an officer of an agency.
38. Clearly the third parties whose personal information has been deleted from the requested document are or were once officers of the agency. Clause 3(3) provides that information is not exempt as personal information under clause 3(1) merely because its disclosure would reveal certain prescribed details about a person who is or has been an officer of an agency. In my opinion, the use of the term ‘merely’ in clause 3(3), according to its ordinary dictionary meaning, means ‘solely’ or ‘no more than’ prescribed details about an officer.
39. However, in my view, the circumstances in which the requested document was created also require consideration, in order to determine whether the disputed matter consists of prescribed details of the kind referred to in paragraphs (a) to (d) of regulation 9(1) of the Regulations.
40. In the course of dealing with a previous complaint which the complainant made to the former Commissioner in October 2004, several of the individuals identified in the requested document claimed that they had not attended the meeting referred to in the requested document. Accordingly, detailed inquiries were made with officers of the agency, by the former Commissioner, in order to establish whether that meeting actually took place and, if it did, who was in attendance.
41. In *Re Mallet and Edith Cowan University* [2005] WAICmr 19, the former A/Commissioner described the outcome of those inquiries at paragraph 44 and 46 of that decision:

“44. Other than the recollection of Ms Cheetham - who did not attend any of the relevant meetings - and Professor Rivalland’s memorandum, assertions as to her recollections and notation on Professor Campbell-Evans’s memorandum, there is no evidence of a meeting of the

Faculty's Board of Examiners having been held on 9 February 2001. None of the other people I was told attended has any record or recollection of such a meeting. No minutes or other record of such a meeting have been produced to me. Nor is there any other evidence presently available to me of the complainant's academic progress and suspension having been discussed and decided at any Board of Examiners' meeting.

45...

46. *If there was not a meeting of the Board of Examiners on that date, at which the complainant's academic progress was discussed and a decision about it made, contrary to the written advice given to the complainant, then serious questions arise as to the manner in which the decision to exclude him from his doctoral studies was made, who made the decision and the veracity of what the complainant was told about it. On the other hand, if there was, in fact, such a meeting, then the dearth of documentation relating to it raises questions about the agency's record-keeping practices, as do the difficulties experienced by the agency in identifying and locating all relevant documents in response to the complainant's access application and in response to the complaint to my office. I accept that after four years, people's recollections of attending a particular meeting of a series of regular meetings may well have faded or gone altogether. Because the people interviewed cannot now recall attending such a meeting does not necessarily mean the meeting did not take place."*

42. When consulted by the agency, the three third parties who do not consent to their personal information being disclosed to the complainant in this matter objected to disclosure because, amongst other things, they claim that they did not attend the relevant meeting and they do not now wish to have a document released into the public domain under the FOI Act which, in their view, is factually incorrect.
43. Given that the former Commissioner's inquiries into the complainant's previous complaint in 2005 were unable to establish whether or not the relevant meeting actually took place, it has not been established, on the balance of probabilities, that the requested document is accurate in its context and content and, as a result, in my view it cannot be said that the third party information, including the names and position titles of officers and former officers of the agency that are recorded in the requested documents consists of prescribed details about those officers, in the sense that they purportedly attended the meeting in the performance of their functions and duties as officers of the agency. Taking into account the fact that it has not been clearly established that the requested document is a true and accurate record of the agency and in view of the disputed nature of the information recorded in that document, I am not satisfied that the disputed matter consists of prescribed details of the kind referred to in regulation 9(1). This is because there are additional factors to be considered. The requested documents do not "merely" contain prescribed details of officers. There is the additional issue of whether the meeting actually took place. It has not been established, on the balance of probabilities, that the officers of the

agency whose names appear in the requested document actually attended a meeting at the agency on 9 February 2001.

44. Therefore, for the foregoing reasons, I consider that the limit on the exemption in clause 3(3) does not apply to the disputed matter in this case. Accordingly, it remains for me to consider whether the limit on exemption in clause 3(6) applies. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Section 102(3) of the FOI Act provides:

“If, under a provision of Schedule 1, matter is not exempt matter if its disclosure would, on balance, be in the public interest, the onus is on the access applicant to establish that disclosure would, on balance, be in the public interest.”

45. Consequently, the onus is on the complainant to persuade me that, on balance, it would be in the public interest to disclose personal information about the third parties in the disputed document, which is, on its face, exempt under clause 3(1).

Clause 3(6) – the public interest

46. The purpose of the exemption in clause 3 is to protect the privacy of individuals. That exemption is recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause, especially in circumstances where one or more of those individuals does not consent to their personal information being disclosed to the access applicant.
47. In *Re Rogerson and Department of Education and Training and Anor* [2007] WAICmr 01, the former Commissioner said, at paragraph 47 of the decision that, in her view, the FOI Act is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit to the public interest in doing so; that she recognised there is a very strong public interest in the maintenance of personal privacy and that the protection of an individual’s privacy is a public interest which is recognised and enshrined in the FOI Act by clause 3 and that in her view, that public interest may generally only be displaced by some other considerably stronger public interest that requires the disclosure of private information about other people. I agree with the former Commissioner’s views in that regard.
48. The complainant sought to have me make additional inquiries into this matter, in order to assist me to form the view that it is, on balance, in the public interest to disclose the disputed information to him. As the complainant bears the onus of persuading me that it would, on balance, be in the public interest to disclose the disputed matter to him (see: *Ministry of Planning v Collins* (1996) 93 LGERA 69 at 76), I chose not to make any further inquiries of the kind requested by the complainant. As he maintained his request for access to a full and unedited copy of the requested document I am required to determine the matter presently before me.

49. The complainant's submissions implied that the disputed matter is already known to him, because he has a signed version of the Letter and, accordingly, it is in the public interest for the requested document to be disclosed to him.
50. Whether matter in a document the subject of an access application under the FOI Act may already be known to an applicant is not determinative of the question of whether the document, or part of the document, is exempt under the FOI Act. In *Police Force of Western Australia v Kelly and Anor* (1997) 17 WAR 9 Anderson J consider a similar submission, in relation to a claim for exemption under clause 5(1)(b) of the FOI Act. At page 14 of his judgment in that case, Anderson J said:

“In considering the question of whether exemption is lost once the matter has found its way into the hands of the applicant or into public hands, I think it must be remembered that what is under consideration is the right of access to the particular documents of an agency. One would not expect the character of the documents as exempt documents to depend on whether, by some means, the subject matter of the documents, or some of it, had already got out....I think it would be a very inconvenient construction of the Act, as it would mean that an applicant could overcome a claim of exemption by showing or claiming that he already knew something of the matter from other sources. I do not think it could have been intended that exemption should depend on how much the applicant already knows or claims to know of the matter. Also the Act plainly contemplates that as regards exempt material, the agency may give access to some documents or parts of documents but refuse access to others dealing with the same subject.”
51. In my view, the decision of the Supreme Court in *Police Force of Western Australia v Kelly* is equally relevant to the matter before me. The fact that the complainant knows personal details, such as the names of the third parties, because he was sent the original of the requested document in 2001, does not mean that the personal information about those third parties is not exempt matter under clause 3(1). The complainant has applied for access to other copies of the Letter and his application is required to be determined in accordance with the requirements and the provisions of the FOI Act.
52. I respectfully agree with the decision of Anderson J in *Police Force of Western Australia v Kelly* and I also do not think it could have been intended that a claim for exemption under the FOI Act should depend on how much the applicant already knows or claims to know of the matter. There is nothing in the FOI Act which supports the complainant's submission on this issue and, as A/Commissioner, I am bound to consider and apply the decisions of the Supreme Court in relation to questions of the meaning and interpretation of the exemption clauses in Schedule 1 to the FOI Act.
53. Determining whether or not disclosure would, on balance, be in the public interest involves identifying those public interests that favour disclosure of the particular matter and those that favour non-disclosure, weighing them against each other and making a judgment as to where the balance lies. Nothing in the

complainant's submissions indicates that he has identified the factors for and against disclosure, in order to persuade me that it would, on balance, be in the public interest to disclose the disputed matter to him.

54. Favours non-disclosure in this case, I agree with the view expressed by both former Commissioners and I also recognise that there is a strong public interest in maintaining personal privacy. That public interest is recognised by the inclusion in the FOI Act of the exemption in clause 3(1) and, in my view, that public interest may only be displaced by some other considerably stronger public interest that requires the disclosure of private information about another person.
55. As I have said, the exemption in clause 3(1) is designed to protect the privacy of third parties. As I am satisfied that the matter deleted from the disputed document is, on its face, personal information about third parties that does not fall within the category of prescribed details, the question is whether the public interest in maintaining the privacy of an individual and any other public interest favouring confidentiality are outweighed by some other public interest that favours disclosure of that personal information. Each of the third parties strongly objects to the disclosure of information about them contained in the disputed document.
56. On the other hand, there is a public interest in the openness and accountability of government agencies and in the applicant being fully informed about a matter relating to his academic progress at the agency. There is also a public interest in people such as the complainant being able to exercise their legal right to access documents, particularly documents that contain personal information about themselves, and being able to respond to information about them and have it corrected if it is wrong. However, in this case, I consider that those particular public interests have been satisfied, as the complainant has received the original of the Letter from the agency, outside the FOI process, in 2001.
57. Having considered all of the material before me, I am not persuaded that the complainant has discharged the onus he bears under section 102(3) of the FOI Act of persuading me that it would, on balance, be in the public interest to disclose the disputed matter to him. Having weighed the competing public interests, I do not consider that those favouring disclosure outweigh the very strong public interest in the protection of the personal privacy of third parties in this instance.
58. Accordingly, I find the disputed matter is exempt under clause 3 of Schedule 1 to the FOI Act.
