

Decision D0232011 - Published in note form only

Re Courtney and Department of Environment and Conservation [2011] WAICmr 23

Date of Decision: 30 June 2011

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

In July 2010, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Environment and Conservation ('the agency') for access to communications made to the Swan River Trust about a particular property. The Swan River Trust is considered to be part of the agency for the purposes of the FOI Act. Following discussions with the agency, the complainant agreed to amend the original scope of his application to exclude personal information about certain third parties.

The agency identified 12 documents and decided to give access in full to six and access in edited form to the remainder. The agency initially claimed that the deleted information was exempt under clause 3(1) (personal information) of Schedule 1 to the FOI. The complainant applied for internal review of the decision to give edited access to the six documents. Following internal review, the agency confirmed its decision but also claimed that part of the deleted information in one particular document was outside the scope of the access application.

In September 2010, the complainant applied to the Information Commissioner for external review of the agency's decision. Having considered the information before her, the A/Information Commissioner advised the parties in May 2011 of her preliminary view, which was that, with the exception of a very small amount of information, the information deleted was exempt under clause 3(1) and that none of the limits on the exemption in clauses 3(2)-3(6) applied. In response the agency wrote to the A/Commissioner and advised that its notices of decision had erroneously advised the complainant that the six disputed documents had been edited to delete exempt personal information when, in fact, the agency should have notified the complainant that he had been given access in full to the information requested, since the matter deleted – as a result of the amended scope of the application – was outside the scope of his application.

In light of that error, the A/Commissioner reviewed the information before her and provided the parties with a supplementary preliminary view, which was that all of the information deleted from the documents was outside the amended scope of the application. The A/Commissioner invited the complainant to withdraw his complaint or provide the A/Commissioner with submissions in response to her supplementary preliminary view.

The complainant sought and was granted an extension of time in which to respond but made no further submissions. However, the complainant did not withdraw his complaint. The Information Commissioner examined all of the material, including the disputed documents, and agreed with the A/Commissioner's supplementary preliminary view. The Commissioner varied the agency's decision to refuse the complainant access to the disputed information on the ground that it was outside the amended scope of the complainant's access application.