

Decision D0232012 - Published in note form only

Re 'Q' and Western Australia Police [2012] WAICmr 23

Date of Decision: 23 August 2012

Freedom of Information Act 1992: sections 23(2) and 31; Schedule 1, clause 5(1)(b)

In September 2011, the complainant applied to the Western Australia Police ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to certain documents relating to the death of his wife.

The agency initially refused access to the requested documents under s.23(2) of the FOI Act. Section 23(2) provides, in brief, that an agency may refuse access to documents without identifying them and without specifying why any particular document is claimed to be exempt if it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt. In this case, the agency advised the complainant that the documents were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act, as they formed part of a current investigation. The complainant sought internal review of that decision. The agency – again without identifying the documents – varied its decision by claiming the application of s.31 and clause 5(1)(b). Section 31(1) provides that an agency is not required to give information as to the existence or non-existence of a document containing matter that would be exempt matter under clauses 1, 2 or 5 of Schedule 1 to the FOI Act. On 8 November 2011, the complainant applied to the Information Commissioner for external review of the agency's decision.

Following receipt of the complaint, the agency produced its FOI file to the Commissioner, together with information concerning its operations. In June 2012, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. On the information before him, the Commissioner was satisfied that documents of the type requested by the complainant would contain matter that is exempt under clause 5(1)(b) because their disclosure could reasonably be expected to prejudice an investigation of a contravention or possible contravention of the law. The Commissioner's preliminary view was that the agency was entitled to rely upon s.31 of the FOI Act.

The complainant made additional submissions including, among other things, that the named police officer who confirmed an investigation was underway did not exist; the agency ought not to have used a broad description of the documents sought in making its decision; and that it was in the public interest for the requested documents to be disclosed to him.

The Commissioner sought further information and reviewed all of the information before him. The Commissioner was satisfied that the named police officer existed; considered that the agency had broadened the scope of the access application rather than narrowed it; and that, as none of the limits on the exemption in clause 5(4) applied in this case, the public interest was not relevant to the application of clause 5(1)(b).

The Commissioner was not dissuaded by the complainant's submissions from his preliminary view and, having reviewed all of the information before him, the Commissioner confirmed the agency's decision to refuse access in accordance with s.31 of the FOI Act because the access application related to documents that included exempt matter under clause 5(1)(b) of Schedule 1 to the FOI Act.