

**Decision D0242006 – Published in note form only**

***Re De Landgraft and City of Albany* [2006] WAICmr 24**

**Date of decision: 21 December 2006**

***Freedom of Information Act 1992: Section 23(2) and Schedule 1: clause 3(1)***

The complainant made an application to the City of Albany ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for copies of correspondence from a named third party which would show that the correspondence was intended to have a particular effect. Without referring specifically to any documents, the agency refused the complainant access to the requested documents on the ground that the documents would be exempt because, firstly, it was all but impossible for the agency to identify documents fitting the description and, secondly, any such documents would reveal personal information about a third party.

The A/Commissioner agreed with the agency that it would be "almost impossible" for the agency to identify documents of the kind described, because the agency cannot determine the underlying intent of the correspondence. To try to do so would be mere speculation.

The A/Commissioner found that any documents of the kind described in the access application – if such documents existed and could be identified – would necessarily reveal personal information about the third party, if disclosed, and would therefore be *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act.

The A/Commissioner also found that none of the limits on exemption would apply and that, therefore, in accordance with s.23(2) of the FOI Act the agency was justified in refusing access without having identified any documents as it was apparent, from the nature of the documents, as described in the access application, that they would all be exempt under clause 3(1). The A/Commissioner therefore confirmed the agency's decision.