

**Decision D0252011 – Published in note form only**

***Re Macdonald and City of Joondalup [2011] WAICmr 25***

**Date of decision: 14 July 2011**

***Freedom of Information Act 1992: sections 26, 39(3); Schedule 1, clauses 3(1) and 6(1)***

In December 2009, the complainant applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to 12 specific documents prepared by external consultants relating to the proposed construction of a marina in Ocean Reef. After identifying 11 documents within the scope of the complainant's access application, the agency's Chief Executive Officer gave the complainant access in full to two documents and refused access to nine documents under clause 6(1) of Schedule 1 to the FOI Act (deliberative processes of an agency). The agency further claimed that the 12<sup>th</sup> document sought by the complainant did not exist and, therefore, refused access to it under s.26 of the FOI Act.

As the decision was made by the agency's principal officer, internal review was not available pursuant to s.39(3) of the FOI Act. On 2 March 2010, the complainant applied directly to the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained the requested documents from the agency, together with the FOI file relating to the complainant's access application.

On 21 April 2011, the Commissioner provided the parties with a letter setting out his preliminary view of the matter, which was that the agency's decision to refuse access to one document under s.26 of the FOI Act was justified and that the balance of the documents ('the disputed documents') were not exempt under clause 6(1) of Schedule 1 to the FOI Act. The agency accepted the Commissioner's preliminary view and subsequently gave the complainant edited copies of the disputed documents, after deleting a small amount of personal information under clause 3(1) of Schedule 1 to the FOI Act. The complainant withdrew her complaint in respect of those matters but did not accept that the agency had given her access to all documents within the scope of her application. The complainant claimed that additional documents, such as covering letters from the authors of the disputed documents, were within the scope of her application.

Based on all of the information before him, including the disputed documents and the complainant's access application, the Commissioner was satisfied that the agency had given the complainant access to all of the documents within the scope of her access application. The Commissioner noted that the complainant had precisely described in her application the individual documents sought and that the terms in which the application was framed set the parameters for the agency's response. The Commissioner considered that accompanying or related documents such as covering letters were separate documents to the requested documents and were not covered by the terms of the complainant's access application.

Accordingly, the Commissioner found that such documents were outside the scope of the complainant's access application and confirmed the agency's decision to refuse access to those documents.