

Decision D0292008 - Published in note form only

Re Rapinet and Department of Education and Training and C [2008] WAICmr 29

Date of Decision: 17 July 2008

Freedom of Information Act 1992: Schedule 1, clauses 3(1), 3(3) and 3(4)

In August 2007, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents disclosing the names, schools and current teaching positions of the assessors who assessed his teaching portfolio submitted as part of his application for status as a Level 3 Classroom Teacher ('L3CT').

The agency identified one document as coming within the ambit of the complainant's application. After consulting with the assessors concerned ('the third parties'), as required under s.32 of the FOI Act, the agency gave the complainant access to an edited copy of the disputed document. The agency refused access to the information in the disputed document which consisted of the names and work locations of the third parties ('the disputed information'), on the ground that it is personal information about those persons and, thus, exempt under clause 3 of Schedule 1 to the FOI Act. The agency confirmed its decision on internal review and the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of that decision.

The A/Commissioner obtained the original of the disputed document and other relevant material from the agency. Both third parties were invited to be joined as parties to the complaint and/or to make submissions to the A/Commissioner. One of the third parties was joined as a party and made submissions to the A/Commissioner. The other third party objected to the disclosure of the disputed information but did not apply to be joined to the complaint or make any submissions on the matter.

After reviewing the material before the A/Commissioner, one of the A/Commissioner's officers informed the agency that the A/Commissioner was of the view that the disputed information may not be exempt under clause 3 as claimed by the agency. As a result, the agency withdrew its claim for exemption. However, both third parties maintained their objection to the disclosure of the disputed information.

The A/Commissioner found that the disputed information would reveal personal information about third parties, if disclosed, and was therefore *prima facie* exempt information under clause 3(1) of Schedule 1 to the FOI Act.

The A/Commissioner found that the third parties – acting in their roles as L3CT assessors – are, or were, officers of the agency for the purpose of clause 3(3). In the alternative, even if the third parties are not, or were not, officers of the agency, the A/Commissioner considered that the third parties were contractors for the purpose of clause 3(4). The A/Commissioner found that the disclosure of the disputed information would do no more than reveal that the third parties assessed the complainant's L3CT portfolio in the course of performing a function or duty as officers of the agency or, alternatively, in the course of performing a service for the agency under a contract for services.

Accordingly, the A/Commissioner found that the disclosure of the disputed information would do no more than reveal prescribed details pursuant to either clause 3(3) or clause 3(4) of Schedule 1 to the FOI Act.

Accordingly, the A/Commissioner set aside the agency's decision and found that the disputed information comprises prescribed details and is not exempt under clause 3(1) by virtue of the limit on exemption in either clause 3(3) or 3(4).