

Decision D0302013 - Published in note form only

***Re Svanberg and Town of Cottesloe* [2013] WAICmr 30**

Date of Decision: 6 December 2013

Freedom of Information Act 1992: Schedule 1, clauses 3(1), 3(2) and 3(6)

In November 2012, Mr Colin Svanberg (**the complainant**) applied to the Town of Cottesloe (**the agency**) for access under the *Freedom of Information Act 1992* (**the FOI Act**) to certain documents in relation to a building application dealt with by the agency. The agency granted the complainant access by way of inspection to edited copies of the requested documents. In accordance with its obligations under sections 32 and 33 of the FOI Act, the agency consulted with the relevant third parties. The third parties objected to the disclosure of the disputed documents and sought an internal review of the agency's decision. On internal review, the agency's Chief Executive Officer reversed the initial decision and decided to refuse access in full to the disputed documents, under clauses 3(1) and 4(2) of Schedule 1 to the FOI Act. On 15 April 2013, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse access to the disputed documents.

On 24 October 2013, the Commissioner provided the parties with a letter setting out his view of the matter, which was that the disputed documents were exempt under clause 3(1), as claimed by the agency, because they contain information which if disclosed would reveal personal information about third parties. The complainant was invited to make further submissions to the Commissioner, in particular as to why disclosure of the disputed information would, on balance, be in the public interest, pursuant to clause 3(6).

In response, the complainant submitted that there was a public interest in disclosing information to the complainant which may be contained in the disputed documents. In addition, the complainant submitted that it was in the public interest for the disputed documents to be disclosed in order to establish whether the agency is accountable for the manner in which it deals with planning issues and for elected representatives to be held accountable for the manner in which they interact with ratepayers. The Commissioner accepted that there is a public interest in persons being able to exercise their rights of access to documents under the FOI Act. However, an applicant's right of access to documents under the FOI Act is not an unfettered right. The FOI Act provides that a person or organisation has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with the FOI Act, including the exemption clauses in Schedule 1.

The Commissioner found that those public interests are satisfied to a significant extent by the ability of the public to attend meetings of the Council of the agency in relation to those matters and to question officials and elected representatives.

The Commissioner accepted that the disputed documents contain 'personal information' about third parties as defined in the FOI Act. The Commissioner considered whether it would be practicable to give access to edited copies of the disputed documents. However, as the identity of a number of third parties involved in this matter is known to the complainant and is otherwise ascertainable, there was not, in the view of the Commissioner, any way the

disputed documents could be edited so as not to disclose personal information about third parties.

In the circumstances of this complaint, the Commissioner did not consider that the strong public interest in privacy was outweighed by any other public interest that required the disclosure of personal information about third parties to the complainant. The Commissioner found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the decision of the agency.