

Decision D0312009 – Published in note form only

***Re Mallet and Edith Cowan University* [2009] WAICmr 31**

Date of decision: 26 November 2009

Freedom of Information Act 1992: Section 27(2), clauses 3(1), 5(1)(a), 5(1)(e) and 5(1)(f) of Schedule 1

By letter dated 25 May 2009, Mr Desire Mallet ('the complainant') applied to Edith Cowan University ('the agency'), under the *Freedom of Information Act 1992* ('the FOI Act') for access to a 'document', being certain CCTV footage. For the purposes of the FOI Act, that footage is a 'record' and, thus, a document, as that term is defined in clause 1 of the Glossary to the FOI Act.

The complainant specifically sought access to a copy of:

"...Closed Circuit Television (CCTV) footage 'captured' via a couple of cameras, on Friday, 22 May 2009, in the indoors of a main reception area of Building 1, Joondalup Campus, between approximately 12:50 hrs and 13:15 hrs."

The complainant briefly described his appearance and his actions while in attendance at the location and time described above and he limited his access application to personal information about him contained in the CCTV footage ('the requested document').

The agency initially refused the complainant access to the requested document claiming exemption from disclosure under clauses 3(1), 5(1)(a), 5(1)(e) and 5(1)(f) of Schedule 1 to the FOI Act. The agency also decided that it was not possible to delete personal information about third parties from the requested document without significant expense and time.

A series of inquiries were made with the agency about its exemption claims under clause 5 and whether it was practicable for the agency to give the complainant access in a form that would not disclose personal information about third parties. After reconsidering its position, the agency amended its decision and withdrew its exemption claims for the requested document under clause 5. In addition, the agency agreed to give the complainant access to an edited copy of the requested document and the complainant confirmed that he would accept access by way of an edited copy of the requested document with personal information about third parties deleted. However, when attempting to give effect to that decision, the agency found that security restrictions associated with the requested document prevented it from being copied. In the alternative, the agency agreed to give access by way of supervised inspection or by printing the video image in photographic form at intervals of one photograph per second.

The complainant was invited to accept one of the alternate proposals for giving him access to the requested document. However, the complainant maintained his request for a copy of the document and he did not accept either of the agency's proposals for access. The complainant made submissions describing how the agency should install new

software to assist with copying the document. The complainant also made submissions about the agency's earlier exemption claims under clause 5, even though the agency no longer maintained that the requested document was exempt under that provision.

In his access application, the complainant clearly sought access only to personal information about him contained in the requested document. Although the agency claimed exemption under clause 3 of Schedule 1 to the FOI Act for that part of the requested document that identifies third parties, that information is, in fact, outside the scope of the access application and consequently it is not matter that is in dispute.

As the personal information about third parties is not within the scope of the access application, it only remained for the Commissioner to decide on the form of access to the requested document. That is, whether the decision of the agency to give the complainant access to the requested document by way of supervised inspection or by printing the video image in photographic form at intervals of one photograph per second, is appropriate in the circumstances.

Section 27(2) of the FOI Act provides:

“If the applicant has requested that access to a document be given in a particular way the agency has to comply with the request unless giving access in that way –

- (a) would interfere unreasonably with the agency's other operations;*
- (b) would damage or harm the document or would be inappropriate because of the physical nature of the document; or*
- (c) would involve an infringement of copyright belonging to a person other than the State,*

in which case access may be given in some other way.”

Having considered the information before him, the Commissioner accepted the agency's advice, on its face, that it is prevented from copying the requested document to produce an edited version for lack of available resources and expertise. The Commissioner did not consider that it is reasonable for the agency to expend additional time and money in attempting to circumvent the existing security measures, which are understood to be in place for legitimate operational reasons. In the Commissioner's view, to require the agency to process the application in the manner described by the complainant would interfere unreasonably with the agency's other operations. The Commissioner considers that in order to take such action, the agency would need to engage external consultants with relevant expertise and to acquire, install and utilise a software program – if available – to render the requested document capable of being copied in an edited form.

The Commissioner found that the agency's amended decision to give access to an edited copy of the requested document by way of supervised inspection is appropriate in the circumstances. Therefore, the Commissioner set aside the original decision of the agency to refuse access to the requested document under clauses 3(1), 5(1)(a), 5(1)(e) and 5(1)(f) of Schedule 1 to the FOI Act and in substitution he decided that access to the requested document be given by way of supervised inspection.