

**Decision D0352012 - Published in note form only**

***Re Coniglio and South Metropolitan Health Service – Armadale-Kelmscott Memorial Hospital [2012] WAICmr 35***

**Date of Decision: 21 December 2012**

***Freedom of Information Act 1992:*** section 26; Schedule 1, clause 3(1)

In 2012, the complainant, Mr Antonino Coniglio, applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to security camera footage taken on 5 February 2012 at the emergency department of the agency.

The agency initially refused the complainant access to the camera footage on the basis that it was exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency claimed that disclosure of the camera footage would reveal personal information about third parties as it showed vision of third parties attending the emergency department.

The complainant applied for an internal review of the agency's decision and narrowed the terms of the application to a significantly shorter time period. The agency did not give notice of a decision on internal review and the complainant subsequently applied to the Information Commissioner for external review of the agency's decision, disputing the exemption claim and arguing that further camera footage should exist.

Following discussions between the Commissioner's office and the parties, the agency agreed to give access to that camera footage showing only the complainant and officers of the agency. The agency gave the complainant access to that camera footage by downloading the camera footage to digital discs and making the digital discs available to the complainant to view. The agency maintained its claim that the balance of the camera footage showing third parties attending the emergency department ('the Disputed Footage') was exempt under clause 3(1).

The agency subsequently offered to give edited access to the Disputed Footage in such a way that the identity of any third parties was obscured. To achieve that purpose, the agency agreed to allow the complainant to have supervised inspection of the Disputed Footage at the agency. Despite several invitations to the complainant to attend at the agency to view the Disputed Footage by way of supervised inspection, the complainant did not respond.

The agency also asserted that there was no further camera footage falling within the scope of the application as claimed by the complainant. As a result, under s.26 of the FOI Act the agency was deemed to have refused access to that further camera footage on the basis that it could not be found or did not exist. Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document and the document cannot be found or does not exist.

In December 2012, the Information Commissioner advised the parties in writing that in his view the Disputed Footage was exempt under clause 3(1) as the agency claimed because disclosure would reveal personal information about third parties. Clause 1 of the Glossary to the FOI Act makes it clear that 'personal information' is information about an identifiable person. The complainant was invited to make further submissions to the Commissioner as to

why clause 3(1) did not apply in this case and in particular, as to why disclosure of the Disputed Footage would, on balance, be in the public interest, pursuant to clause 3(6).

The complainant did not respond. In particular, the complainant did not provide any further information to show that the limit on the exemption in clause 3(6) applied. 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 Footage contained information that is exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency's decision to give edited access to it by way of supervised inspection.

The Commissioner reviewed the agency's file, including all relevant camera footage, and obtained details from the agency as to the process of identifying the relevant camera footage which the cameras produced, the positioning of the cameras and the searches made by the agency to locate camera footage falling within the scope of the application.

Having considered the agency's explanation of the searches that it had performed, the Commissioner was satisfied that the agency had taken all reasonable steps to find any further camera footage, but that no further camera footage existed. The Commissioner found that the agency's decision to refuse access to any further camera footage was justified under s.26 of the FOI Act.