

Decision D0422008 - Published in note form only

***Re Lance and City of Mandurah* [2008] WAICmr 42**

Date of Decision: 30 September 2008

***Freedom of Information Act 1992: Schedule 1, Clause 3(1)*
Police Force of Western Australia and Kelly and Another (1996) 17 WAR 9**

The complainant applied to the City of Mandurah ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to all documents relating to certain complaints and identifying the persons and places involved in such complaints. The agency advised the complainant that it had identified a number of documents – without providing additional detail – but refused access to those documents on the basis that they contained personal information about third parties and were, thus, exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency confirmed its decision on internal review and the complainant applied to the Information Commissioner for external review of that decision.

On receipt of this access application, the Information Commissioner's officer held discussions with both parties and advised the complainant that, in his view, the documents were exempt as the agency claimed. However, the complainant did not wish to withdraw his complaint and provided the A/Information Commissioner with submissions to the effect that it was in the public interest for the requested documents to be disclosed to him.

The A/Information Commissioner considered the submissions made by the parties and was satisfied that the requested documents contained personal information about both the complainant and a number of third parties. Certain third parties objected to the disclosure of personal information about them being disclosed to the complainant.

In determining the complaint, A/Information Commissioner took the view that information about the complainant was inextricably intertwined with information about third parties and that – although certain prescribed details about officers of agencies were not exempt under clause 3(1) – it was not practicable to provide the complainant with edited copies of the requested documents.

The A/Information Commissioner also noted the decision in *Police Force of Western Australia and Kelly and Another* (1996) 17 WAR 9 in which the Supreme Court of Western Australia held that a claim for exemption for documents under the FOI Act cannot be overcome by applicants showing or claiming to know something of the matter from other sources. Accordingly, in this case, the fact that the complainant claimed that he knew the identities of the person or persons making the complaints was irrelevant to the determination of the question as to whether, if disclosed, the disputed documents would reveal personal information about individuals other than the complainant.

In deciding whether disclosure would, on balance, be in the public interest, the A/Information Commissioner noted that the agency had provided the complainant with the substance of the complaints and that certain of his submissions related to private, rather than public, interests. In those circumstances, the A/Information Commissioner gave more weight to the strong public interest in protecting the privacy of the person or persons who made those complaints and confirmed the agency's decision to refuse access to the requested documents.