

Decision D0462011 - Published in note form only

Re 'J' and Challenger Institute of Technology [2011] WAICmr 46

Date of Decision: 30 December 2011

Freedom of Information Act 1992: Clause 5(1)(e).

In February 2011, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to Challenger Institute of Technology ('the agency') for access to his student record and in particular to documents relating to his attendance and studies in a particular course conducted at the agency.

The agency gave access in full to 15 documents, access to an edited copy of one document and refused the complainant access in full to 40 documents ('the disputed matter'). The agency claimed that the disputed matter was exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. That is, the agency claimed that disclosure of the disputed matter "*could reasonably be expected to endanger the life or physical safety of any person*".

The complainant applied for internal review of the agency's decision and the agency confirmed its decision. In April 2011, the complainant applied to the Information Commissioner for external review of the agency's decision.

Having considered the information before him, on 5 December 2011 the Commissioner advised the parties, in writing, of his preliminary view. The Commissioner was of the preliminary view that there was sufficient information before him to satisfy him that certain individuals have fears for their safety if the disputed matter were disclosed to the complainant and that those fears were reasonably based. The Commissioner had material before him evidencing the threats to the safety of individuals who have been involved with the complainant as a student at the agency.

Therefore, from his examination of the disputed matter, and taking all of the material before him into account, the Commissioner was satisfied that disclosure of the disputed matter could reasonably be expected to endanger the physical safety of individuals, and he was of the view that the matter was exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. Further, because of the obligations placed on him by s.74 of the FOI Act, the Commissioner is prevented from providing detailed information in order to avoid the disclosure of exempt matter.

In his submission to the Commissioner, the complainant identified a number of public interest factors which he claimed support disclosure of the disputed matter. In particular, the complainant submitted that he needed the identity of those persons that have provided information to the agency so as to enable the information to be tested and rebutted. However, as the Commissioner was of the view that the disputed matter was exempt under clause 5(1)(e), the public interest for disclosure of that matter did not arise unless one of the limitations in clause 5(4)(a) applied. The Commissioner was satisfied that the limitations in clause 5(4)(a) are not applicable to the disputed matter in this case and, accordingly, it is not open to him to consider whether disclosure would, on balance, be in the public interest.

The complainant was invited to provide the Commissioner with submissions in response to his preliminary view letter, but did not do so.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view. The Commissioner confirmed the agency's decision and found the disputed matter exempt under clause 5(1)(e) of Schedule 1 to the FOI Act.

In order to protect the identity of the complainant and the various third parties, the Commissioner did not identify the complainant in this published decision note.