

**Decision D0392002 - Published in note form only**

***Re Poole and Department of Justice and Police Force of Western Australia [2002] WAICmr 39***

**Date of Decision: 22 November 2002**

***Freedom of Information Act 1992; Section 23(2) and Clause 3(1)***

The complainant made an application to the Department of Justice for access, under the FOI Act to the criminal records of third parties. In respect of one of those individuals, the Department of Justice did not hold any records, but considered that the Police might hold documents of the kind requested and the Department of Justice partially transferred the access application to the Police. Subsequently, and without identifying any of the requested documents or specifying why matter in any particular document is claimed to be exempt, both agencies decided that it was apparent from the nature of the documents described in the access application that all of those documents would be exempt under clause 3(1) and each agency refused access to the requested documents under s.23(2) of the FOI Act.

The complainant lodged a complaint with the Information Commissioner seeking external review of those decisions.

The Information Commissioner considered the terms of the access application and the nature of the documents described therein. The Information Commissioner considered that official criminal records would clearly contain personal information about third parties and would be, therefore, on their face, exempt under clause 3(1). The Information Commissioner was also satisfied that it would not be practicable for those kinds of documents to be edited to delete exempt matter.

The Information Commissioner recognised a strong public interest in protecting privacy. However, the complainant submitted that there was a public interest in a safer community with less crime, which favoured disclosure of the contents of the Criminal Record System maintained by the police.

In balancing the competing public interests, the Information Commissioner was not persuaded that the public interest in a safer community with less crime would be achieved by the disclosure of parts, or by allowing public access to the whole Criminal Record System maintained by the Police or that the identification of people with criminal records or the disclosure of the criminal histories of all people recorded on that database would produce a safer community. In balancing the competing interest, the Information Commissioner gave more weight to the public interest in protecting privacy.

The Information Commissioner found the requested documents exempt under clause 3(1) and confirmed the decisions of the agencies to refuse access to those documents.