

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2011294
Decision Ref: D0042012**

Participants:

Jason Anthony Thompson
Complainant

- and -

**Department of Corrective
Services**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - minutes of meeting - clause 6(1) - deliberative processes - disclosure would reveal opinion, advice, consultation and deliberation - public interest factors for and against disclosure - effective management of prisoners - balancing the public interests.

Freedom of Information Act 1992 (WA): sections 21, 74 and 102(1); Schedule 1 clauses 5(1)(e), 5(1)(h), 6(1)(a) and 6(1)(b).

Re Waterford and Department of the Treasury (No. 2) (1984) 5 ALD 588

Re Collins and Minister for Planning [1996] WAICmr 39

Re Edwards and Minister for Transport [2000] WAICmr 39

DECISION

The agency's decision to refuse access to the documents under clause 6(1) of Schedule 1 to the FOI Act is justified.

SVEN BLUEMMEL
INFORMATION COMMISSIONER

20 January 2012

REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of Corrective Services ('the agency') to refuse Mr Jason Anthony Thompson ('the complainant') access to a document under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The complainant is currently serving a long-term prison sentence and, in 2011, was transferred from Bunbury Regional Prison to Casuarina Prison. On 11 August 2011, he applied to the agency for access under the FOI Act to:

"...a copy of the minutes of the meeting of the relevant stakeholders from the multidisciplinary approach as to section 2 of the Incident Report by Assistant Superintendent dated 12-4-2011 Incident 1194403 ..."

3. By notice of decision dated 13 September 2011, the agency advised the complainant that it had identified one document within the scope of the application but that access was refused under clause 6(1) of Schedule 1 to the FOI Act. Following internal review of that decision, the agency claimed that the document was also exempt under clauses 5(1)(e) and 5(1)(h).
4. By letters dated 13 and 25 October 2011, the complainant applied to me for external review of the agency's decision.

THE DISPUTED DOCUMENT AND EXEMPTIONS CLAIMED

5. The disputed document is a copy of minutes - with attachments - of a review meeting held at Bunbury Regional Prison, which the agency described as *"Minutes of THOMPSON. J REVIEW meeting dated 12 April 2011, 5 pages"* ('the Minutes'). As noted, the agency claims that the Minutes are exempt in full under clauses 6(1), 5(1)(e) and 5(1)(h) of Schedule 1 to the FOI Act.

REVIEW BY THE INFORMATION COMMISSIONER

6. To assist my dealing with this complaint, I required the agency to produce for my inspection its FOI file maintained for the purposes of the access application and the complete original of the Minutes. My Investigations Officer also obtained further information relevant to this matter from the agency.
7. On 11 January 2012, I advised the parties by letter of my preliminary view, which was that the Minutes were exempt under clause 6(1), as the agency claimed. In response, on 17 January 2012, the complainant provided me with written submissions in support of his view that the Minutes were not exempt.
8. In advising the parties of my decision, I am prevented from disclosing certain information because of my obligations under s.74 of the FOI Act. Section 74 states, among other things, that the Commissioner is not to include exempt matter in a decision on a complaint or in reasons given for the decision. Accordingly, I am obliged to describe certain matters in general terms only in

order to avoid breaching my obligation under s.74 not to reveal exempt matter in my reasons for decision.

CLAUSE 6 – DELIBERATIVE PROCESSES

9. The agency claims that the Minutes are exempt under clause 6(1) of Schedule 1 to the FOI Act, which provides:

“Matter is exempt matter if its disclosure –

(a) would reveal –

(i) any opinion, advice or recommendation that has been obtained prepared or recorded;

(ii) any consultation or deliberation that has taken place,

in the course of, or for the purposes of, the deliberative processes of the Government, a Minister or an agency; and

(b) would, on balance, be contrary to the public interest.”

10. The deliberative processes of an agency are its ‘thinking processes’, the process of reflection, for example, on the wisdom and expediency of a proposal, a particular decision or a course of action: see *Re Waterford and Department of the Treasury (No. 2)* (1984) 5 ALD 588.
11. In order to establish a *prima facie* claim for exemption under clause 6(1), the agency must establish the requirements of both paragraphs (a) and (b). The public interest test in clause 6(1)(b) is not a limit on the exemption but an element of the exemption. Thus, unless an agency claiming exemption under clause 6 can establish that disclosure would, on balance, be contrary to the public interest, the disputed matter will not be exempt. If both paragraphs are satisfied, the disputed matter will be exempt, subject to the application of the limits on exemption set out in clauses 6(2) to 6(4). However, in my view, none of the limits on the exemption applies in this case.

The agency’s submissions

12. The agency states that the purpose of the Minutes is to assess the complainant’s current risk of violent recidivism whilst incarcerated and the risk to its employees, and its disclosure would reveal opinions, advice, consultation and deliberation obtained, prepared and recorded in the course of, and for the purposes of, the agency’s deliberative process in that regard.
13. Favouring disclosure, the agency recognises that there is a public interest in people being able to access documents held by government agencies under the FOI process, particularly those containing personal information relating to them. However, in this case, the agency notes that the personal information about the complainant is interwoven with personal information about other people; he has been advised of decisions made in relation to restrictions and security

classifications placed upon him within the prison system; and he has been advised of the reasons for his transfer to Casuarina Prison.

14. Favouring non-disclosure, the agency has considered the need to maintain a secure and safe prison system and submits that the following public interests are relevant:
 - the effective management of prisoners who have been convicted of serious and violent offences, including the ability to obtain psychological opinions, and advice from other relevant professions, without being subject to potential additional behavioural problems and safety concerns; and
 - the maintenance of prison security and the safety of both prisoners and staff; in this case, the Minutes contain information relating to the safety and security of third parties, which are public interests recognised by clauses 5(1)(e) and (h) of Schedule 1 to the FOI Act.
15. The agency submits that the Information Commissioner has previously expressed the view that it would be contrary to the public interest to prematurely disclose deliberative process documents while deliberations in an agency are continuing if there is evidence that the disclosure of such documents would adversely affect the decision-making process or that disclosure would, for some other reason, be demonstrably contrary to the public interest: *Re Collins and Ministry for Planning* [1996] WAICmr 39 and *Re Edwards and Minister for Transport* [2000] WAICmr 39.

The complainant's submissions

16. The complainant's submissions, which are set out in a letter to the agency of 17 September 2011 and letters to me dated 13 October 2011 and 17 January 2012, are summarised as follows:
 - He has a right to see the Minutes because they contain personal information, including opinion and advice, about him and because the agency has transferred him to Casuarina Prison from Bunbury Regional Prison based on the information contained in that document;
 - He wishes to establish whether his prison transfer was necessary and conducted in a fair manner and whether the advice and opinions in the Minutes were made fairly by a person with professional training in psychology who was competent to give advice as to his emotional state whilst at Bunbury or, alternatively, whether that advice was made with the agreement of a psychologist who had dealings with him while in Bunbury Regional Prison;
 - The Minutes contain exaggerated, unfair and misleading comments and judgments about him and may be incomplete, inaccurate, discriminatory or defamatory and show that the prison transfer was unjustified;
 - At Bunbury he was two months into a program that was addressing his offending behaviours "*so it's an unacceptable reason to deny this*

document” and the information will enable him to better himself as a person and to ensure that his rehabilitation is not jeopardised;

- The agency has overrated the risk he poses to others; there is nothing on record to show that he has been violent towards female staff or females generally; and he has no intention of taking action - other than legal action - against anyone; and
- It is evident that the agency is not giving access to the Minutes due to the unfairness of the assessment made in the Minutes and its conclusions.

Consideration

17. I have examined the Minutes and I am satisfied that the disclosure of that document would reveal opinion and advice that has been obtained, prepared and recorded, and consultation and deliberation that has taken place in the course, and for the purpose, of a deliberative process of the agency - in this case, its assessment of risks in relation to the ongoing management of the complainant within the prison system. In my opinion, the agency has established the requirements of clause 6(1)(a).
18. The next question is whether the disclosure of the Minutes would, on balance, be contrary to the public interest. Pursuant to s.102(1) of the FOI Act, the agency bears the onus of establishing the requirements of clause 6(1)(b).
19. In the present case, the relevant deliberative process has concluded so that the disclosure of the Minutes could not adversely affect that process. In view of that, I have considered whether disclosure would be contrary to the public interest for some other reason.
20. Determining whether disclosure would, on balance, be contrary to the public interest involves identifying the public interest factors that favour disclosure and those that do not and weighing them against each other to decide where the balance lies.
21. I recognise that there is a public interest in people exercising their rights of access under the FOI Act, including accessing their own personal information held by government agencies. Pursuant to s.21 of the FOI Act, I have considered that as a factor in favour of disclosure, although I note that the personal information about the complainant in the Minutes is interwoven with personal information about a number of third parties.
22. I also recognise a public interest in people being informed as fully as possible of the basis upon which decisions directly affecting them have been made by government agencies. In this instance, the agency advises me that the reasons for the transfer have been explained to the complainant and he has, in addition, been given information about restrictions and security classifications relevant to his management. In light of that information, I consider that that particular public interest is substantially satisfied.

23. There is nothing on the information before me, other than the complainant's claims, to show that the meeting recorded in the Minutes was conducted in other than a professional, unbiased, objective manner by people qualified to give their opinions. I view the complainant's claims as supposition and I have given little weight to them. There is also nothing before me to support the claim that the disclosure of the Minutes to the complainant would assist his rehabilitation.
24. Weighing against disclosure, I am satisfied that there is a public interest in maintaining the ability of prison authorities to properly assess and develop strategies for the management of prisoners, for their good and for that of the prison staff and wider community. In my view, the disclosure of the Minutes would be contrary to that public interest because it would reveal information about the day to day management of a long-term prisoner that could reasonably be expected to lessen the effectiveness of, or render ineffective, any management strategy introduced on the basis of the information it contains. I consider that its disclosure could enable the complainant (and other prisoners) to alter their behaviour based on the information it contains. Therefore, I accept that the agency's ability to effectively manage prisoners could reasonably be expected to be impaired if the Minutes were disclosed to the complainant.
25. I also consider that there is a public interest in the maintenance of the security of prisons and the safety of those within them, both prisoners and staff. From my examination of the Minutes and the information before me, I am satisfied that the disclosure of that document could jeopardise the safety of third parties and prison security. Consequently, I consider that its disclosure would be contrary to that particular public interest.
26. In balancing the competing public interests, I consider, in this instance, that the public interest factors against disclosure, including the public interest in the agency maintaining its ability to manage the prison system whilst having due regard to individual needs within that system, outweigh the public interest factors favouring disclosure of the Minutes.

CONCLUSION

27. I find that the Minutes are exempt under clause 6(1), as the agency claims. In light of that, it is unnecessary for me to consider whether the Minutes are also exempt under clauses 5(1)(e) or (h).
