

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

**File Ref: F2012010
Decision Ref: D0082013**

Participants:

Brook Anthony Papworth
Complainant

- and -

Western Australia Police
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – record of agency concerning recruitment suitability – clause 5(1)(a) – impair effectiveness of methods or procedures for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.

Freedom of Information Act 1992: section 74(2); Schedule 1, clauses 5(1)(a), 5(4), 11(1)(a), 11(1)(b) and 11(1)(c)

Attorney-General's Department v Cockcroft (1986) 10 FCR 180

Apache Northwest Pty Ltd v Department of Mines and Petroleum [2012] WASCA 167

Re Leighton and Shire of Kalamunda [2008] WAICmr 52

DECISION

The agency's decision is varied. I find that the disputed document is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act.

Sven Bluemmel
INFORMATION COMMISSIONER

15 March 2013

REASONS FOR DECISION

1. This complaint arises from a decision made by Western Australia Police ('the agency') to refuse Mr Brook Papworth ('the complainant') access to documents under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. I understand that in 2010 the complainant applied to join the agency as a recruit. In October and November 2010 the complainant participated in various tests as part of the agency's recruiting process. These tests included a written entrance examination, a physical examination and a psychological evaluation.
3. On 3 December 2010, the complainant applied to the agency under the FOI Act for access to documents as follows:
 - “1. *Psychological information during the course of police recruitment relating to psychological interviews conducted at the police academy including any note recorded by the psychologist performing the interview that relate specifically to myself. (both written and electronic records).*
 2. *Any file notes that relate to the suitability of myself as an applicant of the WA Police Service.*
 3. *Any notes or information that is to be held by WA police on record as regards myself, including assessments, evaluations or any consideration of myself as an applicant, as an applicant or on archive...*”
4. By notice of decision dated 24 February 2011 the agency identified 86 folios within the scope of the application. The agency gave the complainant access to 83 folios but refused access to three other documents - described as folios 3, 60 and 71 - on the basis that they were exempt under clauses 11(1)(a), (b) and (c) of Schedule 1 to the FOI Act.
5. On 30 September 2011 the complainant applied to my office for external review of the agency's decision noting that he was out of time for an internal review and that the agency had decided not to exercise its discretion to accept his application for internal review out of time. Following discussions with my office, the complainant advised that he did not wish to proceed with his application for external review and would instead make a fresh application to the agency for access to the requested documents.
6. Subsequently, on 25 November 2011, the complainant made a further application to the agency under the FOI Act seeking access to folios 3, 60 and 71 referred to in the agency's decision dated 24 February 2011.
7. By notice of decision dated 2 December 2011 the agency again refused access to the requested documents on the basis that each document was exempt under clauses 11(1)(a), (b) and (c) of Schedule 1 to the FOI Act and confirmed that

decision on internal review by notice dated 3 January 2012. On 6 January 2012 the complainant applied to the Information Commissioner for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. Following the receipt of this complaint, the agency produced the requested documents to my office, together with the agency's FOI file relating to the complainant's access application.
9. After reviewing that material, my office advised the agency that it had not provided sufficient reasons to justify its exemption claims. The agency was invited to reconsider its decision or to provide further information in support of its exemption claims. The agency maintained its exemption claims and provided further submissions.
10. In November 2012, I informed the parties, in writing, of my preliminary view of the complaint, including my reasons. My preliminary view was, for the reasons given, that the agency's decision to refuse access to the requested documents under clause 11 of Schedule 1 to the FOI Act was not justified.
11. On 4 January 2013, following my preliminary view, the agency withdrew its claims for exemption under clause 11 for the requested documents. However, in substitution, the agency claimed that folio 71 is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act. The agency subsequently provided the complainant with edited copies of folios 3 and 60 after deleting a small amount of personal information about other people. As the complainant accepted the access provided to folios 3 and 60, those folios are no longer in dispute.
12. On 29 January 2013 my office advised the complainant that, after considering the agency's further submissions, I was of the view that folio 71 was exempt under clause 5(1)(a) as claimed by the agency. In light of that, the complainant was invited to withdraw his complaint or to provide any further submissions that he wanted me to consider.
13. The complainant provided further submissions asserting that he should be given access to folio 71. In addition, the complainant sought to widen the scope of his complaint by requesting access to other documents concerning the agency's recruitment process. However, those documents are outside the scope of the complainant's access application, as described at paragraph 6 of this decision. An applicant cannot unilaterally extend the scope of his or her access application at the stage of external review: see *Re Leighton and Shire of Kalamunda* [2008] WAICmr 52 at [27]. To do so would undermine the effective operation of the FOI Act.

THE DISPUTED DOCUMENTS

14. The disputed document is folio 71 and is described in a schedule to the agency's decision of 2 December 2011 as follows:

“Folio 71. Various WAPOL Recruiting Branch – Application Integrity
Facesheet”

**CLAUSE 5 – LAW ENFORCEMENT, PUBLIC SAFETY AND PROPERTY
SECURITY**

15. The agency claims that the disputed document is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act.

16. Clause 5 of Schedule 1 to the FOI Act, in so far as it is relevant, provides that:

“(1) *Matter is exempt matter if its disclosure could reasonably be expected to —*

(a) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;*

...

(2) ...

(3) ...

(4) *Matter is not exempt matter under subclause (1) or (2) if —*

(a) *it consists merely of one or more of the following —*

(i) *information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by the law;*

(ii) *a general outline of the structure of a programme adopted by an agency for dealing with any contravention or possible contravention of the law; or*

(iii) *a report on the degree of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law;*

and

(b) *its disclosure would, on balance, be in the public interest.*

(5) *In this clause —*

contravention *includes a failure to comply;*

the law *means the law of this State, the Commonwealth, another State, a Territory or a foreign country or state”.*

17. In *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 the Full Federal Court of Australia said, at 190, that the words “*could reasonably be expected to*” in the Commonwealth FOI Act were intended to receive their ordinary meaning. That is, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the relevant outcome. That approach

was accepted as the correct approach in *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASCA 167.

The agency's submissions

18. The agency submits that the disputed document contains various types of information concerning an applicant for recruitment. That information is obtained by the agency from various sources. The agency submits that the release of the disputed document may disclose information from those sources which could reasonably be expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.
19. Section 74(2) of the FOI Act provides that I must not include exempt matter in my decision or in my reasons for decision. In this case, I consider that s.74(2) precludes me from providing further details of the agency's submissions in support of its exemption claim.

The complainant's submissions

20. Other than to assert that he requires the disputed document to properly understand the agency's recruitment process, the complainant has not provided any submissions that are relevant to my consideration.

Consideration

21. I have examined the disputed document and accept that it is a document that contains information of the kind described by the agency. Having considered all the information before me, I am satisfied that disclosure of the disputed document could reasonably be expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. As previously noted, s.74 of the FOI Act precludes me from disclosing exempt matter. In this case, I consider that because of the nature of the information in the disputed document, I am limited in providing expansive reasons for my decision.
22. The exemption in clause 5(1)(a) is subject to the limits on the exemption in clause 5(4). However, based on my examination of the disputed document, I consider that none of the limits in clause 5(4)(a) apply. Accordingly, the question of whether or not disclosure of the disputed document would, on balance, be in the public interest does not arise for my consideration.

CONCLUSION

23. I find that the disputed document is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act.
