

Decision D0092011 - Published in note form only

Re 'B' and Western Australia Police [2011] WAICmr 9

Date of Decision: 6 April 2011

Freedom of Information Act 1992: Schedule 1, clause 5(1)(c)

In June 2010, the complainant applied to the Department of Corrective Services ('the Department') for access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents relating to any criminal, alleged criminal or detrimental allegations recorded against his name. The Department transferred the complainant's application in full to the Western Australia Police ('the agency') under s.15 of the FOI Act.

The agency identified 13 folios as coming within the scope of the complainant's access application. It granted him full access to eight folios and access to edited copies of five folios, deleting personal information it claimed was exempt under clause 3(1) of Schedule 1 to the FOI Act. The complainant sought internal review in relation to two of the edited folios only, seeking access to unedited copies. The agency confirmed its initial decision on internal review and claimed additional exemptions for the matter deleted from the two folios ('the disputed information') under clauses 5(1)(a) and 5(1)(c) of Schedule 1 to the FOI Act. On 19 October 2010, the complainant applied to the Information Commissioner for external review of the agency's decision to give access to edited copies of the two folios.

Following receipt of the complaint, the Commissioner obtained the requested documents from the agency, together with the FOI file relating to the complainant's access application. Having examined that material, the Commissioner was satisfied that the disputed information identified the source of information provided to the former Child Abuse Unit of the agency in relation to allegations made to it. The Commissioner was satisfied that the former Child Abuse Unit of the agency received and acted upon complaints or allegations concerning the alleged abuse of children and had statutory responsibility for the enforcement of the criminal law relating to the abuse of children. The Commissioner accepted that information of that kind was provided to the agency in confidence. Accordingly, the Commissioner's preliminary view was that the disputed information was exempt under clause 5(1)(c) of Schedule 1 to the FOI Act, as the disclosure of the disputed information could reasonably be expected to enable the identity of a confidential source of information in relation to the enforcement or administration of the law to be discovered.

The Commissioner advised the parties, in writing, of his preliminary view and invited the complainant to withdraw his complaint or, alternatively, to provide written submissions to support his claim that the disputed information was not exempt. The complainant provided additional submissions to the effect that the identity of the confidential source of information was already known to him and that he required access to the disputed information to enable him to prove that the allegations made against him were false and malicious.

Although the complainant claimed to have some knowledge of the identity of the source of the information, the extent of the complainant's knowledge was irrelevant because the right of access to a document under the FOI Act does not depend on how much of the information in the document is already known by an access applicant: see *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

The Commissioner considered that the exemption in clause 5(1)(c) was clearly designed to protect the identity of confidential sources of information and was not concerned with the veracity of the information supplied by the confidential source. The Commissioner was satisfied that the disclosure of the disputed information could reasonably be expected to enable the identity of confidential sources of information, in relation to the enforcement or administration of the law, to be discovered and that none of the limits on the exemption in clause 5(4) applied in this case.

The Commissioner found that the disputed information was exempt under clause 5(1)(c) of Schedule 1 to the FOI Act and confirmed the agency's decision to refuse access to it. In light of that, the Commissioner did not need to consider whether that information was also exempt under clauses 3(1) or 5(1)(a).