

**Decision D0092012 – Published in note form only**

***Re Haigh and Department for Child Protection [2012] WAICmr 9***

**Date of decision: 15 March 2012**

***Freedom of Information Act 1992: section 26; Schedule 1, clauses 3(1) and 3(6)***

In January 2011, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department for Child Protection ('the agency') for access to documents relating to child welfare allegations made by the complainant to the agency. The agency identified nine documents within the scope of the application and provided access in part to those documents ('the disclosed documents') deleting certain information. The agency claimed that the deleted matter was exempt under clause 3(1) of Schedule 1 to the FOI Act. In his application for internal review, the complainant objected to the editing of the disclosed documents and stated that more documents should exist. He made reference to a visit in December 2010 that he had made to the agency for which no documents had been provided. The agency confirmed its decision in relation to the editing of the disclosed documents and refused the complainant access to further documents under s.26 of the FOI Act on the ground that those documents could not be found or did not exist.

In March 2011, the complainant applied to the Information Commissioner for external review of that decision. Following the receipt of that application, the Commissioner obtained all relevant documents from the agency and, on 1 February 2012, provided the parties with a letter setting out his preliminary view of the matter.

The Commissioner's preliminary view was that, with the exception of a small amount of matter that was not personal information, or was not exempt because it was 'prescribed details' under clause 3(3), the matter deleted from the disclosed documents was *prima facie* exempt under clause 3(1). In weighing the public interests pursuant to clause 3(6), the Commissioner found that, in this case, the public interest factors in favour of disclosure of the remaining matter deleted were not sufficient to outweigh the strong public interest in the protection of personal privacy.

The Commissioner's preliminary view was that the agency had taken all reasonable steps to locate the further documents but that those documents could not be found or did not exist. Accordingly, the agency was justified in refusing access to those documents pursuant to s.26 of the FOI Act.

The agency accepted the Commissioner's preliminary view and agreed to give access to the information that, in the Commissioner's preliminary view, was not exempt under clause 3(1). The complainant made further submissions to the Commissioner about the existence of documents relating to his visit to the agency in December 2010 and the agency provided further information in response to those submissions.

The Commissioner considered the further submissions and reviewed all of the information before him but was not dissuaded from his preliminary view. The Commissioner confirmed the agency's decision to refuse access to the matter remaining in dispute under clause 3(1) and confirmed the agency's decision to refuse access to further documents under s. 26 for the FOI Act.