

Decision D0102015 – Published in note form only

Re ‘J’ and Western Australian Land Information Authority (Landgate) [2015] WAICmr 10

Date of Decision: 28 May 2015

Freedom of Information Act 1992: section 24, Schedule 1, clause 3

On 8 May 2014 the complainant applied to Western Australian Land Information Authority (Landgate) (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to a report prepared by an external investigator concerning suspected breaches of discipline by the complainant (**the disputed document**). To protect the complainant’s privacy, I have decided not to identify the complainant by name in the particular circumstances of this matter.

The agency refused the complainant access to the disputed document on the grounds that it was exempt under clause 3(1) of Schedule 1 to the FOI Act, because it included personal information, as defined in the FOI Act, about other individuals. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 4 August 2014 the complainant applied to the Information Commissioner for external review of the agency’s decision. Following receipt of the complaint, the Commissioner obtained the disputed document from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application. The Commissioner reviewed the disputed document and carefully considered the detailed submissions made by the complainant and the agency.

The Commissioner was satisfied that the disputed document would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed document was on its face exempt under clause 3(1).

The Commissioner also considered that it was not ‘practicable’ for the agency to edit the disputed document pursuant to section 24 of the FOI Act, to delete that personal information. Specifically, the Commissioner considered that any personal information about the complainant was inextricably intertwined with personal information of other individuals.

The Commissioner considered the application of the limit on the exemption in clause 3(6). In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in the complainant exercising a right of access in this case.

The complainant submitted that he had not been afforded procedural fairness by the agency. However, the Commissioner was satisfied that the agency had provided material which demonstrated that the complainant had been informed of the nature and substance of the allegations made against him and that he had been given an opportunity to respond to those allegations. In addition, the Commissioner considered that the agency had provided the

complainant with information detailing the action it had taken and proposed to take in relation to dealing with those allegations.

Therefore, the Commissioner considered that the public interests identified in favour of disclosure – including the public interest in affording the complainant procedural fairness – had largely been satisfied by the information provided to the complainant by the agency in the course of it dealing with the allegations concerning the complainant.

On 7 May 2015 the Information Commissioner advised the complainant in a preliminary view that, in his view, the disputed document was exempt under clause 3(1) as claimed by the agency. The complainant was invited to withdraw the complaint or, alternatively, to provide further submissions. The complainant made further submissions to the Commissioner. The Commissioner considered the complainant's further submissions. However, the Commissioner did not consider that the complainant's submissions raised any new matters relevant to his consideration. Therefore, the Commissioner was not dissuaded from his preliminary view.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed document was exempt under clause 3(1) of Schedule 1 to the FOI Act.