

**Decision D0122016 – Published in note form only**

***Re Seven Network (Operations) Limited and City of Perth [2016] WAICmr 12***

**Date of Decision: 12 August 2016**

***Freedom of Information Act 1992 (WA): Schedule 1, clause 3(1)***

On 29 September 2015, Seven Network (Operations) Limited (**the complainant**) applied to the City of Perth (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to physical assaults of parking inspectors. The complainant excluded publicly released documents, media statements and correspondence with media.

The application was subsequently revised to include documents relating to assaults on on-street parking inspectors, commercial car park attendants and rangers.

In a notice of decision dated 30 November 2015 the agency decided to give the complainant access to an edited copy of 12 documents and refused access to three documents. The three documents to which the agency refused access comprised CCTV footage relating to the incidents described in the access application (**the disputed documents**). The agency claimed that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act on the grounds they contain personal information about individuals.

On 17 December 2015 the complainant applied for internal review of the agency's decision to refuse access to the disputed documents. By letter dated 31 December 2015 the agency confirmed its decision.

On 5 January 2016 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision to refuse it access to the disputed documents.

Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the agency's FOI file. The Commissioner examined the disputed documents and carefully considered the submissions made by the complainant and the agency. The Commissioner obtained further information from the agency to support its claims for exemption. The agency offered the complainant access to the disputed documents by inspection only, but the complainant did not accept this offer as it sought access to copies of the documents.

The definition of personal information in the Glossary to the FOI Act makes it clear that any information about an individual whose identity is apparent, or can reasonably be ascertained, from that information, is personal information about that individual and is prima facie exempt under clause 3(1) of Schedule 1 to the FOI Act.

On 21 July 2016, after considering all the information before him, the Commissioner provided the parties with his preliminary view. It was his preliminary view that some of the footage in the disputed documents would, if disclosed, reveal personal information about individuals and is therefore exempt under clause 3(1) of Schedule 1 to the FOI Act. Given the nature and the amount of personal information contained in that footage, and taking into

account the comments of Scott J in *Police Force of Western Australia v Winterton* (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997), the Commissioner considered it was not practicable for the agency to edit the footage, pursuant to section 24 of the FOI Act, to delete the exempt matter. He considered that the extensive editing that would be required to avoid disclosure of the personal information about individuals would render the footage unintelligible.

It was also the Commissioner's preliminary view that certain other footage in the disputed documents does not contain information that is within the scope of the access application.

However, in relation to the remaining footage in the disputed documents that came within the scope of the access application (**the disputed footage**), the Commissioner considered that based on the quality of that footage, and the orientation and proximity of the individuals in the footage, disclosure of the disputed footage would not reveal personal information about those individuals because their identities were not apparent or could not reasonably be ascertained from that information. Accordingly, it was the Commissioner's preliminary view that the disputed footage is not exempt under clause 3(1).

The complainant was invited to accept the Commissioner's preliminary view or to make further submissions relevant to the matter. On 22 July 2016 the complainant advised the Commissioner that it accepted his preliminary view. Accordingly, the footage that the Commissioner considered was either exempt or outside the scope of the access application was no longer in dispute and the Commissioner was not required to make a determination about that footage.

The agency was invited to give the complainant access to the disputed footage or, alternatively, to provide further submissions in support of its claim that it is exempt. By letter dated 29 July 2016, the agency maintained its claims for exemption and made further submissions.

After considering all of the material before him, including the agency's further submissions, the Commissioner was not dissuaded from his preliminary view that the disputed footage does not consist of personal information, as that term is defined in the FOI Act.

Accordingly, the Commissioner set aside the agency's decision. In substitution, the Commissioner found that the disputed footage is not exempt under clause 3(1) of Schedule 1 to the FOI Act.