

Decision D0132013 - Published in note form only

Re “Z” and Western Australia Police [2013] WAICmr 13

Date of Decision: 15 May 2013

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

The complainant applied to the agency for access under the *Freedom of Information Act 1992* (‘the FOI Act’) to documents regarding offences alleged to have been committed by him, including statements concerning those allegations, and police files opened at named police stations between 27 September 2000 and 30 December 2001.

By decision dated 28 March 2012, the agency identified 31 documents that fell within the scope of the complainant’s access application. The agency gave the complainant access in full or in edited form to 23 documents and refused him access to 8 documents.

The agency claimed that the material not given to the complainant was personal information about third parties that is exempt from disclosure under clause 3 of Schedule 1 to the FOI Act. The disputed documents were described in the agency’s schedule of documents as third party statements.

Pursuant to a request by the complainant, the agency conducted an internal review. In the request for internal review the complainant asserted that the agency’s decision failed to identify certain documents falling within the access application. On 13 April 2012, the agency confirmed its original decision about the disputed documents.

The complainant applied to the Information Commissioner for external review of the agency’s decision in respect of one document described as “Third Party – Statement – signed dated 5 December 2001.” In August 2012, the Commissioner advised the parties in writing of his view of the matter, which was that the disputed document was exempt under clause 3(1) as the agency claimed because its disclosure would reveal personal information about third parties. The Commissioner also considered that disclosure of the disputed document would, on balance, not be in the public interest, pursuant to clause 3(6).

In response, the complainant accepted the Commissioner’s view that the disputed document is exempt under clause 3(1). However, the complainant asserted that the agency’s decision failed to identify certain additional documents falling within the access application. The complainant also raised various matters about the agency’s charges. However, because that issue was not raised in the initial complaint to the Commissioner, it is not necessary to comment on that matter.

As a result, the only issue remaining in dispute was the complainant’s claim that the agency had, in effect, refused access to further documents within the scope of his access application (‘the requested documents’) under section 26 of the FOI Act.

Section 26 of the FOI Act provides that an agency may refuse access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document is either in the agency’s possession but cannot be found or does not exist.

The Commissioner's officers obtained further information from the agency and required additional searches and inquiries to be made. In particular, the agency explained how it conducted searches of reports made at the named police stations during the period nominated by the complainant. The agency advised that it was able to search those reports by reference to a report number allocated by the agency.

The Commissioner considered the further information, reviewed all of the material before him and was satisfied that the agency had now taken all reasonable steps to find the requested documents and that those documents are either in the agency's possession but cannot be found or do not exist. In light of that, the Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act.