

Decision D0142011 - Published in note form only

***Re Farina and Treasurer No.3* [2011] WAICmr 14**

Date of Decision: 29 April 2011

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

The background facts in this matter are similar to those in *Re Farina and Treasurer* [2011] WAICmr 12 (*'Re Farina No.1'*).

When the complainant lodged this complaint, the position of Treasurer was held by the Hon. Troy Buswell MLA (*'the former Treasurer'*). In the course of dealing with the complaint, the position of Treasurer came to be held after December 2010 by the Hon. Christian Porter MLA (*'the Minister'*).

In February 2009, the complainant applied to the former Treasurer for access under the *Freedom of Information Act 1992* (*'the FOI Act'*) to all documents on the Busselton Jetty Restoration Project from 23 September 2008 until 20 February 2009.

By decision dated 6 April 2009, the former Treasurer identified 13 documents within the scope of the application. The former Treasurer gave the complainant access to edited copies of ten documents, after deleting personal information under clause 3(1) of Schedule 1 to the FOI Act; gave access in full to two documents; and refused access in full to one document, claiming exemption under clause 1(1)(d)(i) of Schedule 1 to the FOI Act (Cabinet and Executive Council).

On 24 April 2009, the complainant applied to the Information Commissioner for external review of the former Treasurer's decision on the ground that further documents within the scope of her application existed or should exist pursuant to s.26 of the FOI Act. The complainant did not seek external review of the former Treasurer's decision to refuse access to documents in full or in part under clauses 3(1) or 1(1)(d)(i).

Following the receipt of this complaint, the Commissioner's office obtained the FOI file maintained in respect of the complainant's application and further information from the former Treasurer concerning, among other things, the searches made for the requested documents. After reviewing that information and the initial searches conducted by the former Treasurer's office, the Commissioner requested the Department of the Premier and Cabinet (*'DPC'*) to conduct further searches for emails within the scope of the complainant's application using specific search terms. Those searches located further documents which the DPC provided to the Commissioner.

As in *Re Farina No.1* at paragraphs 12-13, in light of the further documents located, the Commissioner considered that the former Treasurer had not taken all reasonable steps to locate documents within the scope of the application in the first instance, as required by s.26(1). However, following those further searches, the Commissioner was satisfied that all reasonable steps had been taken to locate emails within the scope of the complainant's access application.

The Commissioner's office reviewed the further documents located by the DPC and identified eight additional documents as coming within the scope of the application. In addition, after reviewing the material on the former Treasurer's FOI file, the Commissioner's office identified four further documents within the scope of the application, which had been located by the former Treasurer's initial searches but which had not been identified as within the scope of the application. Accordingly, the Commissioner's office identified a total of 12 further documents ('the disputed documents').

The Commissioner invited the Minister to make a decision on access in respect of the disputed documents. The Minister subsequently gave the complainant edited copies of those documents, deleting a small amount of personal information under clause 3(1). The complainant did not withdraw her complaint.

At that point, the only information remaining in dispute was information deleted from two of the disputed documents which consisted of the direct work telephone numbers, including mobile phone numbers, of persons who each is or had been an officer of an agency, as that term is defined in the FOI Act ('the disputed information').

For the same reasons as set out in paragraphs 20 to 37 of the Commissioner's decision in *Re Farina No.1*, the Commissioner found the disputed information exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the Minister's decision to refuse access to it.