

Decision D0142013 - Published in note form only

Re 'A' and West Coast Institute of Training [2013] WAICmr 14

Date of Decision: 17 May 2013

Freedom of Information Act 1992: Sections 4(c) and 21; Schedule 1, clauses 3(1), 3(2), 3(3), 3(5) and 3(6)

In November 2010, the complainant lodged a grievance claim with her employer, the West Coast Institute of Training ('the agency'). The agency engaged an external consultant ('the consultant') to investigate that claim and prepare a report. At the completion of the investigation, the consultant gave the agency an investigation report ('the Report') which included summaries of interviews with a number of third parties. The consultant found that the allegations made in the grievance were unsubstantiated and made a number of recommendations, some of which directly related to the complainant.

In February 2011, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for access to the Report and to the documents associated with the Report. The agency gave the complainant access to an edited copy of the Report. It deleted information ('the disputed information') that it claimed was exempt under clauses 3(1) (personal information) and 8(2) (confidential communications) of Schedule 1 to the FOI Act. Following internal review, the agency confirmed its decision claiming that the disputed information was exempt under clause 8(2).

In June 2011, the complainant applied to the Information Commissioner for external review of the agency's decision. Following inquiries from the Information Commissioner's office, the agency identified additional documents within the scope of the application. As a result, the agency gave the complainant edited copies of additional documents. The complainant advised the Commissioner that the only issue remaining in dispute was the agency's decision to give her an edited copy of the Report.

In April 2013, having considered the information before him, the Commissioner advised the parties, in writing, of his preliminary view that the majority of the disputed information was exempt under clause 3(1) and that none of the limits on the exemption in clauses 3(2) - 3(6) applied. In his preliminary view, a small amount of information of the disputed information was not exempt under clause 3(1) or 8(2). The agency accepted the Commissioner's preliminary view and gave the complainant access to that information on 22 April 2013.

The Commissioner invited the complainant to withdraw her complaint or provide the Commissioner with submissions in response to his preliminary view. The complainant did not accept the Commissioner's preliminary view and made submissions to the effect that the public interest in the disputed information being disclosed had not been satisfied. She submitted that she had a right to access information about herself and she had not been given the opportunity to respond to information in the Report which must, in her view, be inaccurate, incomplete or misleading.

The Commissioner found that the right of an applicant to access information about their own personal information under the FOI Act is not absolute. The general right of access created by the FOI Act is subject to and in accordance with the FOI Act, which provides exemptions

from disclosure in some circumstances. He considered the public interests for and against disclosure to determine whether disclosure of the disputed information would, on balance, be in the public interest.

Favouring disclosure, the Commissioner recognised, among other things, that there is a public interest in persons, such as the complainant, who make complaints to proper authorities, being informed of the outcome of their complaints and any action taken. The Commissioner also considered that there is a public interest in the accountability of agencies for their actions and decisions. In the circumstances, the Commissioner considered that those public interests were substantially satisfied because the agency gave the complainant access to an edited copy of the Report and to information provided outside of the FOI process.

While the Commissioner accepted that there was a public interest in an applicant being given access to information to understand whether or not the agency holds information that is inaccurate, incomplete or misleading, this was largely satisfied by the amount of information that was disclosed to the complainant.

In favour of non-disclosure, the Commissioner took the view that the public interest in maintaining the personal privacy of third parties may only be displaced by some other, stronger, public interest that requires the disclosure of private information about another person. In addition, it was his view that, where information is given to investigators voluntarily and steps are taken to ensure that such information is given in confidence, there is a real risk that disclosure of that information would dissuade some staff from volunteering information in similar situations in future.

While recognising that there were public interests in favour of disclosure of the disputed information, the Commissioner was not persuaded that those public interests were sufficient to outweigh the public interest in protection of the personal privacy of third parties. Accordingly, he was not satisfied that the clause 3(6) limitation on the clause 3(1) exemption applied. The Commissioner confirmed the agency's decision and found that the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act.