

Decision D0152015 – Published in note form only

Re ‘K’ and Office of the Public Advocate [2015] WAICmr 15

Date of Decision: 26 August 2015

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

On 23 December 2014 the complainant applied to the Office of the Public Advocate (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents relating to decisions made by the Public Advocate concerning his late mother. To protect the complainant’s privacy, I have decided not to identify the complainant by name in the particular circumstances of this matter.

As a result of correspondence between the agency and the complainant, the scope of the access application was confirmed to be documents related to the decision of the agency to determine a contact plan to accommodate the complainant and his sister when visiting their late mother.

The agency initially granted the complainant access in full to certain documents and access to edited copies of other documents, on the basis that the information deleted is exempt under clause 3(1) and clause 8(2) of Schedule 1 to the FOI Act. In addition, the agency claimed that some of the information deleted from certain documents was outside the scope of the complainant’s access application. On internal review, the agency varied its initial decision and decided to grant the complainant access to some additional information that was initially deleted from three documents. However, the agency maintained its claim that the remainder of the deleted information was either outside the scope of the complainant’s access application or exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act. On 13 March 2015, the complainant applied to the Information Commissioner for external review of the agency’s decision to give access to edited copies of documents.

On 10 July 2015, the Commissioner provided the parties with a letter setting out his preliminary view of the matter, which was that the disputed information, being the information deleted from the disputed documents, was exempt under clause 3(1) of Schedule 1 to the FOI Act, as claimed by the agency. If the disputed information was disclosed it would reveal personal information about individuals other than the complainant. The Commissioner was also of the view that some of the disputed information was outside the scope of the complainant’s access application. The complainant was invited to make further submissions to the Commissioner, in particular as to why disclosure of the disputed information would, on balance, be in the public interest, pursuant to clause 3(6).

In response, the complainant withdrew his complaint with respect to the information the Commissioner considered was outside the scope of his access application. However, the complainant pursued his complaint against the agency’s claim for exemption under clause 3(1). The complainant submitted that there was a public interest in disclosing the disputed information. Such disclosure would ensure the accountability of the agency’s role in managing the affairs or making decisions regarding the care of people, such as the complainant’s late mother, who are the subject of guardianship orders under the *Guardianship and Administration Act 1990*.

The complainant also submitted that the disputed information was personal information about him. Accordingly, the limit in clause 3(2) would apply.

Clause 3(2) provides that matter is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the applicant (in this case, the complainant). The Commissioner accepts the view of the former A/Information Commissioner, that the use of the term ‘merely’ in clause 3(2), means – according to its ordinary dictionary meaning – ‘solely’ or ‘no more than’ personal information about the applicant: *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3 at [23]. Therefore, the Commissioner did not accept that the limit on exemption in clause 3(2) would apply in this matter.

The Commissioner accepted that there is a public interest in an individual, such as the complainant, being able to exercise his or her rights of access under the FOI Act. The Commissioner also accepted that there is a public interest in the accountability of the agency for its decision making processes.

The Commissioner found that those public interests were satisfied to a significant extent in the circumstances of this matter, by the agency providing the complainant with access to edited copies of documents the subject of his access application, and other information it provided to the complainant in the course of the agency’s management of his late mother’s affairs.

The Commissioner accepted that the disputed information consists of ‘personal information’ about third parties, as defined in the FOI Act. In the circumstances of this complaint, the Commissioner did not consider that the public interest in privacy was outweighed by any other public interest that required the disclosure of personal information about third parties to the complainant. The Commissioner found that the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency’s decision.