

Decision D0182010 - Published in note form only

Re Jacqueline Frances Wallace and WorkCover Western Australia Authority (WorkCover WA) [2010] WAICmr 18

Date of Decision: 25 May 2010

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

On 17 August 2009 the complainant applied to the agency for access, under the *Freedom of Information Act 1992* ('the FOI Act'), to a full copy of an investigation report relating to a grievance lodged by the complainant against a senior officer of the agency ('the disputed document'). The agency granted access to an edited copy of the disputed document and claimed exemption under clause 3(1) (personal information) of Schedule 1 to the FOI Act for the information deleted from the copy released to the complainant. The agency confirmed its decision on internal review.

On 5 November 2009, the complainant applied to the Information Commissioner ('the Commissioner') for external review of the agency's decision. Following inquiries made by the Commissioner's Legal Officer, some additional records and information from the disputed document were released to the complainant. The Commissioner examined the remaining information ('the disputed information') and was satisfied that most of it was personal information about a number of third parties because it included names and other information which would identify those third parties. The Commissioner's preliminary view was that – with the exception of a small amount of information – the disputed information was *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Commissioner advised the parties, in writing, of his preliminary view and invited the complainant to withdraw her complaint or alternatively, to provide written submissions to support her request for access to the disputed information. The Commissioner also invited the agency to further disclose that small amount of information from the disputed information that – in his preliminary view – was not exempt under clause 3(1) of Schedule 1 to the FOI Act. In light of that advice, the agency released that additional information to the complainant. However, the complainant maintained her complaint and provided additional submissions to the effect that the limit on the exemption in clause 3(6) applied in this case because there was, on balance, a public interest in the disclosure of the disputed information, given that it related to the overall performance and accountability of the agency.

The Commissioner accepted the complainant's submission that there was a public interest in the accountability of agencies for their actions and decisions, particularly where expenditure of public monies is used in the commissioning of the disputed document. However, the Commissioner found that there was nothing to establish that the agency was involved in any abuse of process in its actions or decisions or that procedural fairness required the full disclosure of the report. The Commissioner considered that the complainant had been informed of the action taken in respect of her complaint and the outcome.

In deciding whether disclosure of personal information would be in the public interest, the Commissioner recognised a public interest in a party to a grievance being informed of the nature of allegations or findings concerning that person and having an opportunity to respond to them. In the circumstances of this complaint, the Information Commissioner decided those

interests were largely satisfied because the complaint had been investigated and dealt with, and the complainant had been informed of the outcome of the investigation. The Commissioner did not agree with the complainant's claim that procedural fairness or the public interest necessarily required the disclosure of the detail of any allegations in *verbatim*, rather than the substance of the complaint.

The Commissioner decided that it was not practicable to give the complainant access to just that personal information about herself, which was entwined with personal information about third parties, because to do so would involve disclosing personal information about the third parties.

The Commissioner was satisfied that the complainant had been given access to a large amount of information contained in the disputed document and had only been refused access to the personal information of third parties. Therefore, in balancing the competing public interests, the Commissioner considered that the public interest in protecting the privacy of third parties outweighed the public interest favouring disclosure in this case. The Commissioner confirmed the agency's decision – with the exception of a small amount of information that was further disclosed by the agency – and found the disputed information was exempt under clause 3(1).