

Decision D0192009 - Published in note form only

***Re Dann and Department of Corrective Services* [2009] WAICmr 19**

Date of Decision: 25 August 2009

Freedom of Information Act 1992: Section 23(2) and Clause 3(1)

The complainant is currently serving a prison sentence in Bunbury Regional Prison. The complainant made an application to the Department of Corrective Services for access under the *Freedom of Information Act 1992* ('the FOI Act') to any incident reports involving a named third party who is also a serving prisoner in a different prison. Without identifying any of the requested documents or specifying why matter in any particular document is claimed to be exempt, the agency decided that it was apparent from the nature of the documents described in the access application that all of those documents would be exempt under clause 3(1) of Schedule 1 to the FOI Act and refused access to the requested documents under s.23(2) of the FOI Act. That decision was confirmed on internal review.

The complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

The Information Commissioner considered the terms of the access application and the nature of the documents as described in the access application. The Information Commissioner considered that incident reports would clearly contain personal information about at least the named third party and also possibly other third parties and would therefore on their face, be exempt under clause 3(1) of Schedule 1 to the FOI Act. The Information Commissioner was also satisfied that it would not be practicable for those kinds of documents to be edited to delete exempt matter.

The Information Commissioner recognised a strong public interest in protecting privacy. In balancing the competing public interests, the Information Commissioner gave more weight to the public interest in protecting privacy.

The Information Commissioner found the agency's decision to refuse access to the requested documents under s.23(2) of the FOI Act is justified.