

Decision D0192013 - Published in note form only

Re Conservation Council of Western Australia (Inc.) and Department of Mines and Petroleum [2013] WAICmr 19

Date of Decision: 17 July 2013

Freedom of Information Act 1992: Schedule 1, clauses 10(4) and 10(5)

The Conservation Council of Western Australia (Inc.) ('the complainant'), applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents passing between the agency and a scientific research group ('the research group'), including reports and draft reports concerning uranium mining regulation in Western Australia.

The agency refused access to all documents falling within the scope of the access application ('the agency's decision'). The agency identified 7 documents falling within the scope of the application ('the disputed documents'). The agency claimed that the disputed documents were exempt under clauses 6 and 10(5) of Schedule 1 to the FOI Act.

In the course of dealing with the access application the agency consulted with the research group. The research group advised the agency that it did not consent to the release of the disputed documents.

The complainant applied to the agency for an internal review of the agency's decision. The parties discussed providing an extension of time for the agency to conduct an internal review. However, the review was not provided by the agency within the time required under the FOI Act or a longer period agreed between the parties. Therefore, the agency is deemed under section 43(2) of the FOI Act to have confirmed the decision under review.

The complainant applied to the Information Commissioner for external review of the agency's decision to refuse access to the disputed documents. Following receipt of the complaint, the Commissioner obtained the originals of those documents, together with the agency's FOI file in relation to the complainant's access application.

In the course of the Commissioner's office dealing with the matter, the agency withdrew the claim that the disputed documents were exempt under clause 6 and substituted a claim under clause 10(4). The agency maintained the claim under clause 10(5). The research group also advised that it withdrew the claim that the disputed documents were exempt.

After examining all the material before him including the disputed documents, in June 2013, the Commissioner wrote to the parties setting out his preliminary view of the complaint. It was his preliminary view that the disputed documents were not exempt under clauses 10(4) or 10(5) of Schedule 1 to the FOI Act. The Commissioner was also of the view that there was a small amount of personal information about named individuals in the disputed documents that may be exempt under clause 3 of Schedule 1 to the FOI Act.

The parties were invited to accept the Commissioner's preliminary view or provide further submissions to him in support of their respective positions. The Commissioner also sought the complainant's advice as to whether or not it required access to details in the disputed documents regarding the names and contact details of individuals.

The complainant advised that it sought access to information about the agency and the research group in the disputed documents. However, the complainant agreed that it did not seek access to information about any named individuals. Accordingly, as the complainant has not disputed the deletion of that matter from the disputed documents, that information was excluded from this complaint. The agency did not accept the Commissioner's preliminary view but decided not to make further submissions to the Commissioner.

The Commissioner reviewed all of the information before him and was not dissuaded from his preliminary view. On the information before him, the Commissioner considered that, while it may be possible for the agency to demonstrate that disclosure of the disputed documents would reveal information concerning the commercial affairs of an agency, he was not persuaded that disclosure of the disputed documents could reasonably be expected to have an adverse effect on those affairs as required by clause 10(4) of Schedule 1 to the FOI Act.

The Commissioner was also not persuaded that the disputed documents would reveal information relating to research that is being, or is to be, undertaken by an officer of an agency or by a person on behalf of the agency as required by clause 10(5) of Schedule 1 to the FOI Act. On the information before the Commissioner, it appears that any such research has been completed.

Accordingly, the Commissioner set aside the agency's decision and, in substitution, found that the disputed documents were not exempt under clause 10(4) or clause 10(5) of Schedule 1 to the FOI Act.