

Decision D0212010 - Published in note form only

Re Carroll and Department of Commerce [2010] WAICmr 21

Date of Decision: 16 June 2010

Freedom of Information Act 1992: section 23(2); Schedule 1, clause 3(1)

On 28 April 2009 the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Real Estate and Business Agents Supervisory Board for access to information relating to, among other things, the payment of a bond by certain tenants for a particular leased property. The application was transferred to the Department of Commerce ('the agency') which refused access to documents containing that information under s.23(2) of the FOI Act.

In brief, s. 23(2) provides that in certain circumstances an agency can refuse access without identifying the requested documents and without specifying the reason why information is claimed to be exempt. In the present case, the agency did not identify the documents but claimed that the documents, should they exist, would be exempt under clause 3(1) of Schedule 1 to the FOI Act because they would contain personal information as defined in the Glossary to the FOI Act about individuals other than the access applicant. The agency confirmed its decision on internal review.

The complainant applied to the Information Commissioner for external review of the agency's decision. Following consideration of the material before the Commissioner, including the agency's FOI file maintained in respect of the access application, the Commissioner advised the parties, by letter, of his preliminary view of the matter. The Commissioner's preliminary view was that the agency was not justified in relying on s.23(2) of the FOI Act but that the requested matter, for the reasons set out in that letter, would be exempt under clause 3(1). The Commissioner invited the complainant to withdraw her complaint or, alternatively, to provide written submissions to support her request for access to the requested matter.

Following the receipt of the Commissioner's preliminary view, the agency withdrew its claim under s.23(2). However, the complainant made no further submissions and provided the Commissioner with no additional information. The Commissioner, having reconsidered the material before him, was not dissuaded from his preliminary view.

The Commissioner was satisfied that the seven documents now identified by the agency as within the scope of the application were *prima facie* exempt under clause 3(1) because their disclosure would reveal personal information about third parties. The Commissioner considered that the only relevant limit on exemption was that in clause 3(6). In considering the relevant public interests, the Commissioner took the view that the need to acquire information to assist in the settlement of a dispute appeared to be a private rather than a public interest. In balancing the competing public interests, the Commissioner was not persuaded that the public interest in protecting the privacy of the third parties was outweighed by any public interests favouring disclosure in this case.

The Commissioner varied the agency's decision and found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act.