

Decision D0212015 – Published in note form only

***Re Ferguson and Shire of Dardanup* [2015] WAICmr 21**

Date of Decision: 9 November 2015

Freedom of Information Act 1992: sections 24, 76(1)(b); Schedule 1, clause 3

On 24 March 2015 Sheila Ferguson (**the complainant**) applied to the Shire of Dardanup (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents arising out of a complaint made by the complainant to the agency about a third party.

The agency refused access to those documents on grounds that were not made clear in the agency's notice of decision. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 13 April 2015 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained the relevant documents from the agency together with the agency's FOI file maintained in respect of the complainant's access application.

During the course of external review the agency claimed that the relevant documents were exempt under clause 5(1) of Schedule 1 to the FOI Act, without specifying the subclause/s of that provision on which it relied.

The A/Information Commissioner was not satisfied that the agency has made out its claim under clause 5(1). However, section 76(1)(b) of the FOI Act provides that in dealing with a complaint, the Commissioner has the power to decide any matter in relation to the access application that could, under the FOI Act, have been decided by the agency.

The A/Information Commissioner considered that the relevant documents would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the A/Information Commissioner considered that the disputed documents were on their face exempt under clause 3(1).

The A/Information Commissioner considered the application of the limit on the exemption in clause 3(6). In balancing the competing public interests, the A/Information Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in the complainant exercising a right of access.

The A/Information Commissioner also considered that it was not practicable for the agency to edit the relevant documents to delete personal information pursuant to section 24 of the FOI Act. Specifically, the A/Information Commissioner considered that any prescribed details of officers of the agency under clause 3(3) were inextricably intertwined with personal information of other individuals.

The complainant submitted that the agency had not been transparent in its dealings with her. However, the A/Information Commissioner was satisfied that the agency had provided material which demonstrated that the complainant had been informed of the action the agency had taken and that it proposed to take in relation to dealing with her complaint.

Therefore, the A/Information Commissioner considered that the public interests identified in favour of disclosure – including the public interest in the accountability of agencies for the manner in which they discharge their functions on behalf of the public of Western Australia – had largely been satisfied by the information provided to the complainant by the agency in the course of it dealing with the allegations made by the complainant.

On 13 October 2015 the A/Information Commissioner advised the complainant in a preliminary view that, in her view, the disputed documents were exempt under clause 3(1). The complainant was invited to withdraw the complaint or, alternatively, to provide further submissions relevant to the matters for consideration.

The complainant made further submissions. Although the access application to the agency included a request for correspondence from a third party to the agency, the complainant advised that she only sought access to the correspondence of the agency described in the preliminary view. Therefore, following the preliminary view, the Commissioner considered those were the only documents in dispute (**the disputed documents**).

The complainant submitted that the most compelling reason that disclosure of the disputed documents is in the public interest as provided by clause 3(6) is that they may reveal an undeclared conflict of interest by the agency. However, the Commissioner did not consider that the disputed documents suggest an undeclared interest by the agency nor was there any evidence to support that proposition.

The Commissioner did not consider that the complainant's submissions raise any new matters for his consideration.

Accordingly, 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.