

Decision D0302011 - Published in note form only

Re 'F' and Department of Corrective Services [2011] WAICmr 30

Date of Decision: 13 September 2011

Freedom of Information Act 1992: section 31; Schedule 1, clause 5(1)(c)

In October 2010, the complainant, a prison officer, applied to the Department of Corrective Services ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to certain security reports containing information about him.

The agency refused access to the requested documents under s.31 of the FOI Act. Section 31 provides that agencies are not required to give information as to the existence or non-existence of a document containing matter that would be exempt under clauses 1, 2 or 5 of Schedule 1 to the FOI Act. In this case, the agency considered that if the requested documents existed they would be exempt under clause 5(1)(b). The complainant sought internal review of the agency's decision. The agency – again without confirming or denying the existence of the requested documents – refused access citing s.31 but varied its decision by claiming that if such documents existed they would be exempt under both clauses 5(1)(b) and 5(1)(c) of the FOI Act. On 17 December 2010, the complainant applied to the Information Commissioner for external review of the agency's decision.

Following receipt of the complaint, the agency produced its FOI file to the Commissioner, together with information and material concerning its operations. The agency advised that the Justice Intelligence Service - which would hold reports of the kind sought by the complainant if they existed - receives information and acts upon complaints concerning, among other things, threats or allegations made against prison staff sourced from prisoners, staff and other third parties. Such information is given on a confidential basis and the identities of confidential sources of information are strictly protected.

In August 2011, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. On the information before him, the Commissioner was satisfied that if documents of the type requested by the complainant did exist they would contain matter that is exempt under clause 5(1)(c). That provision states that matter is exempt if its disclosure could reasonably be expected to enable the existence or non-existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered. The Commissioner's preliminary view was that, in the circumstances, the agency was entitled to rely upon s.31 of the FOI Act.

The complainant responded to the Commissioner's letter by making additional submissions to the effect that it was in the public interest for the requested documents to be disclosed to him. However, since none of the limits on the exemption in clause 5(4) applied in this case, such public interests were not relevant to the application of clause 5(1)(c).

Having reviewed all of the information before him, the Commissioner confirmed the agency's decision to refuse access without giving information as to the existence or non-existence of the requested documents in accordance with s.31 of the FOI Act because, if they existed, those documents would be exempt under clause 5(1)(c) of Schedule 1 to the FOI Act.