

Participants:

Jonathan Hughes Michel
Complainant

- and -

Office of Health Review
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to conciliation process - whether agency should have provided a schedule of documents - certain documents and information outside scope - difference between personal and non-personal information - clause 14(3) - meaning of “*anything said or admitted for the purpose for the purposes of a conciliation*” - clause 3(1) - personal information - clause 3(2) - whether disclosure merely personal information about applicant - clause 3(6) - would disclosure on balance be in the public interest - editing.

Freedom of Information Act 1992: sections 3(2), 8(1), 16(1)(d), 21, 24 and 102(3); Schedule 1, clauses 3(1), 3(2), 3(6) and 14(3)(a); Schedule 2, Glossary.

Freedom of Information Regulations 1993: regulation 4.

Health Services (Conciliation and Review) Act 1995: sections 25(1)(b), 42, 71 and 80(4).

Interpretation Act 1984: section 18.

Re Bartucciotto and State Administrative Tribunal [2006] WAICmr 9

Re Clements and Health Department of Western Australia [1994] WAICmr 3

Police Force of Western Australia and Winterton (1997) WASC 504

DECISION

The agency's decision is varied. I find that:

- (a) folios 51, 73, 77, 86, 87, 102-105, 133 and 145 are outside the scope of the complainant's access application;
- (b) the last three words in the "Path" field in folio 83 and the officer's name wherever it appears in folios 116, 117, 146 and 150 are outside the scope of the complainant's access application;
- (c) folios 65-71, 75, 80-82, 88-100, 107-112, 119-122, 127-132, 135, 137, 139-141, 143, 147-149, 151-153 and 155-156 are exempt under clause 14(3)(a) of Schedule 1 to the FOI Act but that folios 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144 and 154 and the information in folios 83, 116, 117, 146 and 150 (other than the information determined to be out of scope in paragraph (b) above) are not exempt under that provision;
- (d) folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172 are exempt under clause 3(1) but the information in folios 83, 116, 117, 146 and 150 (other than the information determined to be out of scope in paragraph (b) above) is not exempt under that provision; and
- (e) it is not practicable to edit folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172.

Sven Bluemmel
INFORMATION COMMISSIONER

22 December 2009

REASONS FOR DECISION

1. This matter arises from a decision made by the Office of Health Review ('the agency') to refuse Mr Jonathan Michel ('the complainant') access to documents under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The agency is an independent statutory authority established under the *Health Services (Conciliation and Review) Act 1995* ('the HSCR Act') to provide consumers with a formal channel for complaint about health and disability services in both the public and private sectors in Western Australia. The agency assists parties to resolve disputes through a process of conciliation.
3. In July 2007, the complainant underwent a medical procedure at a private medical facility in Western Australia. On 1 April 2008, the complainant made a complaint to the agency in relation to that medical procedure. On 2 July 2008, the Director of the agency wrote to the complainant and the medical facility to advise that the matter had been accepted for conciliation, pursuant to s.25(1)(b) of the HSCR Act. The conciliation process ended on 27 August 2008 without agreement having been reached between the complainant and the medical facility. On the same date, the agency advised the complainant of the outcome of the conciliation process; sent him a copy of the final conciliation report; and closed its file.
4. On 18 February 2009, the complainant applied to the agency under the FOI Act for access to "*copies of all notes/documents/details held by the complainant's office in relationship to myself*". The complainant did not pay the \$30 application fee payable under the FOI Act for non-personal information and the agency dealt with the matter as an application for personal information, for which no application fee or charges are payable.
5. The agency notified the complainant of its decision on 10 March 2009, which was to give him access to 74 folios but to refuse access to other folios. The agency claimed that most of those folios were exempt under clause 14 of Schedule 1 to the FOI Act and 6 folios (folios 49, 50, 51, 159, 164 and 172) were exempt under clauses 3 and 8.
6. The complainant sought internal review of that decision in respect of certain folios and, on 6 April 2009, the agency confirmed its original decision. Subsequently, on 27 May 2009, the complainant applied to me for external review of the agency's decision to refuse access to folios 49-51, 65-156, 159, 164 and 172 and advised that he was seeking full or partial access to those documents and to "*any other documents*".

REVIEW BY INFORMATION COMMISSIONER

7. Following the receipt of that application, my A/Principal Legal Officer wrote to the complainant and advised that the external review could not be expanded to include "*any other documents*" unless he had reason to believe that further

documents within the scope of his access application should exist and should be held by the agency. As the complainant provided no further information in respect of that issue, I have not considered it further.

8. Having obtained further information from the agency, and having examined the originals of the disputed folios and the agency's FOI file maintained in respect of the complainant's application, my officer wrote to the parties setting out her view of this complaint. Following that advice, the agency released a copy of folio 159 to the complainant.
9. On 30 June 2009, the complainant advised me that he was seeking a schedule of the folios in dispute in this matter and referred me to the decision in *Re Bartucciotto and State Administrative Tribunal* [2006] WAICmr 9.
10. In *Re Bartucciotto*, the former A/Information Commissioner noted at [56], that the FOI Act does not require an agency to provide an applicant with a schedule of documents, although in cases involving a large number of documents it may be desirable to do so. In that case, the A/Commissioner considered that a schedule of documents would have assisted the complainant to understand why the disputed documents were not 'documents of a court' as defined in the FOI Act, which provides that only documents relating to matters of an administrative nature are 'documents of a court' for the purposes of the FOI Act.
11. In my view, it was open to the agency to have provided the complainant with a schedule of documents in relation to the disputed folios. However, the FOI Act does not require an agency to create such a schedule and in this case the agency chose not to do so. Unlike *Re Bartucciotto*, I do not consider that providing the complainant with a schedule listing each of the relevant folios would assist the complainant to better understand the agency's claims for exemption.
12. In its notices of decisions, the agency refers to the disputed documents by their folio numbers. The folios in dispute between the parties are folios 49-51, 65-156, 164 and 172. Folios 65-156 make up the agency's conciliation file, being documents dated between 2 July 2008 and 27 August 2008 ('the conciliation period'). Folios 49-51, 164 and 172 are records of telephone conversations dated before and after the conciliation period.
13. On 12 October 2009, I wrote to both the agency and the complainant setting out my preliminary view of the matter. My preliminary view was that some, but not all, of the folios contained on the agency's conciliation file were exempt under clause 14(3)(a) and that folios 49-51, 164 and 172 were exempt under clause 3(1) of Schedule 1 to the FOI Act. However, it did not appear to me that the complainant was seeking access to the folios that, in my preliminary view, were not exempt under clause 14(3)(a).
14. I invited both parties to make further submissions to me by 26 October 2009 in support of their respective positions. On 22 October 2009, the agency advised me that it accepted my preliminary view of this complaint. The complainant did not accept my preliminary view and, on 19 October 2009 sought a three months' extension of time in which to provide me with submissions. I granted a one-

month extension until 23 November 2009. However, the complainant has made no further submissions to me. All of folios 49-51, 65-156, 164 and 172 remain in dispute between the parties.

THE SCOPE OF THE ACCESS APPLICATION

15. Having reviewed the agency's FOI file and the complainant's access application, I note that the complainant applied for personal information in relation to himself. Under the FOI Act and the *Freedom of Information Regulations 1993* ('the Regulations'), no application fee or charges are payable for giving an applicant access to "*personal information about the applicant*" (see s.16(1)(d) of the FOI Act and regulation 4 of the Regulations).
16. The term 'personal information' is relevantly defined in the Glossary in Schedule 2 of the FOI Act to mean:

"...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

(a) whose identity is apparent or can reasonably be ascertained from the information or opinion ..."
17. The definition of 'personal information' makes it clear that any information or opinion about a person, from which that person can be identified, is *prima facie* exempt matter under clause 3(1). In other words, 'personal information' can be information about an applicant or information about other individuals. The term 'non-personal information' is not defined in the FOI Act but – based on the definition of 'personal information' in the Glossary – I understand it to mean information that would not identify any individual, whether the applicant or some other person.
18. Having examined the folios remaining in dispute, I note that folios 51, 73, 77, 86, 87, 102-105, 133 and 145 (together with the last three words in the "Path" field in folio 83 and the officer's name wherever it appears in folios 116, 117, 146 and 150) are outside the scope of the complainant's access application because those folios and that matter contain no personal information as defined in the FOI Act about the complainant.
19. In the present case, I find that folios 51, 73, 77, 86, 87, 102-105, 133 and 145, together with the information referred to in folios 83, 116, 117, 146 and 150, are outside the scope of the complainant's access application. In light of that, it is not necessary for me to deal with those folios or that information further.
20. In his letter to me seeking external review, the complainant referred me to the following text taken from my website at www.foi.wa.gov.au headed 'Deciding what information is 'personal information'', which he underlined, as follows:

"When an applicant seeks access to personal information about himself or herself, the fact that it is personal information about him or her is a factor in favour of disclosure. Frequently, personal information about an

applicant appears in context with non-personal information. It is not a requirement that the non-personal information be deleted before access is given. Rather, background information and factual information that puts the personal information into context should be released to an applicant so that the document is meaningful.

21. With regard to non-personal information, I agree with the complainant that where an applicant has applied for personal information about himself, non-personal information that consists of background or factual material that puts the personal information into context should, where practicable, be disclosed. In the present case, I have taken that into account in my view of the edited matter that I consider could be disclosed to the complainant.

CLAUSE 14 – INFORMATION PROTECTED BY CERTAIN STATUTORY PROVISIONS

22. The agency initially claimed that folios 65-156 are exempt under clause 14(3)(a) of Schedule 1 to the FOI Act. However, in view of my finding that certain folios and information are outside the scope of the complainant's access application, it is only necessary for me to consider whether folios 65-72, 74-76, 78-82, 84, 85, 88-101, 106-115, 118-132, 134-144, 147- 149 and 151-156 and the matter that remains in dispute in folios 83, 116, 117, 146 and 150 (together 'the disputed matter') are exempt under clause 14(3).

23. Clause 14(3)(a) provides:

“Matter is exempt if its disclosure would reveal anything said or admitted for the purposes of a conciliation under –

(a) Division 3 of Part 3; or

(b) ...

of the Health Services (Conciliation and Review) Act 1995.”

24. Clause 14(3)(a) contains no 'public interest test' so that the claim for exemption is established if I am satisfied that the disputed matter contains information of the kind described in that provision.

The agency's submissions

25. In brief, the agency submits that:

- the disputed matter contains information provided in the course of its conciliation process under Division 3 of Part 3 of the HSCR Act;
- the aim of non-disclosure of the disputed matter is to protect the confidentiality of statements made by those who participate in a conciliation process under the HSCR Act and the confidential nature of that process should be maintained;

- s.42 of the HSCR Act provides that evidence of anything said or admitted during the conciliation process is not admissible in any court or tribunal and s.71 of the HSCR Act makes it an offence for participants in conciliation proceedings, including the staff of the agency, to “*whether directly or indirectly, record, disclose, or make use of any information*” obtained because of their being participants in that process.

The agency also made submissions as to why the disclosure of the disputed matter is not in the public interest. However, as I have noted, clause 14(3) is not subject to a public interest test, so those submissions are not relevant to the matters for my determination.

The complainant’s submissions

26. The complainant provided me with no information in respect of the exemption claim under clause 14(3)(a). Instead, the complainant advised that he was seeking access to the requested information so that he could check the accuracy of the personal information about him and have that information corrected if necessary.

Consideration

27. Clause 14(3)(a) refers to the disclosure of information that would reveal anything said or admitted for the purposes of a conciliation under Division 3 of Part 3 of the HSCR Act. Part 3 of the HSCR Act (ss.19-58) is headed ‘Complaints’ and Division 3 of Part 3 (ss.36-42) is headed ‘Conciliation’.
28. Section 42(1) of the HSCR Act provides:

“Protection of statements made

- (1) *Evidence of anything said or admitted during the conciliation process –*
 - (a) *is not admissible in proceedings before a court or tribunal; and*
 - (b) *cannot be used by the Director as a ground for exercising a power of investigation.”*

29. I have considered how the FOI Act interacts with the HSCR Act insofar as it relates to clause 14(3). The second reading speech introducing the HSCR Act into Parliament in August 1995 (*Hansard* vol.325 at p.7545) states:

“[t]he scheme of the Bill is to emphasise the conciliation process for the purposes of resolving a matter. To encourage this, evidence given in the conciliation stage will not be admissible in any other proceedings.”

30. Following the commencement of the HSCR Act in 1996, a number of consequential amendments were made to other statutes. Pursuant to s.80(4) of the HSCR Act, clause 14 of Schedule 1 to the FOI Act was amended by altering

its heading to substitute the word ‘statutory’ for the word ‘secrecy’ - so that it now reads “[i]nformation protected by certain statutory provisions” - and by including subclause (3).

31. Before that amendment to clause 14, the former Information Commissioner in *Re Clements and Health Department of Western Australia* [1994] WAICmr 3 at [23] said:

“The purpose of [clause 14] is to protect certain secrecy provisions in other Acts, bearing in mind that the Western Australian legislation in s.8 effectively overrides such provisions.”

32. Section 8 of the FOI Act relevantly provides:

“(1) Access to documents is to be given ... despite any prohibitions or restrictions imposed by other enactments (whether enacted before or after the commencement of this Act) on the communication or divulging of information, and a person does not commit an offence against any such enactment merely by complying with this Act.

(2) Subsection (1) applies in respect of any enactment (whether enacted before or after the commencement of this Act) unless the enactment is expressly stated to have effect despite this Act.

(3) The application of subsection (1) is subject to clause 14 of Schedule 1.”

33. I note that the wording in s.42(1) of the HSCR Act - “[e]vidence of anything said or admitted during the conciliation process” is similar in construction to the wording of clause 14(3), which provides that matter is exempt if its disclosure would reveal “anything said or admitted for the purposes of a conciliation” conducted under Division 3 of Part 3 of the HSCR Act, which covers the conciliation process.
34. Having considered the wording of s.42 of the HSCR Act and s.8 of the FOI Act and the extrinsic material referred to in paragraph 28, I am of the view that clause 14(3) was included in the FOI Act for the purpose of giving express effect to the restrictions in ss.42 and 71 of the HSCR Act, so that s.8(1) of the FOI Act would not operate to override that restriction.
35. The question for my determination is whether the disputed matter would, if disclosed, “reveal anything said or admitted for the purposes of a conciliation under Division 3 of Part 3 of [the HSCR Act]”. Having examined the information before me and the disputed matter, I accept that the disputed matter came into being in the course of a conciliation under Division 3 of Part 3 of the HSCR Act.
36. The disputed matter includes a variety of documents such as letters and emails sent and received by the agency; minutes of meetings; records of telephone

calls; memoranda; extracts from business directories; and information downloaded from websites.

37. If the words “*anything said or admitted for the purposes of a conciliation ...*” in clause 14(3) are interpreted broadly, potentially all of the documents on the agency’s conciliation file would be exempt under that provision. This would include documents that could be categorised as administrative trivia such as file notes recording that a person will be unable to attend a meeting or was not available when telephoned.
38. Conversely, a narrow approach to the interpretation of clause 14(3)(a) would limit the exemption to those documents which disclose anything said or admitted that relates directly to the issues the subject of the conciliation process. For the reasons given below, I consider that a narrow interpretation of the words in clause 14(3)(a) is to be preferred.
39. In my view, the words ‘anything said or admitted’ in clause 14(3) are limited by the phrase “*for the purposes of a conciliation under Division 3 of Part 3 [of the HSCR Act]*”. The dictionary definition of ‘purpose’ is “*1 an object to be attained; a thing intended. 2 the intention to act. 3 resolution, determination*”. Therefore, in my opinion, clause 14(3)(a) should be understood as meaning ‘anything said or admitted which directly relates to the object of reaching a conciliated settlement or outcome’. By way of example, that interpretation would render exempt a record of someone’s offer to settle or an admission of culpability but not a record of a discussion between agency officers concerning nothing more than the administrative arrangements for a meeting.
40. The wording of ss.42 and 71 of the HSCR Act indicates that what is protected under those provisions is information obtained by participants in the course of the conciliation process under that Act and that such information or statements are not admissible in proceedings before a court or tribunal. In my view, it is logical to infer that the kind of information intended to be protected is statements and admissions directly relevant to a conciliated outcome, rather than documents concerning the general administration of the conciliation process. Of course, process documents that refer, for example, to statements and admissions would be included in the protected category of documents.
41. Therefore, having examined the agency’s conciliation file, I find that folios 65-71, 75, 80-82, 88-100, 107-112, 119-122, 127-132, 135, 137, 139-141, 143, 147-149, 151-153 and 155-156 are exempt under clause 14(3)(a) of Schedule 1 to the FOI Act because, in my view, those folios would, if disclosed, reveal something said or admitted for the purposes of a conciliation under Division 3 of Part 3 of the HSCR Act.
42. However, in my view, folios 72, 74, 76, 78,79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144 and 154 and the disputed information in folios 83, 116, 117, 146 and 150 do not contain information of that kind. Accordingly, I find that those folios and that information are not exempt under clause 14(3)(a).

43. As I have found folios 65-71, 75, 80-82, 88-100, 107-112, 119-122, 127-132, 135, 137, 139-141, 143, 147-149, 151-153 and 155-156 exempt under clause 14(3)(a), I do not need to consider whether they are also exempt under some other provision.

CLAUSE 3 - PERSONAL INFORMATION

44. The agency claims that folios 49, 50, 164 and 172 are exempt under clause 3(1) of Schedule 1 to the FOI Act. In view of my finding that folios 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154 and the disputed information in folios 83, 116, 117, 146 and 150 are not exempt under clause 14(3)(a), I have also considered whether those folios and that information is exempt under clause 3(1).
45. Clause 3, insofar as it is relevant, provides:

“3. *Personal information*

Exemption

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

- (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
- (a) *the person;*
 - (b) *the person’s position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*
- (4) ...
- (5) ...
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*

46. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies.

The complainant's submissions

47. From the complainant's letter to me seeking external review, and from the material he has provided to me, I understand the complainant to submit that he is seeking access to the disputed folios in order to "*amend, refute or delete personal information*". The complainant also submits that he should be given access to the disputed folios because they contain 'personal information' as defined in the FOI Act about him.

The agency's submissions

48. In its notices of decision, the agency submits that the folios 49, 50, 164 and 172 are all records of confidential telephone calls between the agency's staff and third parties and that the disclosure of those folios would reveal the identities of those third parties, which is information that is *prima facie* exempt under clause 3(1).
49. The agency recognises a public interest in the complainant's being given access to information under the FOI Act but submits that it would not, on balance, be in the public interest to disclose folios 49, 50, 164 and 172 to the complainant because the information they contain was given in confidence and disclosure could reasonably be expected to prejudice the future supply of information of that kind to the agency. The agency also submits that it is not practicable to edit folios 49, 50, 164 and 172.

Consideration

50. Having examined the folios and information remaining in dispute, I consider that the disputed information in folios 83, 116, 117, 146 and 150 contains personal information as defined about the complainant and could be disclosed to him.
51. Folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172 consist of records of telephone conversations, memoranda of correspondence sent, letters and emails. In my opinion, those folios contain personal information about the applicant and personal information about third parties. Consequently, all of that information is *prima facie* exempt under clause 3(1).
52. Clause 3(1) is subject to the limits on the exemption in clauses 3(2)-3(6). In my view, the limits in clauses 3(3)-3(5) are not relevant to this case because the complainant is not seeking personal information about officers or former officers of agencies or other third parties.

Limits on the exemption

53. Clause 3(2) provides that information is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the applicant (in the present case, the complainant). In my view, the use of the word 'merely' in

clause 3(2), means - according to its ordinary dictionary meaning - 'solely' or 'no more than' personal information about the applicant.

54. Having examined folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172, I consider that all of those folios contain personal information about the applicant that is interwoven with personal information about other individuals.
55. As a result, disclosure of those folios would do more than 'merely' reveal personal information about the complainant because such information is inextricably interwoven with personal information about third parties. Consequently, it would not be possible for the agency to give access to the personal information about the complainant without also disclosing personal information about the third parties. Therefore, the limit in clause 3(2) does not apply to folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172.
56. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Section 102(3) of the FOI Act provides that the onus is on the complainant, as the access applicant in this matter, to establish that – where personal information about other individuals is interwoven with personal information about him – the disclosure of all of that information would, on balance, be in the public interest.
57. The application of the public interest 'test' in clause 3(6) involves identifying the public interest factors for and against disclosure and weighing them against each other to determine where the balance lies.
58. The agency has identified a public interest in people being able to exercise their rights of access under the FOI Act to access personal information held by a government agency concerning them. That particular interest is recognised in s.21 of the FOI Act, which provides that the fact that a requested document contains personal information about the applicant must be considered as a factor in favour of disclosure for the purpose of considering where the public interest lies and, accordingly, I have taken that into account.
59. Weighing against disclosure, I note that the personal information about the complainant in this case is interwoven with personal information about third parties. I also note that the public interest in the complainant having access to the personal information about him has been to some extent satisfied by the information given to the complainant by the agency in the course of the conciliation process and that, in addition, the complainant is not seeking access to personal information about third parties.
60. I understand the complainant to submit that there is a public interest in members of the public being able to check that personal information about them that is contained in documents held by government agencies is accurate. I recognise that particular public interest but only to the extent that the privacy of third parties is protected. The public interest in the protection of personal privacy is recognised by the inclusion of the clause 3 exemption in the FOI Act and,

among other provisions, the obligation on agencies to consult with individuals before disclosing any information about them under the FOI Act. In my opinion, that public interest may only be displaced by some other, considerably stronger, public interest that requires the disclosure of personal information about other people where it is interwoven with personal information about an applicant.

61. In respect of the personal information concerning some particular third parties referred to in the disputed folios, I am of the view that some, but not necessarily all of that information, may well be known to the complainant. However, it is, nonetheless, personal information about those people and I do not consider that any of the public interests in disclosure identified above requires the disclosure of personal information about those persons. Moreover, although that information may be known to the complainant, disclosure under the FOI Act is considered to be disclosure to the world at large, as agencies have no power to attach conditions to the use to which documents released under the FOI Act may be put.
62. In weighing the competing public interests for and against disclosure, I consider that the public interest in the protection of personal privacy outweighs the public interests favouring disclosure in this instance.
63. I find that folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172 are exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act.

EDITING

64. Section 24 of the FOI Act provides, in brief, that if an applicant seeks access to copies of documents which have been edited to delete exempt matter, the agency must give the applicant an edited copy if it is 'practicable' to do so.
65. In *Police Force of Western Australia and Winterton* (1997) WASC 504, Scott J said:

"It seems to me that the reference to the word "practicable" is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s.24 should not be used to provide access to documents which have been so substantially altered as to make them either misleading or unintelligible."

66. In my view, it would not be practicable to edit folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172 pursuant to s.24 of the FOI Act because the editing required would be so substantial as to render those folios unintelligible. In my view, the agency is

justified in claiming that the disputed matter in those folios is exempt under clause 3(1).

CLAUSE 8(2)

67. As noted in paragraph 5 above, the agency claimed in its notices of decision that folios 49, 50, 51, 164 and 172 are also exempt under clause 8(2). However, in light of my finding that folio 51 is outside the scope of the application and that folios 49, 50, 164 and 172 are exempt under clause 3(1), I do not need to consider whether those folios are also exempt under clause 8(2).

CONCLUSION

68. In light of the above, I find that:

- (a) folios 51, 73, 77, 86, 87, 102-105, 133 and 145 are outside the scope of the complainant's access application;
- (b) the last three words in the "Path" field in folio 83 and the officer's name wherever it appears in folios 116, 117, 146 and 150 are outside the scope of the complainant's access application;
- (c) folios 65-71, 75, 80-82, 88-100, 107-112, 119-122, 127-132, 135, 137, 139-141, 143, 147-149, 151-153 and 155-156 are exempt under clause 14(3)(a) of Schedule 1 to the FOI Act but that folios 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144 and 154 and the information in folios 83, 116, 117, 146 and 150 (other than the information determined to be out of scope in paragraph (b) above) are not exempt under that provision;
- (d) folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172 are exempt under clause 3(1) but the information in folios 83, 116, 117, 146 and 150 (other than the information determined to be out of scope in paragraph (b) above) is not exempt under that provision; and
- (e) it is not practicable to edit folios 49, 50, 72, 74, 76, 78, 79, 84, 85, 101, 106, 113-115, 118, 123-126, 134, 136, 138, 142, 144, 154, 164 and 172.
