

**Decision D0332011 – Published in note form only**

***Re H and City of Nedlands [2011] WAICmr 33***

**Date of decision: 22 September 2011**

***Freedom of Information Act 1992: section 26, clause 5(1)(f)***

In July 2010, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the City of Nedlands ('the agency') for access to certain documents concerning allegations made against him as an officer of that agency.

The agency identified four documents and gave the complainant access in full to two documents and access in edited form to the remainder. The agency claimed that the information deleted from the two documents ('the disputed information') was exempt under clause 10. The complainant sought internal review of the agency's decision and also claimed that further documents should exist. On internal review, the agency confirmed its decision and, in September 2010, the complainant applied to the Information Commissioner for external review.

Following the receipt of the complaint, the agency provided the Commissioner with the two documents in dispute and its FOI file maintained in respect of the access application. In the course of dealing with the matter, the agency provided the complainant with part of the disputed information and made further inquiries and searches for additional documents that the complainant considered should exist.

On 29 July 2011, the Commissioner provided the parties with his preliminary view of the complaint, which was that the disputed information was not exempt under clause 10 and that the agency's claim under s.26 appeared to be justified. In response, both parties made submissions to the Commissioner. In light of those submissions, the Commissioner provided the parties with a supplement to his preliminary view on 30 August 2011. At that point, the Commissioner considered that further searches for documents should be made and that – with the exception of a small amount of matter – the disputed information was exempt under clause 5(1)(f). Clause 5(1)(f) provides that matter is exempt if its disclosure could reasonably be expected to endanger the security of any property.

The agency undertook the further searches requested by the Commissioner and located several relevant documents and released them to the complainant. The agency also disclosed that part of the disputed information that the Commissioner had considered was not exempt. On 20 September 2011, the complainant made further submissions maintaining his claim that additional documents should exist and also that the disputed information should be disclosed.

Having reviewed all of the information before him, including the complainant's further submissions, the Commissioner varied the agency's decision. The Commissioner found that the disputed information was exempt under clause 5(1)(f) and that, pursuant to s.26 of the FOI Act, the agency had now taken all reasonable steps to find the requested document and was satisfied that they could not be found or did not exist.