

**Decision D0342009 - Published in note form only**

***Re T and City of Geraldton-Greenough* [2009] WAICmr 34**

**Date of Decision: 29 December 2009**

***Freedom of Information Act 1992: Schedule 1, Clause 3(1)***

The complainant applied to the City of Geraldton-Greenough ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to the name of a person who made a complaint to the agency about certain matters relating to a business operated by the complainant. To protect the personal and business interests of the complainant, I have decided not to identify him or the specific details of the complaint made to the agency.

The agency refused access to the requested information on the basis that the information is exempt under clauses 3(1) and 5(1)(c) of Schedule 1 to the FOI Act and the complainant applied to the Information Commissioner for external review of that decision.

Following examination of the documents produced by the agency and after making inquiries with the parties, the Information Commissioner advised the parties of his preliminary view. It was the Commissioner's view that the disputed information was exempt under clause 3, as the agency claimed. In light of that view, the complainant was invited to reconsider whether he wished to pursue his complaint. However, the complainant did not withdraw his complaint and provided the Commissioner with submissions to the effect that it was in the public interest for the requested information to be disclosed to him.

The complainant submitted that the person who made the complaint to the agency maliciously provided false information. However, there was no other information before the Commissioner to establish that was the case. The Commissioner stated that the provision of false and/or malicious information is not the only reason why a complaint may be found by investigation to be unsubstantiated. In some cases, an informant will honestly believe in the veracity of the information provided and that it warrants investigation, but will be mistaken in one or both of those beliefs. In other cases, a matter may merit investigation but the evidence gathered does not substantiate the allegations.

It may be that the disclosure of a complainant's identity would act as a deterrent to persons who maliciously provide false information to government bodies but, conversely, it could act as a deterrent to informants with genuine concerns.

Moreover, in deterring malicious persons, it seemed to the Commissioner that there are other avenues available to the complainant to prevent harassment from any person, including reporting such matters to the police. The Commissioner noted that the police has various powers available to it to obtain access to information and documents if the police considers it appropriate in the course of any investigation. In the Commissioner's opinion, the existence of such mechanisms goes some way towards satisfying any public interest in deterring malicious persons.

Weighing against disclosure is the strong public interest in maintaining personal privacy. Previous decisions of the Information Commissioner have consistently expressed the view that there is a very strong public interest in maintaining personal privacy which may only be displaced by some other, considerably stronger and more persuasive public interest that

requires the disclosure of personal information about one person to another person: (see, for example, *Re Lance and City of Mandurah* [2008] WAICmr 42, *Re Brandtner and City of Bayswater* [1995] WAICmr 30 and *Re Penn and Penn and the Shire of Mundaring* [2002] WAICmr 12).

Also weighing against disclosure is a public interest in an agency maintaining its ability to obtain sufficient information to enable it to discharge its regulatory functions, particularly where it relies upon the provision of voluntary information from the public. Accordingly, the Commissioner considered there to be a public interest in maintaining public confidence so that people can approach an agency with genuine concerns without fear of retribution from a person or organization being complained about. In the Commissioner's view, protecting the privacy of persons volunteering information serves that interest.

In balancing the competing public interests for and against disclosure as outlined above, the Commissioner considered that those favouring non-disclosure outweigh those favouring disclosure in this instance. Therefore, the Commissioner confirmed the agency's decision to refuse access to the requested information.