

Decision D0342010 – Published in note form only

***Re Z and Department of Commerce* [2010] WAICmr 34**

Date of decision: 17 December 2010

Freedom of Information Act 1992: sections 32 and 69; Schedule 1, clauses 3(1) and 8(2)

In light of the Information Commissioner's obligation under s.74(2) of the *Freedom of Information Act 1992* ('the FOI Act') not to include exempt matter in his decision or reasons for decision, neither the complainant nor the applicant have been identified.

In 2007, the applicant entered into a tenancy agreement with tenants in relation to a residential property owned by the applicant. After the tenancy ended, the agency received a complaint concerning an issue arising from the tenancy ('the Complaint'). The agency unsuccessfully endeavoured to resolve the complaint by conciliation between the parties.

The applicant applied to the agency for access under the FOI Act to certain documents including the Complaint. After obtaining the views of a third party under s.32 of the FOI Act, the agency refused the applicant access to the Complaint on the ground it was exempt under clause 3(1) (personal information) and clause 8(2) (confidential communications) of Schedule 1 to the FOI Act.

The applicant sought internal review of the agency's decision. Subsequently, the agency's internal review decision-maker varied the initial decision and decided to give the applicant access to an edited transcribed version of the Complaint ('the disputed document'). The agency notified the third party of its internal review decision. The third party ('the complainant') applied to the Information Commissioner for external review of the agency's decision, objecting to disclosure of the disputed document on the ground it was exempt under clause 3(1).

The agency notified the applicant of the complaint, as required by s.69(1)(b) of the FOI Act. During the course of the external review, the Commissioner's office invited the applicant to make submissions on the matter and to be joined as a party to the complaint, in accordance with s.69(2). The applicant declined both invitations.

On 30 November 2010, the Commissioner provided the parties and the applicant with a letter setting out his preliminary view of the matter, which was that the disputed document was exempt under clause 3(1) of Schedule 1 to the FOI Act, as claimed by the complainant. The Commissioner invited the applicant to provide him with submissions in response to his preliminary view including information as to why disclosure of the disputed document would, on balance, be in the public interest, pursuant to clause 3(6).

The agency accepted the Commissioner's preliminary view. As the applicant did not make any further submissions to the Commissioner and there was no new evidence before him, the Commissioner was not dissuaded from his preliminary view. On the information before him, the Commissioner found that the disputed document was exempt under clause 3(1) of Schedule 1 to the FOI Act and set aside the agency's decision.