

Decision D0432011 - Published in note form only

***Re Melville and City of Mandurah* [2011] WAICmr 43**

Date of Decision: 30 November 2011

Freedom of Information Act 1992: Schedule 1, Clauses 3(1) and 3(6)

In August 2011, the complainant applied to the City of Mandurah ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents concerning a complaint made to the agency relating to trees on the verge of a property owned by the complainant. The agency initially identified one document (Document 1) but refused access to it. Following an internal review of that decision, the agency gave the complainant access to Document 1 in edited form, deleting personal information about third parties under clause 3(1) of Schedule 1 to the FOI Act. The complainant applied to the Information Commissioner for external review of that decision.

Following the receipt of this complaint and the relevant documents from the agency, one of the Commissioner's officers made further inquiries with the parties before advising them, in writing, of her preliminary view of the matter, which was that the information deleted from Document 1 was exempt under clause 3(1) as the agency claimed. In addition, the officer also identified a second document (Document 2) held by the agency as coming within the scope of the access application. Following the receipt of that letter, the agency gave the complainant an edited copy of Document 2 and also some additional information from Document 1, again deleting information pursuant to clause 3(1).

The complainant did not withdraw her complaint and made detailed submissions to the Commissioner on the application of the limit on the exemption in clause 3(6). After discussions with the Commissioner's office, the agency contacted a third party who consented to the release of personal information about that person to the complainant. Consequently, the agency released copies of Documents 1 and 2 containing additional information to the complainant. However, the complainant did not withdraw the complaint.

The Commissioner examined Documents 1 and 2 and found that the deleted information was exempt under clause 3(1) because it would, if disclosed, reveal personal information about individuals other than the complainant. With regard to clause 3(6) and favouring disclosure, the Commissioner recognised public interests in, among other things, people whose interests may be affected by information given to government agencies being as fully informed as possible of that information and any action taken in respect of it, as well as government agencies' accountability for their actions. In this case, the Commissioner considered that the information ultimately provided to the complainant substantially satisfied those interests. Weighing against disclosure, the Commissioner recognised a strong public interest in personal privacy and a public interest in agencies maintaining their ability to obtain information to enable them to discharge their regulatory functions, particularly where they rely upon the public to volunteer information.

In balancing the competing public interests, the Commissioner considered that those favouring non-disclosure outweighed those favouring disclosure in this case. The Commissioner varied the agency's decision and found that all of the information deleted from Documents 1 and 2 was exempt under clause 3(1) of Schedule 1 to the FOI Act.