

Decision D0032001 – Published in note form only

***Re Cumming and City of Stirling* [2001] WAICmr 3**

Date of decision: 5 January 2001

Freedom of Information Act 1992; Schedule 1 clause 3(1)

The complainant is involved in an ongoing dispute with one of his neighbours and sought access to a letter sent to the City of Stirling ('the agency') by the neighbour in July 1999. The agency identified one document, a handwritten letter ('the disputed document'), and consulted with the author of the disputed document who did not consent to its disclosure. The agency refused the complainant access to the disputed document on the ground that it is exempt under clause 3(1) and clause 8(2) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

During the course of the Information Commissioner dealing with the complaint, the agency provided the complainant with a typed summary of the disputed document so that the complainant would be informed of the substance of its contents whilst ensuring that personal information about other people was not disclosed.

The complainant maintained his claim that access in full to the disputed document should be provided as the disputed document was used as evidence against him in legal proceedings. In addition, the complainant claimed that the disputed document contained false and defamatory information about him, and that, therefore, access in full should be provided.

The complainant expressed a belief that the document to which he sought access contained information which, on inspection of the document, the Information Commissioner found was not contained in the disputed document. Therefore, the Information Commissioner made inquiries to ascertain whether the disputed document was, in fact, the document to which access was sought, whether any other documents within the scope of the access application exist in the agency and whether the agency had conducted adequate searches for documents in response to the access application. On the basis of those inquiries, the Information Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested document, and that the document identified by the agency was the only document it has which is within the scope of the access application and is the document identified by the complainant in his access application.

The Information Commissioner found that the disputed document contained personal information about third parties, including the names of two third parties, a third party's address and telephone number, and other details from which the identity of a third party could be ascertained, including the author's handwriting. The Information Commissioner decided that the disputed document was, on its face, exempt under clause 3(1) of Schedule 1 to the FOI Act.

The Information Commissioner recognised that there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act

and gain access to documents that would inform them of information about them held by government agencies. However, the Information Commissioner considered that that public interest had been satisfied, to some extent, by the provision to the complainant of a typed summary of the disputed document. The Information Commissioner also recognised that there is a public interest in the agency being held accountable for the enforcement of regulations governing local government matters and the decisions that it makes on behalf of ratepayers. The Commissioner considered that public interest to have been satisfied by the agency having taken action on the complainant's complaints and informed him of the action taken and the outcome.

Weighing against disclosure, the Information Commissioner recognised a strong public interest in maintaining personal privacy. In the circumstances of the case, the Information Commissioner balanced the competing public interests and gave more weight to the public interest in the protection of the personal privacy of the third parties. The Information Commissioner confirmed the decision of the agency to refuse access to the document under clause 3(1).