

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re Reed and The University of Western Australia* [2001] WAICmr 24**

**COMPLAINT No:** F0342001

**DECISION No:** D0242001

**PARTIES:** William Daly REED

Complainant

THE UNIVERSITY OF WESTERN AUSTRALIA

Respondent

**No. of documents in dispute:** 2

**Exemption clause(s):** Clause 3(1)

This complaint arises from a decision made by The University of Western Australia ('the agency') to refuse Professor Reed ('the complainant') access to certain documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act'). The agency claimed that the requested documents are exempt under clause 3(1), 5(1)(b) and 7 of Schedule 1 to the FOI Act.

This complaint was lodged with my office on 4 April 2001. Since then, following consultations between my office and the parties, the agency released additional documents to the complainant and he withdrew his request for access to a number of other documents and parts of documents, which, in my opinion, contain exempt matter. As a result, the scope of this complaint was narrowed to 4 documents.

On 15 June 2001, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency's claims for exemption under clause 5(1)(b) and clause 7 did not appear to be justified, but it was also my preliminary view that an attachment to one document, Document 4.6.33, may be exempt under clause 3(1) of Schedule 1 to the FOI Act. I invited the parties to consider their respective positions in light of my preliminary view.

The agency withdrew its claims for exemption for 3 documents, Documents 4.4.21, 4.6.33 and 4.7.38, but maintained its claim that some information in one document, Document 5j, was exempt under clause 3(1). No response was received from the complainant.

During the external review process, my office also consulted with an officer of the agency, who objected to the disclosure of certain information in 3 of the disputed documents, on the ground that they contained personal information about that officer. The officer was advised of that officer's right to be joined as a party to these proceedings, but the officer did not seek to be joined as a party. Notwithstanding that, submissions in support of the officer's claims were provided to me. I have considered those submissions, but I am not dissuaded from my preliminary view. A summary of my reasons follows.

### **The Disputed Documents**

Two documents remain in dispute between the parties: Document 5j and the attachment to Document 4.6.33. Document 5j is a letter dated 24 July 2000, from an officer of the agency to the Executive Dean of the Faculty of Medicine and Dentistry, Queen Elizabeth II Medical Centre. The agency claims that the matter deleted from Document 5j is exempt under clause 3(1) of Schedule 1 to the FOI Act.

The attachment to Document 4.6.33 is a list of items relating to Laboratory Management, submitted for the consideration of the former Laboratory Review Committee of the agency. The complainant has not withdrawn his claim for access to this document.

### **Clause 3 – Personal Information**

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). However, clause 3(1) is subject to the limits on exemption in clauses 3(2)- 3(6). In the circumstances of this complaint, I consider that the limits on exemption in clauses 3(3) and 3(6) only are relevant to the disputed matter in Document 5j and the attachment to Document 4.6.33.

Clause 3(3) provides that matter is not exempt matter under clause 3(1) if it consists of prescribed details about a person who is or has been an officer of an agency. The relevant details are prescribed by regulation 9(1) of the *Freedom of Information Regulations 1993*. Briefly, the kind of information that is not exempt under clause 3(1), by virtue of the limit on exemption in clause 3(3), includes the names of officers of an agency, the positions or functions of officers of an agency and things done by officers of an agency in the course of performing those functions.

The information deleted from page 1 of Document 5j consists of information about officers of the agency from which those officers can be identified. That information is personal information as defined in the FOI Act and it is, *prima facie*, exempt matter under clause 3(1). However, in my opinion, the disputed matter in Document 5j consists of prescribed details for the purpose of clause 3(3) and is, therefore, subject to the limit on exemption in clause 3(3). Consequently, it cannot be exempt under clause 3(1). Notwithstanding that, one officer of the agency objects to the disclosure of personal information and I have considered those objections below.

I have examined the attachment to Document 4.6.33. I am satisfied that it contains some personal information about the complainant as well as a substantial amount of personal information about a number of other individuals who appear to me to be officers of the agency. With the exception of the personal information about the complainant, the remainder of that information is, *prima facie*, exempt matter under clause 3(1). In my opinion, the personal information recorded in the attachment, about the individuals other than the complainant, is information that goes well beyond the kinds of details that are prescribed details for the purposes of the limit on exemption in clause 3(3). Accordingly, I do not consider that the limit in clause 3(3) applies to that matter.

However, the limit on exemption in clause 3(6) also applies to that matter. Clause 3(6) provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest. In this instance, pursuant to s.102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure of personal information about third parties would, on balance, be in the public interest.

#### **Public Interest**

I recognise that there is a public interest in protecting personal privacy and I consider that that public interest is particularly strong and that it carries some weight in the balancing process. In my view, the strong public interest in protecting privacy may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance.

In favour of disclosure, I recognise that there is a public interest in the complainant being able to exercise his rights of access, and to be given access to documents containing personal information about him. The attachment to Document 4.6.33 contains some personal information about the complainant and I accept that this is a factor to be considered in the balancing process. However, in my view, the personal information about the complainant in the attachment is so entwined with the personal information about the other individuals identified in the attachment that it is not practicable to delete the personal information about third parties and to give the complainant access to an edited copy of it containing personal information about him.

In the circumstances of this complaint, and given that the complainant has not made any submissions to me on this aspect of the matter, I have given more weight in the balancing process to the public interest in protecting the privacy of the other identifiable individuals. Accordingly, I find that the attachment to Document 4.6.33 is exempt under clause 3(1) of Schedule 1 to the FOI Act.

I have also considered the submissions made to me about the disputed matter in Document 5j. It was submitted that the references to a particular officer of the agency should be deleted because, among other things, that officer's right of privacy should prevail over the complainant's right of access under the FOI Act. It was also submitted that the agency has a duty to protect the privacy of the officer concerned. However, as noted above, the limit on exemption in clause 3(3) does not apply to certain prescribed information about officers of an agency. In my view, the information deleted from Document 5j is clearly information of that kind and it is not exempt matter under clause 3(1) by virtue of the limit on exemption in clause 3(3). Further, I am not persuaded that there is any other reason to deny access to that information. I find that the disputed matter in Document 5j is not exempt under clause 3(1) of Schedule 1 to the FOI Act and vary the decision of the agency accordingly.

**B. KEIGHLEY-GERARDY**  
INFORMATION COMMISSIONER  
3 July 2001