



Recent Decisions in FOI

prepared for the FOI in WA Conference 2017

The Commissioner's decisions are a window into considerations about the role of freedom of Information, government accountability and transparency. Below are decisions discussed by the Information Commissioner at the FOI in WA Conference.

Dealing with personal information

- ***Re Penfold and Shire of Exmouth and Others* [\[2015\] WAICmr 8 \(PDF\)](#)**

The complainant sought access to documents consisting of external and internal plans for a commercial property. The plans were found not to be exempt under clause 3(1).

- ***Re 'R' and City of Greater Geraldton and 'S'* [\[2012\] WAICmr 25 \(PDF\)](#)**

The complainant sought access to the building plans of the private residence of their neighbour. The building plans sought were limited to two drawings regarding only the external features and elevations of the property. In the circumstances of the case, in balancing the competing public interests for and against disclosure, the Commissioner considered that those favouring disclosure outweighed those favouring non-disclosure. Consequently, the Commissioner found that the documents were not exempt under clause 3.

- ***Re Shuttleworth and Town of Victoria Park* [\[2016\] WAICmr 13 \(PDF\)](#)**

The complainant sought access to a copy of a statutory declaration that had been executed by a third party and provided to the agency for the purpose of verifying that certain work had been carried out on a block prior to its subdivision and sale as a strata titled block. The agency gave the complainant an edited copy of the document, deleting the name, address, occupation and signature of the third party. The Commissioner found that the third party's signature was exempt under clause 3(1). However, in the circumstances of the particular complaint, the Commissioner decided that disclosure of the name, address and occupation of the third party would, on balance, be in the public interest and he found that information was not exempt under clause 3(1).

See also Volep and Queensland Police Service [\[2013\] QICmr 10](#)

- ***I-v- Department of Agriculture and Food* [\[2016\] WASC 272](#)**

A third party appealed a decision of the Commissioner that certain information was not exempt under clause 3(1) of Schedule 1 to the FOI Act. The Supreme Court accepted that the limitation on the exemption in clause 3(3) applies to personal information that consists of the prescribed details of a person who is or has been an officer of the agency to which an access application is made and that

such information is not exempt under clause 3(1). However, the Court decided that the limitation in clause 3(3) does not apply to the personal information about an officer of another agency.

OIC Guide - [Dealing with personal information about an officer of an agency](#)

Applications for CCTV footage

- ***Re Papalia and Western Australia Police* [\[2016\] WAICmr 1 \(PDF\)](#)**

CCTV footage of an incident outside a business premises was found to be exempt under clause 3(1). The Commissioner was satisfied that the footage would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. In this particular instance, the Commissioner was satisfied the public interest in ensuring community confidence in the manner in which the agency conducts investigations had been largely satisfied by the access given to the footage by way of inspection outside of the FOI Act. The Commissioner also considered that it was not practicable for the agency to edit the footage pursuant to section 24 of the FOI Act, to delete the exempt information.

- ***Re Seven Network (Operations) Limited and Department of Corrective Services* [\[2016\] WAICmr 8 \(PDF\)](#)**

The Commissioner found that some requested CCTV footage that had been recorded at a prison was exempt under clause 5(1)(h) of Schedule 1 to the FOI Act. Other requested CCTV footage was found not to be exempt under clause 5(1)(h). Information is exempt under clause 5(1)(h) if its disclosure could reasonably be expected to endanger the security of a prison. The Commissioner considered that disclosure of certain footage could reasonably be expected to compromise the agency's systems for the detection and prevention of the introduction of contraband into the prison, taking into consideration factors such as camera angles, footage quality and camera location. The Commissioner was not persuaded that disclosure of the other footage that was captured from cameras that were easily discernible from the exterior of the prison could reasonably be expected to endanger the security of the prison.

- ***Re Seven Network (Operations) Limited and City of Perth* [\[2016\] WAICmr 12 \(PDF\)](#)**

- The Commissioner found that certain CCTV footage was not exempt under clause 3(1) of Schedule 1 to the FOI Act because it did not contain personal information as defined in the Glossary to the FOI Act. Based on the quality of the footage and the orientation and proximity of the individuals in the footage, the Commissioner considered that disclosure of the footage would not reveal personal information about those individuals because their identities were not apparent or could not reasonably be ascertained from that information.

- ***Re 'O' and Housing Authority* [\[2016\] WAICmr 10 \(PDF\)](#)**

The Commissioner found that the agency's decision to refuse access to the requested CCTV footage was justified on the basis that the footage was exempt

under clause 5(1)(e) of Schedule 1 to the FOI Act. Clause 5(1)(e) provides that matter is exempt if its disclosure could reasonably be expected to endanger the life or physical safety of a person. The Commissioner also found that the agency's decision to refuse access to additional documents under section 26 of the FOI Act on the basis that they cannot be found or do not exist was justified.

- ***Re Seven Network (Operations) Limited and Public Transport Authority*** [\[2017\] WAICmr 12 \(PDF\)](#)

The complainant applied for access to certain CCTV footage related to incidents at level crossings or railway stations. The Commissioner was not persuaded that the disputed matter contained personal information as defined in the FOI Act because he was not satisfied that the identities of the individuals in the footage were apparent or could reasonably be ascertained from the footage. On that basis the Commissioner found that the footage was not exempt under clause 3(1) of Schedule 1 to the FOI Act.

Applications for documents associated with government projects

- ***Re Travers and Public Transport Authority*** [\[2015\] WAICmr20 \(PDF\)](#)

Documents associated with the potential extension of the Thornlie passenger railway line were found to be not exempt under clauses 1(1)(b) or 6(1) of Schedule 1 to the FOI Act. While the Commissioner agreed with the agency that sectional interests may seek to use information in the documents to support or undermine options according to their own interests, he considered that it is part of the role of government to make project decisions that are in the best interests of the public, even in the face of various lobbying efforts.

- ***Re Johnston and Department of State Development*** [\[2017\] WAICmr 1 \(PDF\)](#)

The complainant sought access to documents relating to a proposed gas pipeline, including the agency's draft invitation for expressions of interest to perform work on the pipeline project. The Commissioner found that the disputed documents are not exempt under clauses 1(1)(b), 1(1)(d), 6(1), 10(1) or 10(5) of Schedule 1 to the FOI Act as claimed by the agency. In considering the public interest in relation to clause 6(1), the Commissioner stated there is strong public interest in the disclosure of a document that is fundamental to the agency's accountability for the performance of its functions and expenditure of public funds relating to the development of a major infrastructure project.

- ***Re John Holland Pty Ltd and Department of Treasury*** [\[2016\] WAICmr 17 \(PDF\)](#)

The complainant sought review of the agency's decision to give access to documents relating to the commissioning and opening of the Perth Children's Hospital. The Commissioner found that the disputed information was not exempt under clauses 4(2), 5(1)(e), 5(1)(f) or clause 8(2) of Schedule 1 to the FOI Act.

- ***Re MacTiernan and Main Roads Western Australia*** [\[2017\] WAICmr 2 \(PDF\)](#)

The complainant sought access to documents relating to the Perth Freight Link project. The agency claimed that the disputed information was exempt under clauses 6(1), 10(3) and 10(4) of Schedule 1 to the FOI Act. The Commissioner

found that disclosure of the disputed information was not, on balance, contrary to the public interest and therefore that it was not exempt under clause 6(1). The Commissioner was not persuaded that the disputed information had a commercial value to the agency (clause 10(3)) or that it concerned the commercial affairs of the agency (clause 10(4)). The Commissioner found that the disputed information was not exempt under clause 10(3) or clause 10(4).

See also *Re McGowan and Minister for Regional Development, Lands and Anor* [\[2011\] WAICmr 2](#).

See also: [Productivity Commission Inquiry Report - Public Infrastructure - Report No 71 dated 27 May 2014](#)

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