

Decision D0132007 - Published in note form only

***Re De Graaf and Police Force of Western Australia* [2007] WAICmr 13**

Date of Decision: 20 July 2007

Freedom of Information Act 1992: section 10(1); Schedule 1, clause 3; Schedule 2, Glossary, clause 4

The complainant claims that the Police Force of Western Australia ('the agency') and various other government agencies have, for many years, mistaken his identity for that of another person ('the third party'), resulting in incorrect information about him being used and exchanged between government agencies, including interstate agencies.

The complainant made a number of access applications to the agency under the *Freedom of Information Act 1992* ('the FOI Act'). In May 2005, the complainant applied to the agency under the FOI Act for access to various documents relating to the criminal and traffic record of the complainant and to that of the third party to the extent it contained information about the complainant. The complainant also sought access to documents relating to the enquiries made by officers of the agency into the record of the complainant and the third party and to the audit logs recording the details of the occasions when officers accessed the record of either the complainant or the third party.

The agency refused the complainant access to documents relating to the third party's record on the basis that such documents contain personal information about another person and are exempt under clause 3 of Schedule 1 to the FOI Act. The agency refused the complainant access to the requested 'audit logs' on the basis that such documents are documents of the Internal Affairs Unit (IAU) of the agency, which is an exempt agency under the FOI Act, and that the complainant's right of access under the FOI Act does not apply to those documents. The agency's decision was confirmed on internal review and the complainant applied to the Acting Information Commissioner ('the A/Commissioner') for an external review of the agency's decision.

Following receipt of the complaint, the A/Commissioner obtained the disputed documents from the agency, together with the FOI file maintained in respect of the complainant's access application. One of the A/Commissioner's officers made various inquiries with the agency and had various discussions with the complainant and officers of the agency about the matter.

Based on the information gathered during the external review process, and after the agency agreed to give the complainant access to some additional documents, the A/Commissioner was satisfied that the agency had given the complainant access to his record and that it was not apparent that the third party's record contained any information about the complainant. Accordingly, the A/Commissioner found that part of the complaint to be lacking in substance.

The A/Commissioner was also satisfied, based on the information before her, that the only part of the agency that has a program capable of producing or creating an audit log 'document' and which, therefore, holds documents of that kind, is the IAU. The A/Commissioner was also satisfied, based on the information before her, that documents that would show the enquiries made by officers of the agency into the complainant's record and the third party's record, if any existed, would be documents of the IAU.

On that basis, the A/Commissioner was satisfied that the requested documents are not documents of the agency but rather are documents of the IAU, an exempt agency, to which there is no right of access under s.10(1) of the FOI Act. Accordingly, the A/Commissioner was of the view that the agency's decision to refuse access to those documents was justified and confirmed that decision.