

Decision D0412011 – Published in note form only

Re Stayt and Western Australia Police [2011] WAICmr 41

Date of decision: 30 November 2011

Freedom of Information Act 1992: sections 23(2) and 26; Schedule 1, clauses 3(1) and 3(6)

In 2009, the complainant was convicted of various offences and sentenced to a term of imprisonment. In March 2011, he applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Western Australia Police ('the agency') for access to transcripts of interviews made by the agency in relation to the charges brought against him. The agency refused access to those documents citing s.23(2) of the FOI Act, which provides that an agency may refuse access to documents without identifying them or specifying why matter in any particular document is claimed to be exempt, if certain conditions are met. The agency confirmed its decision on internal review.

In August 2011, the complainant applied to the Information Commissioner for external review of that decision and also claimed that further documents within the scope of his access application should exist ('the additional documents'). He advised that he required the documents to assist in certain legal proceedings, in which he was self-represented. Following the receipt of that application, the Commissioner obtained all relevant documents from the agency and, on 21 November 2011, provided the parties with a letter setting out his preliminary view of the matter. On the information before him, the Commissioner's preliminary view was that the agency had not established the requirements of s.23(2) but that the one document ('the disputed document') located by the agency was exempt under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner did not consider that it was practicable to edit the disputed document. In addition, it was the Commissioner's preliminary view that the agency had taken all reasonable steps to locate the additional documents but that those documents could not be found or did not exist. Accordingly, the agency was justified in refusing access to those documents pursuant to s.26 of the FOI Act. The Commissioner invited the parties to accept his preliminary view or to make further submissions to him.

The agency accepted the Commissioner's preliminary view. On 23 November 2011, the complainant made further submissions to the Commissioner, to the effect that the disclosure of the disputed document was, on balance, in the public interest because it should have been disclosed to him under the terms of a subpoena issued in the course of his ongoing legal proceedings.

The Commissioner considered the complainant's further submissions and reviewed all of the information before him but was not dissuaded from his preliminary view. In particular, the Commissioner was not satisfied that the complainant had established that the disputed document should have been produced in response to the subpoena and it was also open to the complainant to raise that issue in the course of his legal proceedings. The Commissioner confirmed the agency's decision to refuse access to the disputed document under clause 3(1) of Schedule 1 to the FOI Act and to refuse access to the additional documents under s. 26.