

Decision D0072025 – Published in note form only

Re Roughan and City of Nedlands [2025] WAICmr 7

Date of Decision: 27 June 2025

Freedom of Information Act 1992 (WA): Schedule 1, clause 3(1)

On 8 March 2023, Gordon Roughan (**the complainant**) applied to the City of Nedlands (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to ‘all building/demolition plans/permits engineering detail submitted and approved for [a specified property and] all submissions to [the Council of the agency] regarding [the property]’.

By notice of decision dated 18 April 2023 (**initial decision**), the agency identified five documents within the scope of the access application (**the disputed documents**) and refused the complainant access to those documents on the basis they are exempt under clauses 3(1) and 4 of Schedule 1 to the FOI Act.

The complainant sought internal review of the agency’s decision and, by internal review decision dated 31 May 2023, the agency confirmed the initial decision.

On 28 July 2023, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. The Commissioner obtained the agency’s FOI file maintained in respect of the access application, together with copies of the disputed documents.

In May 2024, one of the Commissioner’s officers informed the complainant’s representative that the Acting Information Commissioner (**the A/Commissioner**) considered that, on the information then before her, the disputed documents were likely to be exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). The complainant was invited to reconsider their application for external review or to provide further written submissions. The complainant provided further written submissions in July 2024.

On 18 October 2024, the A/Commissioner provided the parties with her preliminary view of the matter (**the preliminary view**), after considering all the material then before her. It was the A/Commissioner’s preliminary view that the disputed documents were exempt in full under clause 3(1).

The complainant did not accept the preliminary view and made further submissions on 1 November 2024 (**the further submissions**).

After considering all the material before her, including the disputed documents, the preliminary view and the complainant’s further submissions, the Commissioner agreed that the disputed documents were exempt under clause 3(1).

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). Personal information is exempt under clause 3(1) subject to the application of the limits on the exemption set out in clauses 3(2) to 3(6).

The term ‘personal information’ is defined in the Glossary to the FOI Act to mean:

[I]nformation or an opinion, whether true nor not, and whether recorded in a material form or not, about an individual, whether living or dead –

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.

The Commissioner referred to the observations about the definition of personal information made by the Supreme Court of Western Australia in *Pearlman -v- WA Information Commissioner* [2025] WASC 167, at [78], noting that the definition is expressed in wide terms.

The Commissioner considered that disclosure of the disputed documents in their entirety would reveal personal information, as defined in the FOI Act, about the owners of the property in question (**the third parties**) because the complainant had requested documents relating to building works at a private home and is aware of the identities of the third parties. The information about the third parties that would be revealed by disclosure of the disputed documents included the names of the third parties, their address and the building works proposed by the third parties to their private home. Therefore, the Commissioner was satisfied that the disputed documents were, on their face, exempt under clause 3(1).

The complainant claimed that the disputed documents are not exempt under clause 3(1) because the name and address of the third parties was already public knowledge and, in any event, is ascertainable from the address of the property from publicly available records at Landgate.

The Commissioner noted that, in the circumstances, the complainant is likely to be aware of the identities of some of the individuals referred to in the disputed documents. However, the characterisation of the documents as exempt documents does not depend on what the complainant knows or claims to know of their content: *Police Force of Western Australia v Kelly* (1996) 17 WAR 9, at page 14; see also *S v Department for Child Protection and Family Support* [2017] WASC 305 at [26].

The Commissioner considered the only limit on the exemption that may apply to the disputed documents was clause 3(6). Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under section 102(3), the onus was on the complainant, as the access applicant, to establish that disclosure of the disputed documents would, on balance, be in the public interest.

As no restrictions or conditions can be placed upon the release of documents under the FOI Act, it is well established that disclosure of information under the FOI Act is disclosure to the world at large: see *Public Transport Authority* [2018] WASC 47 at [71]. Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.

Determining whether or not disclosure would, on balance, be in the public interest involves identifying the relevant competing public interests for and against disclosure, weighing them against each other and making a judgment as to where the balance lies in the circumstances of each particular case.

In favour of disclosure, the Commissioner considered that there is a public interest in the accountability of the agency for its actions and decisions – including, in this case, the manner in which the agency deals with building applications.

The Commissioner also recognised that there is a public interest in the actions and decisions of local governments being as transparent as possible and in the public having confidence that local governments enforce compliance with laws without fear or favour.

However, the Commissioner was of the view that the public interest in the accountability of the agency was satisfied in the circumstances of this matter by the ability of the public to attend meetings of the Council of the agency in relation to those matters; the public availability of minutes of meetings of the Council of the agency; and the ability to raise concerns regarding compliance issues with the agency's compliance team.

Favouring non-disclosure, the Commissioner recognised the strong public interest in maintaining personal privacy and noted that this public interest may only be displaced by some other strong or compelling public interest or interests that requires the disclosure of personal information about one person to another person.

The Commissioner observed that the FOI Act is intended to make Government, its agencies and officers more accountable, not to call to account or unnecessarily intrude upon the privacy of private individuals, where there is no demonstrable benefit to the public interest in doing so.

In balancing the competing public interests, the Commissioner concluded that the public interests favouring disclosure of the disputed documents were not sufficient to outweigh the strong public interest in the protection of the personal privacy of other individuals. Therefore, the Commissioner was not persuaded that disclosure of the disputed documents would, on balance, be in the public interest and found that the limit on the exemption in clause 3(6) did not apply.

The complainant contended that it should be possible for the agency to provide access to edited copies of the disputed documents under section 24 of the FOI Act by deleting the personal information that may be contained in those documents. The Commissioner considered it would not be practicable for the agency to edit the disputed documents to delete all the exempt matter because the severe editing that would be required to avoid the disclosure of the exempt matter would render the remaining matter unintelligible. Consequently, the Commissioner did not consider that the agency was obliged to give the complainant access to an edited copy of the disputed documents pursuant to section 24 of the FOI Act.

The Commissioner found that the disputed documents were exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency's decision.