

**Decision D0092025 – Published in note form only**

***Re 'A' and WA Country Health Service – Central Office [2025] WAICmr 9***

**Date of Decision: 29 August 2025**

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

On 29 September 2023, 'A' (**the complainant**) applied to the WA Country Health Service – Central Office (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to a specific internal email relating to the complainant, who was an employee of the agency (**the disputed document**). The Acting Information Access Deputy Commissioner (**the A/FOI Deputy Commissioner**) decided not to identify the complainant by name to protect the complainant's privacy.

By notice of decision dated 4 December 2023, the agency refused the complainant access to the disputed document under clause 8(2) of Schedule 1 to the FOI Act (**clause 8(2)**) on the ground the document contains information which was given and received in confidence. The complainant sought internal review of the agency's decision. By internal review decision dated 22 January 2024, the agency confirmed the initial decision.

On 21 March 2024, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. The Commissioner obtained the disputed document from the agency, together with the FOI file maintained by the agency in respect of the access application.

Section 76(1) of the FOI Act provides that the Commissioner may decide any matter in relation to an access application that could have been decided by the agency. On 13 March 2025, the Commissioner provided the parties with her preliminary view of the matter (**preliminary view**). It was the Commissioner's preliminary view, based on the information before her, that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). As a result, the Commissioner did not consider whether the disputed document is also exempt under clause 8(2) as claimed by the agency.

The complainant did not accept the Commissioner's preliminary view and provided further submissions. After considering all the material before her, including the disputed document and the complainant's further submissions, the A/FOI Deputy Commissioner agreed that the disputed document was 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 A/FOI Deputy Commissioner was satisfied that disclosure of the disputed document would reveal personal information about individuals and was therefore, on its face, exempt under clause 3(1).

The A/FOI Deputy Commissioner considered the only relevant limits on the exemption that may apply to the disputed document were clauses 3(2), 3(3) and 3(6). Clause 3(2) provides

that matter is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the access applicant. The word ‘merely’ in clause 3(2) has its ordinary meaning of ‘solely’ or ‘no more than’ personal information about the access applicant (*Re Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25 at [32]). The A/FOI Deputy Commissioner considered that, while the disputed document contains personal information about the complainant, this information was inextricably intertwined with personal information about other individuals. Therefore, the A/FOI Deputy Commissioner considered the disclosure of the disputed document would not merely reveal personal information about the complainant and that the limit in clause 3(2) did not apply.

Clause 3(3) provides that information is not exempt merely because its disclosure would reveal ‘prescribed details’ in relation to officers or former officers of the agency. The prescribed details covered by the limit on the exemption include anything done by an officer in the course of performing or purporting to perform their functions or duties as an officer as described in any job description for the position held by that officer: regulation 9(1) of the *Freedom of Information Regulations 1993*.

The A/FOI Deputy Commissioner considered the personal information about the officer of the agency, who was the author of the disputed document, went beyond the officer’s functions and duties as described in the officer’s job description form. Therefore, that information did not consist of prescribed details. As a result, the A/FOI Deputy Commissioner considered the limit in clause 3(3) did not apply.

Clause 3(6) provides 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 document 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.

In favour of disclosure, the A/FOI Deputy Commissioner recognised the public interest under section 21 of the FOI Act in individuals accessing their own personal information held by government agencies. The A/FOI Deputy Commissioner also recognised that there is a public interest in individuals who have had concerns about them raised in the workplace being: informed of those concerns when they have been acted on; given an opportunity to respond, informed of what action has been taken in respect of the concerns; and informed of the outcome of that action. On the information before her, the A/FOI Deputy Commissioner considered that these public interests had been satisfied by the information the agency had provided to the complainant.

Also in favour of disclosure, the A/FOI Deputy Commissioner considered there is a public interest in the accountability of agencies for their actions and decisions and in the actions of agencies being as transparent as possible. The A/FOI Deputy Commissioner was of the view these public interests had been satisfied by the information the agency provided to the

complainant and that the public interest in the accountability of the agency would not be furthered by the disclosure of the disputed document.

The A/FOI Deputy Commissioner considered whether procedural fairness required that the complainant be given a copy of the disputed document such that this is a factor in favour of disclosure. The A/FOI Deputy Commissioner observed that it is not essential to procedural fairness that persons who have allegations made against them receive the actual written allegations, or other supporting documents, provided the substance of those allegations is disclosed: *Re Weygers and Department of Education and Training* [2007] WAICmr 16. As the agency had disclosed to the complainant the substance of the concerns raised in the disputed document, the A/FOI Deputy Commissioner considered that procedural fairness did not require the complainant be given a copy of the disputed document.

Weighing against disclosure of the disputed document, the A/FOI Deputy Commissioner recognised a 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 require the disclosure of personal information about one person to another person.

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

Accordingly, the A/FOI Deputy Commissioner found that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act and varied the agency's decision.