

Decision D0022026 – Published in note form only

Re Fatin and Department of Fire and Emergency Services [2026] WAICmr 2

Date of decision: 30 April 2026

Freedom of Information Act 1992 (WA): Schedule 1, clauses 2(1)(a), 5(1)(e), 5(1)(f), 9(1)(a); section 27(2)(c)

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) set aside the decision of the Department of Fire and Emergency Services (**agency**) to refuse access in full to the 'State Risk Profile 2021' (**disputed document**) under the *Freedom of Information Act 1992 (WA)* (**FOI Act**). In substitution, the Deputy Commissioner found:
 - certain information in the disputed document is exempt under clauses 2(1), 5(1)(e), 5(1)(f) or 9(1)(a) of Schedule 1 to the FOI Act; and
 - access to certain information in the disputed document subject to copyright should be given by inspection only.
2. On 13 February 2023, Ms Meri Fatin (**complainant**) applied to the agency under the FOI Act for access to the disputed document. The disputed document is based on an assessment of 28 hazards prescribed under state emergency management legislation and forms part of the State Risk Project, which aims to systematically assess the risks posed by prescribed hazards, including natural and human-caused incidents.
3. To remove the requirement for third party consultation under sections 32 of the FOI Act, the complainant agreed to the removal of third-party personal information and prescribed details of agency officers from the disputed document.
4. By decision dated 3 April 2023, which was confirmed on internal review on 30 June 2023 the agency refused the complainant access to the disputed document in full. The agency claimed the disputed document was exempt under clause 1(1) of Schedule 1 to the FOI Act on the basis it was subject to cabinet confidentiality.
5. On 15 August 2023, the complainant applied to the former Information Commissioner (**former Commissioner**) for external review of the agency's decision.
6. During the course of the external review, which included the former Commissioner providing the parties with her preliminary view on the matter, the agency amended its position and gave the complainant a copy of the disputed document edited to remove information under clauses 2(1), 5(1)(e), 5(1)(f) or 9(1). The agency also claimed certain information was subject to copyright.
7. This did not satisfy the complainant who sought a formal decision on the matter.
8. The issues remaining in dispute for determination were:

- whether certain information in the disputed document (**disputed information**) is exempt under clauses 2(1)(a), 5(1)(e), 5(1)(f) or 9(1)(a); and
- whether access to the copyright information should be given by inspection only, pursuant to section 27(2)(c).

9. The Deputy Commissioner considered the material before him and found as follows.

Clause 2(1) – intergovernmental relations

10. Clause 2(1)(a) provides matter is exempt if its disclosure could reasonably be expected to damage relations between the Western Australian government and any other government. However, under clause 2(2), matter is not exempt under clause 2(1)(a) if its disclosure would, on balance, be in the public interest.
11. In relation to clause 2(1)(a), the Deputy Commissioner was satisfied the relevant information identified the government referred to in the hypothetical disaster scenario, and its disclosure could reasonably be expected to damage relations between the Western Australian Government and that other government.
12. The Deputy Commissioner then considered the public interest under clause 2(2) and was not satisfied the factors favouring disclosure outweighed those against disclosure. Although the public being informed about certain disaster scenarios for the purposes of transparency, accountability and enhancing community preparedness are public interest factors weighing in favour of disclosure, those interests were substantially met by the edited copy of the disputed document the agency had provided under the FOI Act.
13. Further, the Deputy Commissioner did not consider disclosure of the relevant information would meaningfully enhance the public's ability to prepare for such scenarios. Rather, the Deputy Commissioner considered disclosure was likely to provide information that may encourage or facilitate deliberate initiation of the disaster scenarios.
14. Accordingly, the agency's claim in relation to clause 2(1)(a) was upheld.

Clause 5(1)(e) and 5(1)(f) – endanger life, or physical safety; endanger security of property

15. Clauses 5(1)(e) and 5(1)(f) provide matter is exempt if its disclosure could reasonably be expected to endanger the life or physical safety of any person or endanger the security of any property.
16. The Deputy Commissioner noted the relevant information included the location of infrastructure related to the disaster scenarios or other relevant matters. In the context of a risk report setting out hazards and credible worst-case scenarios which could occur in Western Australia, the Deputy Commissioner was satisfied disclosure of almost all of that information could reasonably be expected to endanger the life or physical safety of a person or endanger the security of property. Furthermore, the limit on the exemption in clause 5(4) did not apply to this information.
17. Accordingly, apart from a small amount of information the Deputy Commissioner specifically identified, the agency's clause 5(1)(e) and 5(1)(f) claims were upheld.

Clause 9(1) – adversely affect management of the State's economy

18. Clause 9(1) provides matter is exempt if its disclosure could reasonably be expected to have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State. However, under clause 9(2), matter is not exempt under clause 9(1) if its disclosure would, on balance, be in the public interest.
19. In relation to clause 9(1)(a), the Deputy Commissioner was satisfied the relevant information:

- consisted of specific material relating to disaster scenarios which, if initiated, could reasonably be expected to have such a significant impact on the economy that this would have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State; and/or
 - contained specific details which, if disclosed, could reasonably be expected to increase the risk of those scenarios being deliberately initiated, the impact of which would have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State.
20. The complainant submitted the agency's assessment of whether the relevant information is exempt under clause 9(1)(a) erroneously focussed on potential impact to particular industries rather than the ability of the government to *manage* the economy. The Deputy Commissioner did not accept this distinction was material. The Deputy Commissioner considered where the impact of disclosure on key industries is sufficiently significant, that, in turn, may affect the State's economy more broadly and thereby impair the capacity of government or its agencies to manage the economy.
 21. The Deputy Commissioner then considered clause 9(2) and whether, notwithstanding clause 9(1), it was in the public interest for the information to be disclosed.
 22. In favour of disclosure, the Deputy Commissioner recognised the public interest in the transparency and accountability of the Government and its disaster preparedness. However, the Deputy Commissioner considered that interest was substantially met by the edited version of the document already provided, which disclosed the general nature of the scenarios without revealing the sensitive detail in issue.
 23. Against disclosure, there is a strong public interest in avoiding the risk of the disaster scenarios being deliberately initiated or exploited, with the potential consequences such as disruption to major industries, increased unemployment, reduced investment attractiveness and broader economic harm. Non-disclosure would avoid this risk.
 24. On balance, the Deputy Commissioner was not satisfied the public interest in disclosure outweighed the public interest in non-disclosure. Accordingly, the information claimed by the agency as exempt under clause 9(1)(a) was exempt on that basis.

Copyright information

25. The Deputy Commissioner examined the copyright information and was satisfied it comprised maps which are 'drawings' within the meaning of the Copyright Act and in which copyright subsists with a Commonwealth agency. The Deputy Commissioner was therefore satisfied the agency's decision to give access to the copyright information by way of inspection, rather than a copy, was justified under section 27(2)(c) of the FOI Act.