Decision D0102026 – Published in note form only

Re M and Legal Practice Board of Western Australia **[2026] WAICmr 10**

Date of Decision: 23 June 2026

Freedom of Information Act 1992 **(WA): Schedule 1, clauses 3(1), 3(2), 3(3), 3(5), 3(6)**

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) confirmed the decision of the Legal Practice Board of Western Australia (**agency**) to refuse the complainant access to certain documents on the basis they are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* (WA) (**FOI Act**).
2. The Deputy Commissioner decided not to identify the complainant by name to protect the privacy of the complainant and other individuals to whom the documents in dispute relate.

Disputed documents

3. The complainant applied to the agency under the FOI Act for access to documents relating to a complaint they had lodged with the agency against a named legal practitioner.
4. The agency identified 131 documents within the scope of the complainant's access application. By notice of decision, which was confirmed on internal review, the agency decided to:
   - give access in full to 122 documents;
   - give access to edited copies of 3 documents; and
   - refuse access to 6 documents,
5. The agency considered the latter 9 documents to be exempt in full or in part under clause 3(1) (**disputed documents**).

Reasons

Clause 3 – personal information

6. Clause 3(1) provides matter is exempt matter if its disclosure would reveal personal information about an individual. The Deputy Commissioner was satisfied disclosure of the disputed documents would reveal personal information about individuals and that they were, on their face, exempt under clause 3(1).
7. The exemption in clause 3(1) is subject to the limits on the exemption set out in clauses 3(2) to 3(6). The Deputy Commissioner considered only the limits in clauses 3(2), 3(3), 3(5) and 3(6) were relevant in this case.

Clause 3(2) – personal information about the applicant

8. Clause 3(2) provides matter is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the applicant (that is, the complainant). The word 'merely' has its ordinary meaning of 'solely' or 'no more than'.[1]

9. The Deputy Commissioner considered the personal information about the complainant was interwoven with personal information of others and it was not possible to separate it from the personal information of others contained in the disputed documents.

10. As a result, disclosure of the disputed documents would do more than 'merely' reveal personal information about the complainant. Accordingly, the limit in clause 3(2) did not apply.

Clause 3(3) – prescribed details

11. Clause 3(3) provides matter is not exempt under clause 3(1) merely because its disclosure would reveal 'prescribed details' in relation to officers or former officers of the agency. As with clause 3(2), the word 'merely' has its ordinary meaning of 'solely' or 'no more than.[2]

12. The Deputy Commissioner accepted the disputed documents contained prescribed details, including the names and titles of officers and descriptions of things done by officers in the course of performing their functions or duties.[3] However, the Deputy Commissioner considered this information was interwoven with the personal information of non-officers, such that the prescribed details could not be disclosed without also disclosing personal information about those non-officers.[4]

13. As a result, the Deputy Commissioner found disclosure of the prescribed details would do more than merely reveal prescribed details and the limit in clause 3(3) did not apply.

Clause 3(5) – consent

14. Clause 3(5) provides matter is not exempt if the applicant provides evidence establishing the individual concerned consents to the disclosure of the matter to the applicant.

15. The complainant submitted the named legal practitioner consented to disclosure of their personal information because the legal practitioner had represented the complainant in a court case.

16. The Deputy Commissioner disagreed. While court proceedings are generally conducted in public, openness of the court process does not equate to consent for disclosure of personal information under the FOI Act. Further, the fact a solicitor's name may appear in some court documents does not establish consent to the release of personal information in every document relating to those proceedings under the FOI Act.

17. As there was no information before the Deputy Commissioner the legal practitioner had consented to the disclosure of their personal information under the FOI Act, he found the limit in clause 3(5) did not apply.

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1 *Re 'V' and Curtin University* [2020] WAICmr 3 (***Re 'V'***), [31].
2 *Re 'V'*, [41].
3 *Freedom of Information Regulations 1993* (WA), r 9(1).
4 *Re 'V'*, [48].

Clause 3(6) – the public interest

18. Clause 3(6) provides matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The term 'public interest' is best understood as follows:[5]

> The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals...

19. In favour of disclosure, the Deputy Commissioner recognised public interests in:

- the accountability of agencies for the manner in which they discharge their functions and obligations;
- the actions and decisions of agencies being as transparent as possible; and
- the public having confidence agencies properly perform their functions including, in this case, the agency's regulatory functions.

20. However, the Deputy Commissioner also considered the agency had largely satisfied these public interests by providing the complainant with information concerning the outcome of its investigations and providing a process for the complainant to respond to that information. Further, the edited documents already disclosed to the complainant also provided transparency and accountability in the agency's actions and decisions, helping maintain public confidence in the agency's processes.

21. The complainant referred to previous Information Commissioner decisions in their submissions, namely in *Re 'R' and City of Greater Geraldton and 'S'*[6] and *Re Shuttleworth and Town of Victoria Park*.[7] In both instances, the Deputy Commissioner considered those decisions to be distinguishable from the present matter on their facts.

22. In *Re 'R',* the personal information in question consisted of an address, the name of an individual and the size and certain external features of a building. In that case, the former Information Commissioner found disclosure of certain documents would not reveal personal information of a particularly private or sensitive nature.[8] As a result, the former Information Commissioner found disclosure of the disputed documents would not involve 'any real intrusion on the personal privacy of the third party'.[9]

23. However, the Deputy Commissioner considered the nature of the disputed documents materially different to those in *Re 'R'*. Here, the documents concern a complaint made about the conduct of a third party to a professional regulatory body and disclosure of the disputed documents would reveal personal information of a highly private nature.

24. The complainant also relied on *Re Shuttleworth* to argue disclosure of the legal practitioner's personal details would promote the administration of justice and therefore outweighed the public interest in upholding privacy. In *Re Shuttleworth*, the disputed document was a statutory declaration provided to a local council to verify certain work had been carried out on a block prior to its subdivision and sale. The complainant in that case had relied on the statutory declaration and suffered detriment in doing so.

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5 See, e.g. *Re 'V'*, [55], which adopts the description of the Victorian Supreme Court in *Director of Public Prosecutions v Smith* [1991] 1 VR 63, 75.
6 [2012] WAICmr 25 (***Re R***).
7 [2016] WAICmr 13 (***Re Shuttleworth***).
8 *Re 'R'*, [22].
9 *Re 'R'*, [24].

25. Again, the Deputy Commissioner considered the circumstances of *Re Shuttleworth* materially different to the present case, which concerns allegations of unprofessional conduct rather than reliance on a statutory declaration to verify facts.

26. In favour of non-disclosure, the Deputy Commissioner recognised the strong public interest in upholding privacy. That public interest may only be displaced by some other strong or compelling public interest or interests requiring the disclosure of personal information about one person to another person.[10]

27. In this case, the Deputy Commissioner found the strong public interest in upholding the privacy of other individuals outweighed the public interests favouring disclosure of the disputed matter. Accordingly, disclosure of the disputed documents would not, on balance, be in the public interest and the limit on the exemption in clause 3(6) did not apply.

28. In light of the above, the Deputy Commissioner found the relevant personal information exempt under clause 3(1) and the agency's decision justified.

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10 *Re 'V'*, [67].