



Decision D0122026 – Published in note form only

Re ‘B’ and Main Roads Western Australia [2026] WAICmr 12

Date of Decision: 27 July 2026

Freedom of Information Act 1992 (WA): section 26; Schedule 1, clauses 3(1), 3(2), 3(3), 3(5), and 3(6)

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) varied a decision of Main Roads Western Australia (**agency**) under the *Freedom of Information Act 1992 (WA)* (**FOI Act**). The Deputy Commissioner decided:
 - access is refused in full to the allegation (**Document 1**) under clause 3(1) of Schedule 1 to the FOI Act;
 - access is given to an edited copy of the investigation report (**Document 2**), with exempt information deleted under clause 3(1); and
 - access is refused to further documents within the scope of the access application under section 26 of the FOI Act, on the basis they do not exist or cannot be found.
2. Although the agency also claimed exemptions under clauses 8(2) and 11(1)(c), the Deputy Commissioner considered it unnecessary to consider those exemption clauses as the relevant information was exempt under clause 3(1).
3. Consistent with the Office of the Information Commissioner’s new policy, the Deputy Commissioner decided not to identify the complainant by name to uphold their privacy in this matter.

Reasons

Clause 3(1) – personal information

4. Clause 3(1) provides matter is exempt if its disclosure would reveal personal information about an individual. The Deputy Commissioner was satisfied the disputed matter contained personal information, as defined in the FOI Act. Accordingly, the Deputy Commissioner considered the disputed matter was, on its face, exempt under clause 3(1).
5. In relation to Document 1, the Deputy Commissioner considered whether the information in the complaint would reveal the identity of the person who made it. In doing so, the Deputy Commissioner had regard to:
 - the nature of the information contained in the complaint, including information likely to have been known only to a small number of people;

- the complainant's lengthy employment with the agency and resulting familiarity with workplace relationships, events and information;
 - the language, writing style and manner of expression used in the complaint.
6. Taking those factors into account, the Deputy Commissioner considered the identity of the author of the complaint was either apparent or could reasonably be ascertained by persons with relevant knowledge of the circumstances, including the complainant. Accordingly, Document 1 contained personal information and was, on its face, exempt under clause 3(1).
 7. The Deputy Commissioner also considered Document 2, which included witness transcripts, contained personal information about a number of individuals and was therefore, on its face, also exempt under clause 3(1).
 8. The exemption in clause 3(1) is subject to the limits set out in clauses 3(2) to 3(6) of Schedule 1 to the FOI Act.
 9. 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 complainant

10. Under clause 3(2), 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' means 'solely' or 'no more than' personal information about the applicant.¹
11. In this case, 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 information.
12. As a result, the disclosure of the complainant's personal information 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 about agency officers

13. Under clause 3(3), matter is not exempt under clause 3(1) merely because its disclosure would reveal 'prescribed details' in relation to officers or former officers of an agency. As with clause 3(2), the word 'merely' has its ordinary meaning of 'solely' or 'no more than'.²
14. The Deputy Commissioner accepted some personal information about agency officers comprised prescribed details, including their names, position titles and descriptions of things done by them in the course of performing their functions or duties.³ However, he considered information identifying individuals as the subject of, or witnesses in, a disciplinary investigation was not prescribed details merely because those individuals were agency officers. The information concerned their involvement in a disciplinary process rather than merely their position, functions or duties as agency officers.
15. The Deputy Commissioner considered the prescribed details were intertwined with the personal information of other individuals. As a result, the prescribed details could not be disclosed without also revealing personal information about those individuals.
16. Accordingly, the disclosure of the prescribed details would do more than 'merely' reveal prescribed details in relation to the officers. The limit in clause 3(3) therefore did not apply to such information.

¹ *Re Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25, [32]; *Re 'V' and Curtin University* [2020] WAICmr 3, [31] (**Re 'V'**).

² *Re 'V'*, [41].

³ *Freedom of Information Regulations 1993*, r 9(1).
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Clause 3(5) – prescribed details about agency officers

17. Clause 3(5) provides matter is not exempt if the applicant establishes the individual concerned consents to disclosure of the matter.
18. There was no information before the Deputy Commissioner to establish any of the relevant third parties had consented to the disclosure of their personal information to the complainant. Accordingly, the limit in clause 3(5) did not apply.

Clause 3(6) – public interest

19. Under clause 3(6), 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:⁴

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...

20. The Deputy Commissioner noted the complainant had a personal interest in disclosure of the disputed information. However, the public interest is not primarily concerned with the personal interests of the individual applicant.
21. In weighing the public interest factors for and against disclosure, the Deputy Commissioner considered the public interest in people accessing the personal information a government agency holds about them, as recognised in section 21 of the FOI Act, favoured disclosure.
22. Also favouring disclosure, the Deputy Commissioner acknowledged it is generally in the public interest government agencies are open and accountable for their actions and decision-making processes.
23. The complainant, who was the subject of the investigation, submitted disclosure was necessary to understand the allegations made against them, assess the agency’s investigation and demonstrate broader concerns regarding the agency’s workplace practices.
24. In this case, the Deputy Commissioner considered the public interests favouring disclosure had largely been met by the agency’s disclosure of an edited copy of the investigation report, which set out the substance of the allegations, the material it considered, and the investigator’s findings and recommendations.
25. Weighing against disclosure, the Deputy Commissioner recognised the strong public interest in upholding privacy, which may only be displaced by some other strong or compelling public interest or interests.
26. Finally, the Deputy Commissioner noted the well-established principle that disclosure under the FOI Act is disclosure to the world at large.⁵
27. Having weighed the competing public interests, the Deputy Commissioner did not consider those favouring disclosure outweighed the public interests against disclosure. Therefore, the Deputy Commissioner found the limit in clause 3(6) did not apply.
28. Accordingly, the Deputy Commissioner found the disputed information is exempt under clause 3(1) because its disclosure would reveal personal information, and no limits apply to that exemption.

⁴ See e.g. *Re ‘V’ and Curtin University* [2020] WAICmr 3, [55] which adopts the description of the Victorian Supreme Court in *Director of Public Prosecutions v Smith* [1991] 1 VR, 75.

⁵ *Public Transport Authority* [2018] WASC 47, [71].

Section 26 – documents cannot be found or do not exist

29. Section 26 provides an agency may refuse access to a document if it has taken all reasonable steps to find the document and is satisfied the document is either in the agency's possession but cannot be found, or does not exist.
30. In dealing with section 26, the following questions must be asked:⁶
- Are there reasonable grounds to believe the requested documents exist or should exist?
 - If so, are the requested documents held, or should they be held, by the agency?
 - If so, has the agency taken all reasonable steps to find those documents?
31. Further:
- it is not the function of the Information Commissioner to physically search for documents on behalf of a complainant;⁷
 - an agency is not required to take every possible step to locate documents, but only to take all reasonable steps;⁸
 - the adequacy of an agency's efforts to locate documents must be judged by what was reasonable in the circumstances;⁹ and
 - the reasonableness of an agency's searches depends, in part, on the likelihood the requested documents exist. The more likely it is a document exists, the more extensive the searches may need to be.¹⁰

Are there reasonable grounds to believe the documents exist or should exist?

32. The complainant sought access to a separate investigation report into a workplace complaint they had made about other agency officers.
33. The complainant submitted an investigation report should exist because the agency had previously advised it would investigate the complainant's allegations of workplace bullying and harassment.
34. The agency confirmed it did commence an investigation process, but no formal investigation report was prepared as the enquiries conducted did not identify sufficient material to enable the matter to progress further. The agency also advised if such a report had existed it would ordinarily have been retained on the complainant's case file, but no such document was located.
35. Having considered the material before him, the Deputy Commissioner was not persuaded there were reasonable grounds to conclude a formal investigation report was created.
36. Accordingly, the Deputy Commissioner was not persuaded there were reasonable grounds to be satisfied the requested documents exist or should exist.

Has the agency taken all reasonable steps to find those documents?

37. In light of the above, it was not necessary for the Deputy Commissioner to consider this question.

⁶ *Re James and City of Albany* [2014] WAICmr 2, [17]; *Re McLerie and City of Melville* [2022] WAICmr 1, [38].

⁷ *Re James and City of Albany* [2014] WAICmr 2, [19]; *Re McLerie and City of Melville* [2022] WAICmr 1, [39].

⁸ *Re Boland and City of Melville* [1996] WAICmr 53, [27].

⁹ *Re James and City of Albany* [2014] WAICmr 2, [18]; *Re Leighton and Shire of Kalamunda* [2008] WAICmr 52, [85]; and *Re Veale and City of Swan* [2012] WAICmr 12.

¹⁰ *Lee v Department of Justice* [2020] WASC 105, [64].

38. Nevertheless, even if there were reasonable grounds to be satisfied the documents exist or ought to exist, the Deputy Commissioner considered the agency had taken all reasonable steps in the circumstances to find the requested documents.
39. In reaching his view, the Deputy Commissioner noted the agency:
 - consulted the officer responsible for investigating the complainant's workplace complaint, who confirmed no report was created; and
 - searched the complainant's case file, where such a document would ordinarily be retained, and confirmed no report was located.
40. Having considered the material before him, the Deputy Commissioner was not persuaded further searches were warranted or likely to locate documents within the scope of the application.
41. The Deputy Commissioner was satisfied the agency had taken all reasonable steps to locate documents within the scope of the application and any further documents either could not be found or did not exist.
42. Accordingly, the Deputy Commissioner did not require the agency to conduct further searches and confirmed the agency's decision to refuse the complainant access to documents under section 26 of the FOI Act.

FOI Act and rights under an enterprise bargaining agreement

43. The complainant also submitted provisions under the agency's enterprise bargaining agreement (**EBA**) entitled employees to receive documents relating to alleged misconduct.
44. The Deputy Commissioner considered those submissions were not relevant because the external review related to whether the disputed matter was exempt under the FOI Act. Any rights arising under the EBA operate separately from and cannot be enforced through an application under the FOI Act. Accordingly, the terms of the EBA were not relevant to his determination.