

Decision D0212026 – Published in note form only

Re CF1 and Department of Biodiversity, Conservation and Attractions [2026] WAICmr 21

Date of Decision: 29 September 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**) varied the decision of the Department of Biodiversity, Conservation and Attractions (**agency**) to refuse the complainant access to documents related to the complainant's workplace grievance (**disputed documents**).
2. The agency had refused the complainant access to the disputed documents on the basis they are exempt under clause 8(2) of Schedule 1 to the FOI Act (confidential communications). However, the Deputy Commissioner found the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

Reasons

Clause 3(1) – personal information

3. Clause 3(1) provides matter is exempt matter if its disclosure would reveal personal information about an individual.
4. The Deputy Commissioner was satisfied disclosure of the disputed documents would reveal personal information about the complainant and other individuals. Therefore, such personal information was, on its face, exempt under clause 3(1).
5. 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. In this case, clauses 3(2), 3(3), 3(5) and 3(6) were relevant.

Clause 3(2) – personal information is not merely about the complainant

6. Clause 3(2) provides matter is not exempt under clause 3(1) merely because its disclosure would reveal personal information about the access applicant (complainant). 'Merely' has its ordinary meaning of 'solely' or 'no more than' personal information about the applicant.¹
7. The Deputy Commissioner was satisfied clause 3(2) did not apply because the disputed documents contained more than merely the complainant's own personal information. While the disputed documents related to a workplace grievance lodged by the complainant and included some of their personal information, that information is inextricably intertwined with personal information about other individuals.

¹ *Re Malik and Office of the Public Sector Standards Commissioner* [2010] WAICmr 25, [32].

Clause 3(3) – prescribed details

8. 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.
9. In this case, the disputed documents included names, job titles and some information about things done by officers of the agency in the course of performing their duties. That information is prescribed details under regulation 9(1) of the *Freedom of Information Regulations 1993*. However, the Deputy Commissioner considered it was not possible to separate the prescribed details from other personal information of the relevant officer which is not prescribed details. As a result, the disclosure of the prescribed details would do more than ‘merely’ reveal prescribed details in relation to the officer. Accordingly, the limit in clause 3(3) did not apply.

Clause 3(5) – consent

10. Clause 3(5) provides matter is not exempt under clause 3(1) if the applicant provides evidence establishing the individual concerned consents to the disclosure of the matter to the applicant.
11. The complainant submitted individuals whose personal information appeared in the disputed documents had provided affidavits for a related WorkCover claim and in so doing, consented to their personal information in the disputed documents being disclosed to the complainant.
12. The Deputy Commissioner disagreed. He considered the affidavits were only related to the disputed documents to the extent they concerned the same individuals. The affidavits were otherwise different documents created for a different purpose. Disclosure of personal information about an individual in a particular document in one context does not amount to consent to disclose the same or other personal information about that individual in another document under the FOI Act.²
13. As there was no information before the Deputy Commissioner that individuals had consented to the disclosure of their personal information under the FOI Act, he found the limit in clause 3(5) did not apply.

Clause 3(6)

14. 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:³

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...
15. 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.
16. The Deputy Commissioner also recognised the following public interests in favour of disclosure:
 - promoting agency accountability for the manner in which they deal with complaints;
 - promoting transparency and public confidence in the procedural fairness and integrity of agency processes for managing complaints and workplace grievances; and
 - enabling the public to understand the basis on which agency decisions are made.

² *Re M and Legal Practice Board of Western Australia* [2026] WAICmr 10, [16].

³ 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.

17. However, in this case, the Deputy Commissioner considered these public interests had been largely satisfied by information the agency gave the complainant informing them of the outcome of its investigations.
18. In balancing the competing public interests, the Deputy Commissioner was not persuaded the public interests in disclosure outweighed the strong public interest in upholding the privacy of other individuals in this matter.
19. Accordingly, he found the limit on the exemption in clause 3(6) did not apply and the disputed documents are exempt under clause 3(1).