

Decision D0222026 – Published in note form only

Re KB7 and Department of Biodiversity, Conservation and Attractions [2026] WAICmr 22

Date of Decision: 29 September 2026

Freedom of Information Act 1992 (WA): Part 2, Division 2 – Scope of access application

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 7(1) (legal professional privilege) and clause 8(2) (confidential communications) of Schedule 1 to the FOI Act. However, the Deputy Commissioner found the disputed documents were outside the scope of the access application and, therefore, not required to be disclosed under the FOI Act.

Reasons

The disputed documents are outside the scope of the access application

3. The Deputy Commissioner considered the wording of an access application determines what an agency must consider under Part 2 of the FOI Act. This includes deciding which documents, and which information in those documents, come within the scope of an access application.
4. The Deputy Commissioner observed former Information Commissioners have consistently held an agency is entitled to delete from documents information outside the scope of the access application.¹ He also observed that if information is outside the scope of an access application, it is not necessary to consider whether or not that information is exempt.²
5. The complainant consented to the deletion of 'personal information relating to third parties' and 'prescribed details of officers of the agency'. As a result, that information in the disputed documents fell outside the scope of the access application. The Deputy Commissioner therefore found the agency was entitled to refuse access to such information because it was 'out of scope'.
6. The Deputy Commissioner examined the disputed documents and considered they not only comprised almost entirely of personal information about other individuals, but were fundamentally about other individuals. In particular, two of the disputed documents are reports into grievances

¹ See, e.g., *Re G and Department for Community Development* [2002] WAICmr 28, [15]-[16].

² See, e.g., *Re Michel and Office of Health Review* [2009] WAICmr 33, [19].

lodged against other individuals and two are affidavits provided by other individuals in a workers' compensation claim and the disputed matter is in an email related to the grievances.

7. Therefore, as the complainant had consented to the deletion of third-party personal information, the Deputy Commissioner considered the disputed documents are outside the scope of the access application.