
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : S -v- DEPARTMENT OF COMMUNITIES [2019]
WASC 260 (S)

CORAM : TOTTLE J

HEARD : 21 AUGUST 2019

DELIVERED : 29 AUGUST 2019

FILE NO/S : GDA 8 of 2018

BETWEEN : S
Appellant

AND

DEPARTMENT OF COMMUNITIES
Respondent

ON APPEAL FROM:

Jurisdiction : OFFICE OF THE INFORMATION
COMMISSIONER

Coram : ACTING INFORMATION COMMISSIONER L
WARD

File Number : 048 of 2018

Catchwords:

Practice and procedure - Orders following judgment - Freedom of information - Power of court to make orders in substitution where views of third parties not obtained under s 32 of *Freedom of Information Act 1992* (WA)

Legislation:

Freedom of Information Act 1992 (WA)

Result:

Orders given

Category: B

Representation:

Counsel:

Appellant : Mr D W Thompson
Respondent : Mr J Carroll

Solicitors:

Appellant : In person
Respondent : State Solicitor for Western Australia

Case(s) referred to in decision(s):

Nil

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TOTTLE J:

1 On 22 July 2019 I delivered reasons for judgment in these proceedings. Having heard submissions from the parties I proposed to make orders as follows:

- 1 The appeal is allowed and the decision of the Information Commissioner numbered D0022018 is set aside.
- 2 Within 21 days, the respondent is to give the appellant access to the non-exempt matter contained within the previously redacted portions of the documents the subject of this appeal identified in the Schedule to these orders.
- 3 The respondent is to pay the appellant's disbursements of the appeal.

2 At the hearing the respondent's solicitors agreed to make some relatively minor revisions to a draft of the schedule referred to in proposed order 2 that had previously been prepared by them. Consequently, I did not make orders on 22 July 2019.

3 The respondent's solicitors prepared and filed a revised draft schedule as requested. Shortly after taking this step the respondent's solicitors brought a potential legal difficulty with order 2 of the proposed orders to the court's attention.

4 Section 32(2) of the *Freedom of Information Act 1992 (WA)* relevantly provides that access is not to be given to a document that contains personal information about an individual (the third party) other than the access applicant unless such steps as are *reasonably practicable* to obtain the views of the third party as to whether the document contains matter that is exempt have been taken.

5 The difficulty in this case is that the previously redacted portions of the documents that my orders contemplate will be disclosed to the appellant contain personal information about third parties (which the appellant provided to the respondent) and the views of those third parties have not been obtained.

6 This difficulty is compounded by the fact that the same portions of the documents that contain personal information about third parties contain personal information about the appellant. Realistically, it is not possible to obtain the views of the third parties about whether the

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relevant portions of the documents contain exempt matter without disclosing the appellant's personal information to the third parties.

7 What steps are reasonably practicable will vary from case to case. This case is unusual, if not unique, for two reasons: first, the portions of the documents that will be disclosed to the applicant are statements of information about third parties of which the applicant was the sole and only source and which I have held are not exempt; and, second, it is not possible to seek the views of the third parties without disclosing to the third parties the appellant's personal information.

8 Accordingly, in my judgment, it is not reasonably practicable to obtain the views of the third parties and the previously redacted portions of the documents should be disclosed to the appellant. I will now make the orders set out in [1].

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

JB

Associate to the Honourable Justice Tottle

29 AUGUST 2019