

**Redacted Determination**  
**External review - section 39 *Freedom of Information Act 1991***

<b>Applicant</b>	[The applicant]
<b>Agency</b>	SA Police
<b>Ombudsman reference</b>	2018/04625
<b>Agency reference</b>	FOI 18/1543
<b>Determination</b>	The determination of the agency is confirmed.

**REASONS**

**Application for access**

1. By application under the *Freedom of Information Act 1991* (the **FOI Act**) the applicant requested access from the agency to [documents relating to an attendance by police at his property.]

**Background**

2. For ease of reference, procedural steps relating to the application and the external review are set out in the appendix.

**Jurisdiction**

3. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

**Provisional determination**

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 6 August 2018. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to confirm the agency's determination.
5. The agency advised my Office that it did not wish to make any submissions. I did not receive a response from the applicant. This determination is therefore in the same terms as my provisional determination.

**Relevant law**

6. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.<sup>1</sup>

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<sup>1</sup> *Freedom of Information Act 1991*, section 12.

7. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
8. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
9. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

### Documents in issue

10. The agency did not identify the number of documents it held which fell within the scope of the application. However, it refused to provide the applicant with access to 'any documents' on the basis of clause 12(1) of Schedule 1 to the FOI Act, which provides:

A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

11. In making this determination the agency took the view that it would constitute an offence under sections 44, 45 and 46 of the *Police Complaints and Discipline Act 2016* (**the PCD Act**) to disclose any documents that fall within the scope of the application.
12. The agency relied on the sections cited in paragraph 10 above to refuse to provide me with copies of the documents falling within scope of the application. However, on 1 August 2018 I attended the agency's offices at 100 Angas Street, Adelaide, and inspected those documents.

### Issues in this review

13. The issue in this review is whether the agency has justified its determination to refuse access to any documents falling within scope on the basis of clause 12(1).

### Consideration

14. It can be inferred from the terms of the access application that the applicant may have made a complaint about the actions of the police officers who attended [his property]. Further I note that in its determination of the application, the agency stated, 'As you would be aware a complaint against Police was received with respect to this matter'. For the purposes of this provisional determination therefore I assume that a complaint against police was made under section 10 of the PCD Act
15. Section 45 of the PCD Act relevantly provides:
  - (1) Except as required or authorised by this Act or by the Commissioner [of Police], the [Independent Commissioner Against Corruption] (**the ICAC**) or the [Office for Public Integrity] (**the OPI**), a person who is or has been engaged in the administration of this Act must not, directly or indirectly, disclose information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment or investigation under this Act.  
  
Maximum penalty: \$2 500 or imprisonment for 6 months.
  - (2) Despite subsection (1), a person engaged in the administration of this Act may disclose information -

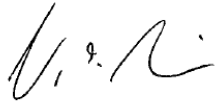
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- (a) for the purposes of the administration or enforcement of this Act; or
  - (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
  - (c) for the performance of the functions of the Commissioner, the ICAC or the OPI under another Act; or
  - (d) in accordance with an order of a court; or
  - (e) if the information relates to the person and is disclosed by the person to a close family member of the person; or
  - (f) as otherwise required or authorised by this or another Act.
- (3) A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment or investigation under this Act must not disclose that information unless -
- (a) the person is authorised in writing by the Commissioner, the ICAC or the OPI, or by a person approved by the Commissioner, the ICAC or the OPI, under this section to give an authorisation; or
  - (b) the disclosure of that information is for the purpose of -
    - (i) dealing with a matter under this Act by the Commissioner, or under this or the *Independent Commissioner Against Corruption Act 2012* by the ICAC or the OPI; or
    - (ii) a criminal proceeding, a proceeding for the imposition of a penalty or disciplinary action; or
    - (iii) a person obtaining legal advice or legal representation or for the purpose of determining whether a person is entitled to an indemnity for legal costs; or
    - (iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist.

Maximum penalty: \$2 500 or imprisonment for 6 months.

16. In my view subsection (1) of section 45 of the PCD Act does not apply to the agency's FOI officers; I do not consider that they could be said to be engaged in the administration of the PCD Act. However I do consider that, as a result of enquiries made by those officers with the Ethical and Professional Standards Branch of the agency they received information knowing that it was connected with a matter that formed or was the subject of a complaint, report, assessment or investigation under the PCD Act. Had the FOI officers disclosed that information they would have committed an offence under subsection (3) of section 45. In my view therefore the information contained in the documents that fall within the scope of the access application is exempt pursuant to clause 12(1) of Schedule 1 to the FOI Act.

**Determination**

17. In light of my views above, I confirm the agency's determination.

A handwritten signature in black ink, appearing to read 'W. Lines', written in a cursive style.

Wayne Lines  
**SA OMBUDSMAN**

28 August 2018

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## APPENDIX

### Procedural steps

Date	Event
27 March 2018	The agency received the FOI application dated 26 March 2018.
4 April 2018	The agency determined the application.
9 April 2018	The agency received the internal review application dated 9 April 2018.
17 April 2018	The agency confirmed the determination.
27 April 2018	The Ombudsman received the applicant's request for external review dated 26 April 2018.
30 April 2018	The Ombudsman advised the agency of the external review and requested submissions and documentation.
1 August 2018	The Ombudsman inspected the documents falling within scope of the FOI application.
6 August 2018	The Ombudsman issued his provisional determination and invited submissions from the parties.
7 August 2018	The agency advised the Ombudsman that it did not wish to make any submissions.

