



## Determination

### External review - section 39 *Freedom of Information Act 1991*

<b>Applicant:</b>	Mr Daniel Woidt
<b>Agency:</b>	Courts Administration Authority
<b>Ombudsman reference:</b>	2023/00513
<b>Agency reference:</b>	2022/01021
<b>Determination:</b>	The determination of the agency is confirmed, the effect of which is that 1 document is released in full, 13 documents are partially exempt on the basis of clause 6(1) and 3 documents are fully exempt on the basis of clause 11(a).
<b>Date of Ombudsman's determination:</b>	10 March 2023
<b>Issues considered:</b>	Definition of personal affairs Unreasonableness (personal affairs) Document relating to judicial functions
<b>Exemption clauses relied upon:</b>	6(1) 11(a)
<b>Legislation considered:</b>	<i>Freedom of Information Act 1991</i>

## 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:
  1. Provide the CCTV footage of my attendance in the public areas of the Murray Bridge court on the 6/12/22.
  2. Provide the CCTV footage of my court attendance at Murray Bridge court on the 6/12/22.

### Background

2. For ease of reference, procedural steps relating to the application and the external review are set out in Appendix 1.

### 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 21 February 2023. 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. By email dated 21 February 2023 the applicant provided a response, stating that because the recorded court proceedings are open to the public, access to those records cannot be refused. As has been explained to the applicant on numerous occasions, a request made under the FOI Act must be dealt with according to the provisions of that Act. If I am satisfied that a document is exempt, I do not have the power to determine that the document should be released.<sup>1</sup>
6. In this case, as was set out in my provisional determination and will be repeated in this determination, the requested CCTV footage from inside the courtrooms very clearly falls within the exemption of clause 11(a). Accordingly, even though the court proceedings were open to the public, I am only able to determine that the CCTV recordings of those proceedings are exempt.
7. The applicant also submits that because the court proceedings are open to the public, the images of people attending those proceedings cannot be said to concern their personal affairs. I reject this submission; the definition of personal affairs extends to 'matters of private concern to an individual'.<sup>2</sup> I am satisfied that a person's court appearance would be of private concern to them, even if the court proceedings were open to the public.
8. I am not persuaded by the applicant's submissions to alter the views expressed in my provisional determination. I did not receive a response from the agency. Accordingly, this determination is in the same terms as my provisional determination.

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<sup>1</sup> *Freedom of Information Act 1991* s 39(12).

<sup>2</sup> *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1985) 13 FCR 85 at 88-89.

## Relevant law

9. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.<sup>3</sup>
10. 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.
11. The following clause of Schedule 1 of the FOI Act are relevant to my external review:

### **6—Documents affecting personal affairs**

(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

### **11—Documents relating to judicial functions etc**

A document is an exempt document if it contains matter—

- (a) relating to the judicial functions of a court or tribunal; or
- (b) prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard before a court or tribunal; or
- (c) prepared by or on behalf of a court or tribunal (including any order or judgment made or given by the court or tribunal) in relation to proceedings that are being heard or have been heard before the court or tribunal.

12. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
13. 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

14. The agency identified 17 documents within the scope of the application.

## Issues in this review

15. Having regard to the agency's submissions and the exemption clauses provided in Schedule 1 of the FOI Act, it is for me to determine whether to confirm, vary or reverse the agency's determination in regard to the documents in issue in this external review.

## Consideration

16. The agency identified 14 documents as falling within the scope of part 1 of the FOI application and submits that 1 document can be fully released and 13 documents can be partially released. The redactions applied to the 13 documents have been made on the basis of clause 6(1).
17. The agency submits that:

The CAA is required to redact images of any person that is not Mr Woidt, a Sheriff's Officer, or a Police Officer in uniform [sic]. This includes any third parties contained in the footage that have not provided the CAA with permission to release their image.

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<sup>3</sup> Freedom of Information Act 1991 s 12.

...

The information is obtained involuntarily in circumstances that often the person would not voluntarily wish to be in, and it is collected in circumstances which makes it impossible to consult them or allow them to inform the agency as to why the information is sensitive or would be an unreasonable disclosure of personal affairs.

The location as a court is identifiable from the footage and any identifiable person appearing on that footage contains information concerning the personal affairs of that person. There are numerous reasons for which a person's attendance at a Court may be sensitive, and similarly many possible reasons that the person would not want that information disclosed.

18. I agree with the agency's submissions. Very clearly a person's attendance at a court would be of private concern to that person (unless their attendance is in an occupational or professional capacity),<sup>4</sup> and as such I am satisfied that footage showing a person's image at a court location constitutes their personal affairs.
19. I am also satisfied that disclosure of the images of other people would be unreasonable noting that:
  - the sensitivity of the information
  - the fact that there are no reasonably practicable steps that either the agency or myself could take to undertake consultation with those individuals
  - the fact that the images can be redacted without otherwise interfering with the footage of the applicant
  - the circumstances in which the footage was obtained.
20. The agency advised that three documents were identified as falling within the scope of part 2 of the FOI application, and that all three documents are fully exempt on the basis of clause 11(a).
21. Although the term 'judicial functions' is not defined in the South Australian FOI Act, the equivalent New South Wales legislation defines the term as follows:

*judicial functions*, in relation to a court, means such of the functions of the court as relate to the hearing or determination of proceedings before it, and includes -

  - (a) In relation to a Magistrate - such of the functions of the Magistrate as relate to the conduct of committal proceedings; and
  - (b) In relation to a coroner - such of the functions of the coroner as relate to the conduct of inquests and inquiries under the *Coroners Act 2009*
22. This definition has also been adopted in numerous cases and I am satisfied that it provides useful guidance in the absence of a definition of 'judicial functions' within the South Australian FOI Act. Having formed the view that the above definition is appropriate in this context, I have afforded 'judicial functions' that definition in the context of the SA FOI Act.
23. Although section 39(15) of the FOI Act prevents me from disclosing the content of the documents claimed to be exempt, it is clear from the wording of the FOI application that these three documents consist of CCTV footage which captures the applicant's court appearance on 6 December 2022.
24. Very clearly this footage relates to the judicial functions of a court as it captures the hearing and/or determination of proceedings before it. The documents are therefore fully exempt on the basis of clause 11(a).

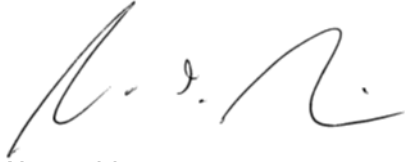
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<sup>4</sup> *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606 [625], citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 2019 and *Young v Wicks* (1986) 13 FCR 85 [88-89].

OFFICIAL

**Determination**

25. 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**

10 March 2023

## APPENDIX 1

### Procedural steps

Date	Event
9 December 2022	The agency received the FOI application dated 9 December 2022.
9 December 2022	The agency requested that the applicant narrow the scope of his application such that he identified the time of his court attendance.
5 January 2023	Having received no response from the applicant, the agency determined to refuse to deal with the application.
10 January 2023	The agency received the internal review application dated 10 January 2023.
12 January 2023	The agency again requested that the applicant narrow the scope of his application such that he identified the time of his court attendance. The applicant responded on the same day.
24 January 2023	The agency varied the determination.
30 January 2023	The Ombudsman received the applicant's request for external review dated 30 January 2023.
30 January 2023	The Ombudsman advised the agency of the external review and requested submissions and documentation.
13 February 2023	The agency provided the Ombudsman with its submissions and documentation.
21 February 2023	The Ombudsman issued his provisional determination and invited submissions from the parties.
21 February 2023	The applicant provided submissions in response to the provisional determination.