

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2006090
Decision Ref: D0012007**

Participants:

Kathryn Gae Rogerson
Complainant

- and -

**Department of Education and
Training**
First Respondent

- and -

Suzanne Cooper
Second Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – document relating to workers’ compensation claim – clause 3(1) – personal information – definition of personal information – clause 3(6) – whether disclosure on balance is in the public interest.

Freedom of Information Act 1992 (WA): ss. 10(1), 11(2), 11(3), 12(1), 24, 34, 69(2), 76(1), 102(3); Schedule 1, clauses 3(1), 3(2), 3(3), 3(4), 3(5), 3(6); Glossary.

Freedom of Information Regulations 1993: Regulation 4, Schedule 2.

Police Force of Western Australia v Ayton [1999] WASCA 233

DECISION

The decision of the agency is varied. I find that:

- the information deleted from the third and fourth paragraphs on page 1 and the information deleted from lines 3 and 4 of the second paragraph on page 2 of the disputed document are outside the scope of the complainant's access application and need not be disclosed;
- words 11 and 12 in line 12 and words 2-5 in line 14 of the second paragraph on page 2 are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act');
- the remainder of the disputed information is within the scope of the access application and is not exempt; and
- it would be practicable for the agency to give the complainant access to an edited copy of the disputed document, from which only the information I have found to be exempt or outside the scope of the access application has been deleted.

D A WOOKEY
A/INFORMATION COMMISSIONER

11 January 2007

REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of Education and Training ('the agency') to give Mrs Rogerson ('the complainant') access to an edited copy of a document requested by her under the *Freedom of Information Act 1992* ('the FOI Act'). Ms Cooper ('the third party') opposes the giving of access to certain matter that is recorded in the requested document.

BACKGROUND

2. The complainant is an employee of the agency. The third party is the principal of the school at which the complainant was working at the relevant time. I understand that, in mid-2005, the complainant lodged a claim for workers' compensation with the agency. Following that, by letter dated 26 July 2005, the agency's Workers' Compensation and Rehabilitation Officer wrote to the third party requesting her to provide the agency with a detailed statement outlining the circumstances leading up to or surrounding the complainant's workers' compensation claim. On 9 August 2005, the third party sent an "Employer's Report Form – Form 1B" ('the Form 1B') to the agency, by facsimile transmission. On 30 September 2005, the third party wrote a detailed report in relation to the complainant's workers' compensation claim and submitted that report to the agency.
3. By email letter dated 15 November 2005, the complainant applied to the agency, under the FOI Act, for access to a copy of that report. The complainant lodged her access application with the agency by email. The complainant did not pay the application fee of \$30.00, which is prescribed by regulation 4 of the *Freedom of Information Regulations 1993* ('the regulations'), when she lodged her access application with the agency. The agency acknowledged receipt of the complainant's access application, by letter dated 22 November 2005, but did not ask the complainant to pay the prescribed application fee.
4. Following receipt of the access application, the agency's FOI Officer wrote to the third party, seeking relevant documents from her. The third party subsequently delivered those documents to the agency. Those documents were the Form 1B, which the third party had sent to the agency on 9 August 2005, and the report prepared by the third party dated 30 September 2005. That report is the disputed document in this matter.
5. When the third party delivered the requested documents to the agency, she advised the agency that she was not happy with the possible release of the disputed document, on the ground that the disputed document was written confidentially, as requested by the agency. It was also the view of the third party that, as she had written the disputed document at home, and not in her office, it was a "personal confidential document" of the third party. The third party submitted that she expected the disclosure of the disputed document would prejudice the investigation of the complainant's workers' compensation

claim and that it should also be exempt under the FOI Act, on the ground that it would, if disclosed, reveal information of a confidential nature communicated in confidence to the Government, via the agency.

6. After receiving the third party's letter, the agency's FOI Co-ordinator made further inquiries about the third party's claims with officers of the agency, including the Workers' Compensation and Rehabilitation Officer who requested the third party to prepare the report in the first instance. Following those consultations and inquiries, by email letter dated 15 December 2005, the agency's FOI Co-ordinator advised the third party that, having considered her claims, the agency had, nonetheless, decided to give the complainant access to an edited copy of the disputed document after deleting any personal information about third parties from the disputed document. The FOI Co-ordinator advised the third party of her right to seek internal review of the agency's initial decision on access, by no later than 15 January 2006.
7. On the same date, 15 December 2005, the FOI Co-ordinator notified the complainant of the agency's decision on access. The FOI Co-ordinator advised the complainant that the agency had decided to give her full access to the Form 1B as well as access to an edited copy of the disputed document, in accordance with s.24 of the FOI Act. The FOI Co-ordinator advised the complainant that, as the third party had lodged an appeal against the agency's initial decision on access, the agency was obliged to defer giving her access to an edited copy of the disputed document, in accordance with s.34 of the FOI Act, in order to allow the third party an opportunity to exercise her rights of review and appeal under the FOI Act.
8. The third party subsequently advised the agency that she would not be seeking internal review of the agency's decision on access. Thereafter, by letter dated 16 January 2006, the agency gave the complainant a complete copy of the Form 1B and an edited copy of the disputed document. The agency claimed that the information deleted from the disputed document ('the deleted information') was exempt under clause 3 of Schedule 1 to the FOI Act, because it was personal information about individuals other than the complainant.
9. By email letter dated 3 February 2006, the complainant applied to the agency for an internal review of the agency's initial decision on access.
10. By letter dated 21 February 2006, the agency's internal review decision-maker confirmed the agency's initial decision on access. The internal review officer advised the complainant that, in his view, the deleted information was *prima facie* exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act and that, in weighing the public interest factors for and against disclosure, the internal review officer considered that the complainant had already been given access to all of the personal information about her that is recorded in the disputed document and, further, that the deleted information related to third parties and was their personal information and/or opinion.

11. On 27 February 2006, the complainant applied to the Information Commissioner for external review of the agency's decision to give her access to an edited copy of the disputed document.

REVIEW BY THE A/COMMISSIONER

12. After receiving this complaint, I required the agency to produce to me, for my examination, the FOI file relating to the complainant's access application and the original of the disputed document.
13. After investigating the complaint and considering all of the information then available to her, my Legal Officer (Research & Investigations) ('my Legal Officer') informed the parties, in writing, of her view of this complaint and her reasons for that view, pursuant to her delegated authority under the FOI Act. It was my Legal Officer's view, for the reasons given to the parties, that some of the deleted information did not appear to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act, that some of the deleted information fell outside the scope of the complainant's application and, finally, that some of the deleted information was exempt under clause 3(1), as claimed by the agency.
14. The complainant did not accept my Legal Officer's view of her complaint. In response, the complainant submitted that she is entitled to be given access to a complete and unedited copy of the disputed document. The agency did not accept all of my Legal Officer's view of this complaint. The agency made further written submissions to me in support of its position, by letter dated 16 May 2006, and by emails dated 18 May 2006 and 25 May 2006, respectively.
15. During the external review process, the third party was advised of her right to be joined as a party to this complaint, in accordance with s.69(2) of the FOI Act. The third party subsequently applied to be, and was, joined as a party. The third party was also invited to provide written submissions to me in support of her claims that the deleted information is exempt under clause 3. However, she has not done so.

THE DISPUTED INFORMATION

16. Other than the information deleted from lines 6 and 7 of the second paragraph on page 1 of the disputed document, the agency maintains its claim that all the deleted information is exempt. The third party objects to disclosure of all of the deleted information, including that deleted from lines 6 and 7 of the second paragraph on page 1.
17. Therefore, the information remaining in dispute between the parties is the information deleted from:
 - lines 6, 7 and 9 of paragraph 2 on page 1;
 - lines 4-8 of paragraph 3 on page 1;
 - lines 1 and 2 of paragraph 4 on page 1;
 - lines 3, 4, 12, 13 and 14 of paragraph 2 on page 2; and
 - line 5 of paragraph 4 on page 3.

Preliminary issue – scope of the complainant’s access application

18. In dealing with a complaint under Part 4 of the FOI Act, the Information Commissioner has, in addition to any other power, the power to review any decision that has been made by the agency in respect of an access application or application for amendment and power to decide any matter in relation to an access application or application for amendment that could, under the FOI Act, have been decided by the agency (s.76(1) of the FOI Act).
19. In this instance, the complainant lodged her access application with the agency by email and did not pay the prescribed application fee of \$30.00 to the agency. In circumstances where an agency receives an application for access to documents which does not comply with the requirements of s.12 of the FOI Act, including the payment of the prescribed application fee, the agency receiving such an application is obliged, under s.11(3) of the FOI Act, to take reasonable steps under s.11(2) to help the access applicant to change his or her application so that it complies with the requirements of s.12.
20. In my view, once the agency received the complainant’s access application, it was obliged to have taken steps to assist the complainant to change her access application so that it complied with s.12 of the FOI Act, in accordance with its responsibilities under s.11 of the FOI Act. In particular, the agency should have advised the complainant that she was required to pay the prescribed application fee of \$30.00 in the event that she sought access to an unedited copy of the disputed document, or that – if she chose not to pay the fee – the agency would deal with her access application as an application for access to personal information about the complainant only. In the event, the agency did neither but, rather, dealt with the access application as if it complied with the requirements of s.12(1) of the FOI Act and was a valid access application for the whole of the document.
21. Given that the complainant did not pay the prescribed application fee to the agency, her application was a valid application for access to personal information about herself only, because an application fee is not required to be paid for seeking access only to personal information about the applicant. If the application had been considered in that way, it follows that any information recorded in the disputed document which would reveal ‘personal information’ about individuals (‘third parties’) other than the complainant, or is not personal information as defined, is information which is outside the scope of the complainant’s access application, and need not therefore be disclosed.
22. In my opinion, the information deleted from the third and fourth paragraphs of page 1 and from lines 3 and 4 of the second paragraph on page 2 is information of that kind. That matter contains no information about the complainant but the matter deleted from the third paragraph on page 1 and from the second paragraph on page 2 would, if disclosed, reveal personal information about two other individuals. As it is not personal information about the complainant, it is outside the scope of the complainant’s access application and need not be released.

23. The information deleted from the fourth paragraph on page 1 is also outside the scope of the complainant's access application, in my view. It is not personal information about the complainant; indeed, it is not personal information at all as no individual's identity could be ascertained from it. It need not, therefore, be disclosed.
24. Other than in respect of the information deleted from line 9 of the second paragraph on page 1 and from the fourth paragraph on page 3, the agency's decision to delete the balance of the disputed information would also have been justified on that basis, in my view. The information deleted from lines 6 and 7 of the first paragraph on page 1 and from lines 12-14 of the second paragraph on page 2 would, if disclosed, reveal more than just personal information about the complainant. The former would reveal personal information about the complainant and several other third parties and the latter would reveal personal information about the complainant and another individual.
25. However, given that all the parties appear to have proceeded on the basis that a valid access application – not limited merely to personal information – was made, and given that the complainant's access application was valid at least in respect of personal information about herself and those particular deletions do contain personal information about her, I do not consider that it would be reasonable for me at this stage to dismiss the complaint about those deletions on the basis that they are outside the scope of the access application. I have, therefore, considered whether they are exempt under clause 3(1) of Schedule 1 to the FOI Act, as claimed by the agency.
26. Similarly, the matter deleted from line 9 of the second paragraph on page 1 and from the fourth paragraph on page 3 would, if disclosed, reveal personal information, as defined, about the complainant. For the reasons given at paragraphs 30-33 below, I consider that it would reveal only personal information about the complainant and is clearly within the scope of the access application. I have considered, therefore, whether it is exempt under clause 3(1).

THE EXEMPTION CLAIMED

27. The agency and the third party claim that the disputed information is exempt under clause 3 of Schedule 1 to the FOI Act. Clause 3 provides as follows:

“3. Personal information

Exemption

- (1) Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

- (2) *Matter is not exempt matter under sub-clause (1) merely because its disclosure would reveal personal information about the applicant.*
 - (3) *Matter is not exempt matter under sub-clause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to-*
 - (a) *the person;*
 - (b) *the person's position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*
 - (4) *Matter is not exempt matter under sub-clause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to-*
 - (a) *the person;*
 - (b) *the contract; or*
 - (c) *things done by the person in performing services under the contract.*
 - (5) *Matter is not exempt matter under sub-clause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
 - (6) *Matter is not exempt matter under sub-clause (1) if its disclosure would, on balance, be in the public interest.”*
28. The term “personal information” is defined in the Glossary to the FOI Act as meaning:
- “...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead:*
- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
 - (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.”*
29. The definition of the term “personal information” makes it clear that any information or opinion about a person, from which that person can be identified, is, on the face of it, exempt under clause 3(1). I have examined the disputed

information. Its disclosure would reveal some personal information about the third party, several other third parties and the complainant. In my view, that information is, on the face of it, exempt under clause 3(1). The exemption in clause 3(1) is, however, subject to the application of the limits on exemption set out in subclauses 3(2) – (6) of Schedule 1 to the FOI Act, which are set out in paragraph 27 above.

The limits on exemption – clause 3(2)-(5)

30. The limit on exemption in clause 3(2) applies to some of the disputed information because its disclosure would reveal only personal information about the complainant. That information is the matter deleted from the ninth line of the second paragraph on page 1 and the matter deleted from the fourth paragraph on page 3.
31. The agency submits that that information consists of an opinion that was expressed by a person acting in an individual capacity and that such opinion is not, therefore, a professional opinion but, rather, an expression of a personal view about a particular situation. The agency argues that disclosure of that information would reveal personal information about the third party because that information “...*would reveal* [the third party’s] *personal perception about a situation* [the third party] *found herself in.*” The agency submits that the limit on exemption in clause 3(3) of the FOI Act does not apply to that particular information.
32. I do not agree with the agency’s submission that the disclosure of that information would reveal personal information about the third party. It is, in each case, an opinion about the complainant. In considering whether an opinion about a person is information about the opinion-holder or the person whom the opinion is about, Wheeler J of the Supreme Court of Western Australia made the following comments at pages 13 and 14 of *Police Force of Western Australia v Ayton* [1999] WASCA 233:

“...the definition of personal information is that it means “information ...about an individual” ...a comment which the person makes himself or herself...is not information “about” that person but is information or opinion about the subject matter of the comment...”
33. In light of Wheeler J’s comments, in my view, the information deleted from the ninth line of the second paragraph on page 1 and the information deleted from the fourth paragraph on page 3 is personal information about the complainant, not personal information about the third party. Accordingly, I find that the limit in clause 3(2) applies to that information and it is not exempt under clause 3(1).
34. The limits on exemption in clauses 3(3) and 3(4) do not apply to the balance of the information deleted from the disputed document, in my opinion, because, although some of that information consists of information about officers of the agency, in my opinion, the particular information in question does not consist of prescribed details about those officers and, in my view, that information could not be disclosed to the complainant without revealing personal information

about those other individuals. Its disclosure would not, therefore, merely reveal prescribed details about officers of the agency.

35. The limit on exemption in clause 3(5) does not apply to the balance of the disputed information because the complainant provided no evidence to the agency, and has put no evidence before me, that any of the third parties identified in the disputed document consents to personal information about him or her being disclosed to the complainant. To the contrary, the third party previously advised the agency that she was concerned about the possible disclosure of the disputed document to the complainant. The third party has also advised me that she does not consent to the disputed information being disclosed to the complainant.

Clause 3(6) – the public interest

36. The only other limit on exemption that might apply to the balance of the disputed information is the limit on exemption in clause 3(6), which provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest. In accordance with s.102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of personal information about individuals other than her would, on balance, be in the public interest.
37. The disputed information that I am prepared to treat as within the scope of the access application, and which I consider *prima facie* exempt under clause 3(1) and not subject to the limits in clauses 3(2)-(5), is the information deleted from lines 6 and 7 of the second paragraph on page 1 and from lines 12-14 of the second paragraph on page 2 of the disputed document.
38. Determining whether or not disclosure of that information would, on balance, be in the public interest involves identifying those public interests that favour disclosure of the particular information and those that favour non-disclosure, weighing them against each other and making a judgment as to where the balance lies.

The complainant's submissions

39. The complainant advised the agency that she required access to a full and unedited copy of the disputed document, in order to ascertain whether the deleted information contained allegations about her and to enable her to respond to any such allegations. In response to my Legal Officer's view of her complaint, the complainant made the following submissions:

“The Report I request was written by [the third party] in response to my Claim for Worker's Compensation. My claim for Worker's Compensation commenced on 2.6.05. [The third party's] Report was not written until 30.9.05. It may contain information which is constructed in order to damage my reputation and delay progress for my Worker's Compensation Claim...”

“My Worker’s Compensation claim has not yet been accepted by RiskCover. RiskCover have used the contents of [the third party’s] Report to delay progressing my Claim for Worker’s Compensation. It is essential that I obtain an unedited copy of [the third party’s] Report, which was written about me, so that I can respond to comments made by [the third party]”.

“It is unjust to allow one employee [the third party] to write an adverse Report about me and to then attempt to restrict my access to this Report”.

40. The complainant submits that *“I have every right to receive an unedited copy of the [disputed document]”.*

The agency’s submissions

41. In response to my Legal Officer’s view of this complaint, the agency maintains its claim that some of the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act.
42. The agency submits that that information consists of a statement made by a person (other than the complainant) about a matter which, in the agency’s view, that person was not professionally qualified to make.
43. The agency says that it recognises that some of the disputed information contains personal information about both the complainant and about other persons. The agency submits that the release of the disputed information which consists of personal opinions of people other than the complainant does not *“...add value to the public interest in [the complainant] knowing the nature of what was said about her relating to her worker’s compensation claim i.e. the subject matter of the document.”*

The third party’s submissions

44. The third party strongly objects to the disclosure of the disputed information. However, despite being joined as a party to this complaint and being invited to make written submissions to me as to why she considers that the disputed information is exempt under clause 3 or another exemption clause in the FOI Act, I have not received any submissions from the third party.

Consideration

45. The complainant’s right of access is not an unfettered right. Section 10(1) of the FOI Act provides that a person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with the FOI Act.
46. The right created by s.10(1) is subject to a range of exemptions which are designed to protect significant public interests that compete with the public interest in the openness and accountability of government and its agencies. Clause 3 of the FOI Act is intended to protect the strong public interest in the protection and maintenance of personal privacy of individuals about whom

personal information may be contained in documents held by State and local government agencies, especially in circumstances where one or more of those individuals does not consent to their personal information being disclosed to the access applicant.

47. In my view, the FOI Act is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit to the public interest in doing so. I recognise that there is a very strong public interest in the maintenance of personal privacy and that the protection of an individual's privacy is a public interest which is recognised and enshrined in the FOI Act by clause 3. That public interest, in my view, may generally only be displaced by some other considerably stronger public interest that requires the disclosure of private information about other people.
48. Weighing in favour of disclosure, I recognise that there is a public interest in the complainant being able to exercise her right of access under the FOI Act. I also recognise a public interest in a person being informed of all information taken into account by decision-makers in making a decision directly affecting that person's interests – in this case a workers' compensation decision – and being given an opportunity to respond to it if it is adverse to that person. However, I consider that in this case those public interests have been satisfied to a large extent by the disclosure to the complainant of an edited copy of the disputed document, and will be further satisfied by the disclosure to her of another copy of it edited in accordance with this decision.
49. In respect of the information deleted from lines 12-14 of the second paragraph on page 2, I do not consider that the public interests favouring disclosure are sufficient in this instance to outweigh the public interest in the protection of the personal privacy of the individual other than the complainant about whom its disclosure would reveal personal information. Therefore, to the extent that it would reveal personal information about that individual I find that material exempt under clause 3(1). However, I do consider that it would be practicable for the agency to re-edit that part of the document so as to disclose only personal information about the complainant and not about the other individual. That could be done, in my view, by deleting only words 11 and 12 of line 12 and words 2-5 of line 14, but not the other words deleted from the copy given to the complainant by the agency.
50. In respect of the information deleted from lines 6 and 7 of the second paragraph on page 1, however, I consider that the balance of the public interest is different. Although disclosure of that information would reveal personal information about, not only the complainant, but about three other individuals, the only information that would be revealed is about something that occurred at a meeting at which the complainant was present. As the information is already known to the complainant by virtue of her having been present, it seems to me that the personal privacy of the other individuals concerned would not be in any way infringed by disclosure of that information to the complainant. Further, it does not appear to me to be information of the particularly private and personal kind that the clause 3 exemption is designed to protect. Even if that information were to be further disseminated by the complainant, there does not appear to me

to be any potential harm to the public interest which could follow from its disclosure. In my opinion, therefore, the public interest in the complainant being able to exercise her right of access under the FOI Act outweighs any public interest in non-disclosure of that information and I find that it is not exempt.
