

DENT AND KEEP AUSTRALIA BEAUTIFUL

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

**File Ref: 97169
Decision Ref: D0021998**

Participants:

Peter James Dent
Complainant

- and -

Keep Australia Beautiful Council
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access to documents – access to edited copies – correspondence – clause 3(1) – personal information about third parties – balance of public interest.

Freedom of Information Act 1992 (WA) s. 21; Schedule 1 clauses 3, 4;
Glossary.

DECISION

The decision of the agency is confirmed. The matter deleted from Document 1 and Document 4 is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, and the whole of Documents 2 and 3 are exempt under clause 3(1).

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

19th January 1998

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Keep Australia Beautiful Council ('the agency') to refuse access to documents requested by Mr Dent ('the complainant') under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is the former Education Manager of the agency. In March 1997, he commenced a period of sick leave and in April 1997, the agency referred the complainant to an occupational health service ('the Service') for an assessment of his medical condition and his fitness to return to work. Subsequently, the complainant was treated by the Service as a private patient and certain correspondence passed between the Service and the agency as a result of this arrangement.
3. On 8 August 1997, the complainant lodged an application with the agency seeking access under the FOI Act to all letters from the agency to the Service concerning him. By letter dated 22 September 1997, the General Manager of the agency made the decision on access. Four documents were identified as falling within the scope of the complainant's access application. Access to three documents was refused on the ground that the documents are exempt under clause 4(3) of Schedule 1 to the FOI Act. The complainant was given access to an edited copy of a fourth document with exempt matter deleted.
4. As the principal officer of the agency made the decision on access, internal review of the agency's decision was not available to the complainant. Thereafter, by letter dated 24 September 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

4. I obtained the disputed documents from the agency and directed a member of my staff to make further inquiries in respect of this matter. Preliminary conferences were held with the agency and with the complainant to determine whether this complaint could be resolved through conciliation and negotiation. Following those discussions, the agency agreed to provide the complainant with access to an edited copy of one document to which access had previously been denied. However, the agency maintained its decision in respect of the other disputed documents.
5. After examining the disputed documents and considering the material before me, on 17 December 1997, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency had not established a valid claim for exemption based on clause 4(3) of

Schedule 1 to the FOI Act. However, I was satisfied that most, but not all, of the matter to which access had been refused was, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. It was also my preliminary view that three sentences in Document 1 may not be exempt. Subsequently, the agency decided to disclose that matter to the complainant and effectively withdrew its claims for exemption under clause 4(3) on the basis that the balance may be exempt under clause 3(1).

6. No further submissions were received from either party, but the complainant did not withdraw his complaint.

THE DISPUTED DOCUMENTS

7. The four disputed documents are briefly described as follows:

Document 1	letter dated 20 May 1997, from the agency to the Service
Document 2	letter dated 25 June 1997, from the agency to the Service
Document 3	letter dated 25 June 1997, from the agency to the Service
Document 4	letter dated 24 July 1997, from the agency to the Service

THE EXEMPTION

Clause 3 – Personal information

8. Clause 3, so far as is relevant, provides:

“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 under subclause (2) merely because its disclosure would reveal personal information about the applicant.*

(3)...

(4)...

(5)...

(6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*

9. In the Glossary in the FOI Act, “personal information” is defined to mean:
- “...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”.*
10. In a number of my formal decisions, I have expressed the view that the purpose of the exemption in clause 3 is to protect the privacy of individuals. In my view, the exemption is a recognition by Parliament of the fact that all Government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause. The definition of “personal information” in the Glossary 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 matter under clause 3(1).
11. I have examined each of the disputed documents. I am satisfied that the matter deleted from Documents 1 and 4 and the whole of Documents 2 and 3 comprise personal information as defined in the FOI Act about a third party. In my view that information is, on the face of it, exempt under clause 3(1). Although the disputed documents also contain some personal information about the complainant, in my view that information is so entwined with the personal information about a third party that it could not be disclosed to the complainant without also disclosing the personal information about a third party.
12. Clause 3 is subject to a number of limits on exemption. In my view the only limit which may apply in this instance is the limit in clause 3(6) which provides that matter is exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

PUBLIC INTEREST

13. The complainant bears the onus of satisfying me that disclosure of personal information about a third party would, on balance, be in the public interest. The complainant made a number of allegations concerning the agency’s treatment of him and his desire for fair treatment. I have considered those matters in weighing up the competing public interests for and against disclosure and in making a judgement as to where the balance lies.

14. The FOI Act is intended to open the process of decision-making by government agencies to public scrutiny, and to thereby promote accountability and enable public participation in that process. I recognise that there is a public interest in an applicant being able to exercise his or her right of access under the FOI Act and to be informed of information about him or her that is held by government agencies. I also recognise a public interest in ensuring that agencies deal fairly with employees and with citizens and s.21 of the FOI Act requires that the fact that a document contains personal information about an applicant is to be considered as a factor in favour of disclosure.
15. However, FOI is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable public benefit. Therefore, I also recognise that there is a strong public interest in maintaining personal privacy and I consider that public interest to have considerable weight in the balancing process.
16. Whilst there may be circumstances where the personal privacy of one person must give way to a stronger competing public interest which requires the disclosure of private personal information, this is not one of those instances. Taking into account the nature of the information in the disputed documents, I am not persuaded that the public interest in maintaining privacy is outweighed by any other competing public interest in this instance. Accordingly, I find the matter in dispute exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse the complainant access to that matter.
