

DI-PAOLO AND SWAN

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

**File Ref: 96191
Decision Ref: D00397**

Participants:

Vito Di-Paolo
Complainant

- and -

Shire of Swan
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - matter deleted from filenote of investigation - information identifying a third party - clause 3(1) - personal information - balance of public interest.

Freedom of Information Act 1992 (WA) s.102(3); Schedule 1 clause 3.

Health (Asbestos) Regulations 1992 (WA) Regulation 4.

DECISION

The decision of the agency is confirmed. The matter to which access has been refused is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

4th February 1997

REASONS FOR DECISION

BACKGROUND

1. This is an external review by the Information Commissioner arising out of a decision of the Shire of Swan ('the agency') to refuse Mr Di-Paolo ('the complainant') access to certain matter contained in a document of the agency requested under the provisions of the *Freedom of Information Act 1992* ('the FOI Act').
2. On 22 May 1992, the *Health (Asbestos) Regulations 1992* ('the regulations') came into effect and regulation 4 declared asbestos to be a hazardous substance. The regulations govern, *inter alia*, the sale or supply of asbestos cement sheet and its use and disposal. Since the enactment of the regulations, the complainant has unsuccessfully sought the removal of a secondhand asbestos fence constructed at the rear of his property in Middle Swan. The complainant claims the fence was constructed illegally after 22 May 1992. Although his claims were investigated by the agency, it was unable to resolve the differing recollections of the relevant parties as to the date of construction of the offending fence and, on the basis of legal advice, no action was taken by the agency against the party who is alleged to have erected the fence.
3. By letter dated 9 September 1996, the complainant applied to the agency under the FOI Act for access to information relating to the erection of the asbestos fence. In particular, the complainant informed the agency that he was seeking the name of a person ('the third party') who is alleged to have supplied the agency with information concerning the erection of the offending fence.
4. By letter dated 15 October 1996, the agency explained that the FOI Act allows for access to information contained in documents only and informed the complainant that it had previously supplied him with copies of all relevant documents concerning this matter. In respect of the complainant's request for the identity of the person concerned with passing information to the agency, the agency informed the complainant that that information was contained in a document entitled "*Investigation of Construction of Asbestos Fence No 23 (Lot 75) Toodyay Road, Middle Swan*" ('the report'). The agency had already given the complainant access to an edited copy of that document with matter identifying the third party deleted. The agency informed the complainant that it had consulted with the third party who objected to disclosure of information in the document which would identify the third party. The agency further informed the complainant that the matter had been deleted on the basis that it is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

5. The complainant sought internal review of the agency's decision and, on 3 December 1996, the internal reviewer confirmed the agency's decision to refuse access to the matter deleted from the document. On 19 December 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

6. I obtained a copy of the document containing the disputed matter and reviewed the agency's FOI file maintained in respect of this matter. I received and considered submissions from the parties. After examining the document and considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including reasons for that view. It was my preliminary view that the matter deleted from the document is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
7. On 28 January 1997, I received a further submission on behalf of the complainant which was directed at the issue of whether disclosure of the deleted matter would, on balance, be in the public interest. That submission has not dissuaded me from my preliminary view. My reasons follow.

THE DOCUMENT

8. The document containing the matter sought is a file note comprising three pages with a copy of a map attached to it. The file note contains notes of inquiries conducted by the agency from 2 to 29 June 1995 in respect of the complainant's complaint. The complainant has been given access to an edited copy containing all the information - including the names and addresses of a number of people spoken to and details of what they said - except for 17 words on page 2 which would identify the third party. It is that matter only (those 17 words) that is the subject of this decision.

THE EXEMPTION

9. Clause 3 of Schedule 1 to the FOI Act, 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

...

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

10. 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.*”
11. As I have said before, I consider the exemption in clause 3(1) is designed to protect the privacy of persons whose personal information may be contained in documents held by State and local government agencies. 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, *prima facie*, exempt matter under clause 3(1).
12. In this instance, the disputed matter consists of 17 words which appear on page 2 of the report. Those words include the name and address of a third party and other identifying information about that person. I am satisfied that the deleted matter comprises “personal information” as defined in the FOI Act. In my view, that information is clearly exempt matter under clause 3(1).
13. Clause 3 is limited by sub-clauses (2)-(6) inclusive. In the context of this complaint, the only relevant limitation is that contained in sub-clause (6) which provides that matter is not exempt under sub-clause (1) if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the complainant bears the onus of persuading me on that point.

Public interest

14. The submissions made to me on behalf of the complainant in this matter concern, in the main, the merits of his complaint to the agency about the fence and criticisms about the manner in which the agency dealt with that complaint. In support, I was supplied with a copy of a report from an environmental officer to the Asbestos Diseases Society of Australia Inc recommending replacement of the fence and removal and disposal of roofing sheets. Although the merits of the complaint about the fence and the manner in which the agency dealt with the complaint may have some relevance to a consideration of whether there is any public interest in disclosure of the deleted matter, they are not matters for my

- determination. I am concerned only with the question of whether the matter deleted from the document is exempt from disclosure under the FOI Act.
15. The complainant submits that he seeks access only in order that he may assess the third party's credibility as a witness in his dispute with the agency. It is also submitted for the complainant that the public interest is best served by an investigation of all the facts surrounding the erection of what he claims to be an illegal asbestos fibre cement fence.
 16. Whilst I accept the complainant's claim that there is a public interest in ensuring a full investigation by the agency of all the facts concerning complaints of this nature, I do not consider that providing the complainant with access to personal information concerning a third party would add to that aspect of the public interest. Further, I do not consider that public interest, or any of the other aspects of the public interest I have considered, to require the complainant to be enabled to assess the credibility of the third party in this instance.
 17. I recognise a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act and to obtain access to documents held by State and local government agencies. In this instance, the complainant has been able to exercise that right and he has been given access to all relevant documents, save for 17 words deleted from one document.
 18. I recognise, in particular, a public interest in a person who makes a complaint to a government agency, such as a local council, being properly informed of what action was taken by the relevant agency in respect of investigating the complaint and what the outcome of the investigation was. However, my view, in this instance, that public interest has been satisfied by way of both meetings and correspondence between the agency and the complainant in the course of the agency dealing with the complaint to the agency.
 19. That public interest has also been satisfied by the agency giving the complainant access to all relevant documents and, in particular, in giving the complainant access to the disputed document with only the personal information about the third party, but none of the substance, deleted. The edited copy of the document contains a reasonably detailed outline of the action taken by the agency in respect of the complaint about the fence. It contains a brief account of the inquiries undertaken by the agency sufficient to inform the complainant of what was done and the people spoken to, other than the third party. I do not consider that this public interest requires disclosure of the name and address of the third party.
 20. Weighing against disclosure, in my opinion, is a public interest in the agency maintaining its ability to obtain information in disputes such as these by way of ratepayers or others coming forward voluntarily to provide information which may be of assistance to the agency in determining how to resolve the matter. It is for the agency to assess the value and the credibility of the information provided in determining how it should deal with the complaint.
 21. Also weighing against disclosure, I recognise a public interest in protecting the privacy of persons about whom personal information is contained in documents

held by State and local government agencies. In my view, in the balancing process, that public interest will generally prevail unless there is some very strong countervailing public interest that warrants the public disclosure of private information.

22. In this instance, those aspects of the public interest which, in my view, might ordinarily favour disclosure of documents of the nature of the disputed document have been satisfied both by the provision to the complainant of a considerable amount of information by the agency in the course of its dealing with the complaint about the fence and by the access the complainant has already been given. I do not consider that any public interest there may be in disclosure of the disputed matter outweighs the public interest in maintaining the privacy of third parties having dealings with government bodies.
23. In balancing the competing interests, the complainant has not persuaded me that there is any countervailing public interest which should prevail over the protection of personal privacy. Therefore, I find the matter deleted from the report is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
