

WINSLADE AND SWAN

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

**File Ref: 95191
Decision Ref: D01096**

Participants:

Cyril Harry Winslade
Complainant

- and -

Shire of Swan
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - reverse FOI application - letter of complaint to local authority - clause 3 - personal information - public interest factors for and against disclosure - public interest in maintaining privacy of third parties - clause 8(2) - confidential communications - whether information is information of a confidential nature obtained in confidence.

Freedom of Information Act 1992 (WA) ss. 21, 24, 72(1)(b), 75(1), Schedule 1 clauses 3(1), 3(2), 3(6), 8(2), Glossary in Schedule 2.

Re Morton and City of Stirling (Information Commissioner, WA, 5 October 1994, unreported).

DECISION

The decision of the agency is varied. In substitution it is decided that the matter described in paragraph 15 of this decision is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, and the access applicant is entitled to have access to a copy of the document from which exempt matter has been deleted.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

29th January 1996

REASONS FOR DECISION

BACKGROUND

1. This is a “reverse FOI” complaint. That is, it is a request by a third party for external review by the Information Commissioner arising out of a decision of the Shire of Swan (‘the agency’) to grant the access applicant access to a document of the agency, namely, a letter written by the third party, Mr Winslade (‘the complainant’).
2. On 3 July 1995, the access applicant lodged a request with the agency under the *Freedom of Information Act 1992* (‘the FOI Act’) seeking access to a letter written by the complainant to the agency “...*alleging that I have done detrimental things to him and other allegations.*” The agency consulted with the complainant, who objected to disclosure of the document, and decided nonetheless that access would be granted to that document. The complainant sought internal review of the agency’s decision and, on 8 September 1995, the agency confirmed its initial decision to provide the access applicant with access to the document.
3. However, the agency deferred giving access to enable the complainant to exercise his right to have the decision reviewed externally by the Information Commissioner. On 2 October 1995, the complainant applied to the Information Commissioner for external review of the decision.

REVIEW BY THE INFORMATION COMMISSIONER

4. On 9 October 1995, I informed the agency that I had received this complaint and, exercising my powers under ss.75(1) and 72(1)(b) of the FOI Act, I obtained a copy of the disputed document and the agency’s FOI file maintained in respect of this matter.
5. After examining those documents and other information and submissions provided to me by the complainant and the access applicant, I provided the parties with my preliminary view and reasons for that view on 4 January 1996. It was my preliminary view that the disputed document contained personal information about third parties, including the complainant and that that information was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
6. After receiving my preliminary view, the complainant and the access applicant provided further submissions.

THE EXEMPTIONS

7. There is only one document in dispute between the parties. That document is a letter dated 25 June 1995 from the complainant to the Chief Executive Officer of the agency. Although the complainant did not specifically refer to any of the exemption clauses in Schedule 1 to the FOI Act (nor would I expect him to necessarily do so), in his submission to me he stated that the letter was a personal letter to the Chief Executive Officer of the agency and that it was in the nature of a complaint against certain of the staff of the agency. Accordingly, it appears to me that the complainant may be seeking to rely upon clause 8(2) as a ground for non-disclosure.

(a) Clause 8 - Confidential communications

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

“8. Confidential communications

(2) *Matter is exempt matter if its disclosure -*

- (a) *would reveal information of a confidential nature obtained in confidence; and*
- (b) *could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.*

Limits on exemption

(3)...

(4) *Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest."*

9. There are two parts to the exemption in clause 8(2) and both parts must be satisfied in order for a *prima facie* claim for non-disclosure to arise. In this instance, other than the complainant's assertion, there is no material before me to establish that the document contains information of a confidential nature obtained in confidence - that is, in my view, both given and received in confidence - by the agency. On that basis, I am not satisfied that a claim for exemption under clause 8(2) could be made out. Accordingly, I find that the document is not exempt under clause 8(2) of Schedule 1 to the FOI Act.

(b) **Clause 3 - Personal information**

10. 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).”

11. In the Glossary in Schedule 2 to the FOI Act, "**personal information**" is defined 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.”

12. I am satisfied, from my own examination of the document, that it contains personal information about the complainant, as well as the access applicant and other third parties. In my view, the personal information about the complainant and parties other than the access applicant is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. However, clause 3(2) of Schedule 1 provides that matter is not exempt merely because its disclosure would reveal personal information about the applicant. The personal information about the access applicant contained in the document is not, therefore, exempt under clause 3(1).

13. The personal information about parties other than the access applicant which is contained in the document, however, is *prima facie* exempt under clause 3(1). Further, in a submission to me the access applicant has clearly indicated that he requires access only to those parts of the disputed document which contain allegations and information about him and he does not require access to personal information about the complainant and other third parties. Accordingly, I consider the personal information about parties other than the access applicant which is contained within the document to be outside the scope of the complaint. In any event, as it has not been established in respect of that matter that any of the limits on the exemption apply, that matter is clearly exempt, in my opinion, under clause 3(1).

14. Some of those parts of the document which contain mainly personal information about the access applicant also, to some extent, include some information that may be characterized as personal information, as defined in the FOI Act, about the complainant which would be, *prima facie*, exempt from disclosure under

clause 3(1) of Schedule 1. However, clause 3(1) is limited by a “public interest test” provided by clause 3(6). That is, matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. In considering where the balance of the public interest lies in respect of that matter, or the effect that disclosure of that matter might have, section 21 requires that, as the access applicant has requested access for a document containing personal information about himself, the fact that the matter is personal information about him must be considered as a factor in favour of its disclosure.

15. I consider that there is a strong public interest in maintaining the privacy of individuals whose personal information is contained in a document held by a local government agency. I have also previously recognized that there is a public interest in maintaining an avenue of complaint to local authorities (*Re Morton and City of Stirling* (5 October 1994, unreported)). However, I also recognize that there is a public interest in a person being informed of the nature of any allegations against him or her and being given an opportunity to respond to those allegations. More broadly, I also consider that there is a public interest in a person being able to access documents containing personal information about him or her which are held by a State or local government agency. In this instance, the agency has confirmed that it did not inform the access applicant of all matters raised in the disputed document which concern the access applicant as the document was expressed to be, and taken by the agency to be, a complaint about the agency’s handling of matters previously brought to its attention by the complainant.
16. In balancing those competing public interests in this case, I consider that disclosure of the very small amount of personal information about the complainant which is entwined with the personal information about the access applicant in the document would be in the public interest, in order that he may be fully informed of the allegations and information about him given to the agency by the complainant. I add that, although I do not necessarily consider that the public interest requires disclosure of the identity of the source of such information as well as the information itself, in this instance protection of the identity of the complainant is not an issue as it is already known to the access applicant. If not earlier, it was confirmed when the agency confirmed that it had a letter as described in the access application.
17. Section 24 of the FOI Act provides that, where an access applicant requests access to a document containing exempt matter and it is practicable to give access to a copy of the document from which exempt matter has been deleted, and the access applicant indicates that he or she would wish to be given access to an edited copy, the agency must give access in that form. The access applicant’s submission to me clearly indicates that he would wish to be given access to an edited copy of the disputed document from which personal information about other parties has been deleted. In my view, other than the very small amount of personal information about the complainant which may be contained within the personal information about the access applicant, it is practicable to delete from the disputed document the personal information about the complainant and other third parties, to which the access applicant does not seek access and which, in

any event, I find to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

18. Accordingly, I find that the matter described below is exempt under clause 3(1) of Schedule 1, but the document is not otherwise exempt. The access applicant is entitled to be given access to a copy of the document with the exempt matter deleted. The matter which I have found to be exempt consists of the following:

- page 1 - all of paragraphs 1 - 4 inclusive;
- page 3 - all of paragraph 1;
 - the last six words in line 13 and the first six words of line 14 of paragraph 2;
 - line 1, the first seven words of line 2, the last nine words of line 4 and all of lines 5 - 15 inclusive of paragraph 3 (NB paragraph 3 appears to be two paragraphs inadvertently joined together, to which I have together referred as paragraph 3);
 - all of lines 1 - 11 and the final sentence in lines 13 - 15 of paragraph 4; and
- page 4 - the last sentence, in lines 10 -13 of paragraph 2;
 - all of paragraph 3 except for line 3, the last six words of line 6 and the first five words of line 7 and all of line 10;
 - the signature of the complainant and the hand-written note of the complainant's telephone number.
