

HAYES AND HOMESWEST

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

**File Ref: 94030
Decision Ref: D01194**

Participants:

William Hayes
Applicant

- and -

**The State Housing Commission of
Western Australia (Homeswest)**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents of an agency - edited access - personal information - whether unedited disclosure contrary to the public interest - confidential communications - personal information - protection of personal privacy - public interest in maintaining privacy - whether disclosure is on balance in the public interest - factors relevant to public interest - privacy considerations.

Freedom of Information Act 1992 (WA) ss.24; 68(1); 75(1); Schedule 1; clause 3.

Re Kobelke and Minister for Planning and Others (Information Commissioner WA, 27 April 1994, unreported).

Re Veale and Town of Bassendean (Information Commissioner WA, 25 March 1994, unreported).

DECISION

The decision of the agency of 23 February 1994 is confirmed. The matter to which access has been refused is exempt matter under clause 3(1) of the FOI Act.

**B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER**

17th June 1994

REASONS FOR DECISION

BACKGROUND

1. This is an application for review by the Information Commissioner arising out of a decision of Homeswest ('the agency') to refuse Mr Hayes ('the applicant') access to certain documents held on his personal file and to provide edited access to other documents on that file.
2. The background to this application is that the applicant has been a tenant of the agency for a number of years. He has also performed duties as caretaker in the block of units where he resides. Over a period of some years the applicant has written to various authorities, public figures and the agency concerning the activities of some of the other tenants of the agency. In turn some of those tenants have complained to the agency about him. The net result has been the development of a degree of friction between the applicant and his neighbours. The agency inquired into all matters brought to its attention and the applicant was subsequently relieved of his duties as caretaker in 1985.
3. On 27 October 1993 the applicant wrote to the agency referring to his earlier attempts to obtain his personal file. He indicated that he was now seeking access to these documents under the *Freedom of Information Act 1992* ('the FOI Act').
4. The FOI Act was not proclaimed until 1 November 1993. However, as the applicant's request was received by the agency on 4 November 1993 it was subsequently dealt with by that agency as a formal request under the FOI Act.
5. On 17 December 1993 the agency decided to provide the applicant with access in full to 154 separate documents (folios), edited access to 9 folios and to refuse access to a further 10 folios. Exemption under clause 3(1) of schedule 1 to the FOI Act, (Personal information), was claimed by the agency for the edited information and for the documents to which access was denied.
6. On 8 February 1994 the applicant sought internal review by the agency of this decision. On 23 February 1994 the original decision was confirmed by Mr. P. Woodworth, Manager, Records Management. Mr Woodworth confirmed that the documents and parts of documents to which access had been denied were claimed to be exempt under clause 3(1) of Schedule 1 to the FOI Act.
7. On 28 March 1994 the applicant sought external review by the Information Commissioner of the agency's decision of 23 February 1994. He also claimed that documents were missing from the agency file and that there was another file in existence.

REVIEW BY THE INFORMATION COMMISSIONER

8. Upon receipt of this complaint my office advised the agency in accordance with the requirements of s.68(1) of the FOI Act and I sought the production of the documents in dispute in accordance with my authority under s.75(1). I considered it necessary to view these documents in order to decide whether the agency's claim for exemption was valid and whether the editing appropriate in the circumstances. The documents were duly provided to me by the agency on 7 April 1994, together with edited copies to enable a comparison to be made where edited access was proposed.
9. On 31 March 1994 the applicant was also requested to provide me with a copy of his original application to the agency, the notice of decision and a list of the documents he alleged were missing. These were received from him on 12 April 1994.
10. The applicant's list of missing documents and his claim in relation to a second file were also brought to the attention of the agency. I requested a further search be conducted in relation to these matters on 15 April 1994. The agency responded by letter on 20 April 1994 stating that the documents claimed to be missing from the file, could not be located and no other file relating to the applicant could be found.
11. However, during the course of the further search conducted by the agency, an additional document that had been omitted from the notice of decision was discovered and the agency agreed to release an edited copy of this document to the applicant.
12. Following the examination of the documents in dispute provided by the agency, I formed a preliminary view that the release of further documents was possible and on 10 May 1994 I advised the agency of my preliminary view. The agency subsequently reviewed its original claims for exemption with respect to 6 documents and, on 13 May 1994, agreed to release 1 document in its entirety and to provided edited access to another 5 documents. After my office had consulted with a third party referred to in the documents in dispute, and obtained his consent to release, edited access was also provided to another 2 folios.
13. I also formed a preliminary view that the remaining documents contained exempt matter under clause 3 of Schedule 1 to the FOI Act and on 23 May 1994 and 10 June 1994, the applicant was advised of my preliminary view that the editing of certain documents was appropriate and that the remaining documents to which he had been refused access contained personal information about people other than himself. I also advised him that the agency's attempts to locate the documents and the second file alleged to be missing had not been successful. I accepted the agency's assurances that all reasonable attempts to locate any further material had been carried out and, in the circumstances, I was satisfied that all reasonable attempts had been made by the agency to locate these documents.

14. Although my office attempted to conciliate this complaint to a satisfactory conclusion for both parties, the applicant was unable to accept my preliminary view and he pressed me for a formal decision in this matter. It is my decision that the documents and parts of documents to which access has been denied, are exempt under clause 3(1) of Schedule 1 to the FOI Act. My reasons follow.

THE DISPUTED DOCUMENTS

15. The documents supplied to the applicant in edited form consist of file notes written by various employees of the agency regarding the ongoing dispute between the applicant and one of his neighbours. Some of these notes refer to the views expressed by other tenants in the complex about the behaviour of the applicant. These documents are identified as folios 35, 36, 37, 38, 41, 69, 74, 75, 76, 77, 80, 81, 83, 92, 94, 95, 171 and 172.
16. The documents to which access has been refused in total consist of file notes and letters from various agencies and other persons involved in the dispute between the applicant and one neighbour in particular. These documents are identified as folios 70, 71, 72 and 73.
17. None of the documents or parts of documents to which access has been refused contain any information about the applicant. The agency construed the applicant's request for access to his personal file as a request for personal information and deleted references to third parties in accordance with the provisions of s.24 of the FOI Act. Having examined all relevant material, including the applicant's original application I am also of the view that the applicant is seeking access to his personal information only. I am further lead to this view by reference to the material set out in the letters between my office and the applicant during the course of dealing with this complaint.

THE EXEMPTION

18. The agency claimed exemption for the documents under clause 3. Clause 3 (Personal information) 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)...

(3)...

(4)...

(5)...

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

19. In the Glossary, "**personal information**" means *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.*

20. As I have stated in previous decisions (see *Re Kobelke and Minister for Planning and Others* (27 April 1994, unreported); *Re Veale and Town of Bassendean* (25 March 1994, unreported)), the purpose of the exemption in clause 3 is to protect the privacy of individuals. It is the identity of an individual, which must be apparent, or which can reasonably be ascertained from an actual disclosure of the document, that is relevant for the purpose of this exemption. Although in some instances, the mere mention of a person's name may reveal "personal information" about that individual (such as the identity of an informer), more is normally required in order to establish this exemption. Parts (a) and (b) of the definition suggest that disclosure of the document, ordinarily, must reveal something more about an individual, other than his or her name to attract the exemption.

21. The protection of personal privacy is an important feature of the legislation in Western Australia and there is a public interest in maintaining that privacy of all Western Australians. However, there is also a public interest in a person being made aware of, and given an opportunity to answer, allegations made against him to government agencies.

22. I am satisfied from an examination of the documents concerned that the information kept from the applicant is personal information about other people. It consists of names and addresses as well as references to gender, employment and family connections where it is possible to identify the person.

23. I am also satisfied from reading the documents that the applicant's right to know what has been said about him is satisfied by the agency providing edited copies of relevant documents to him. From the history of this matter, it appears to be more than a mere possibility that disclosure of this personal information, may cause further conflict between the applicant and the people mentioned in the

documents. On balance therefore, I do not consider it to be in the public interest to disclose that information.

24. In my view, the public interest in protecting the privacy of other people is not outweighed by the public interest in the applicant being able to exercise his rights of access under the FOI Act.
