

GRAY AND UWA

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

**File Ref: 94056
Decision Ref: D01294**

Participants:

Bruce Nathaniel Gray
Applicant

- and -

The University of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - internal report - edited access - personal information about a third party - public interest in maintaining privacy - public interest in complainant being informed of action taken by agency and outcome of complaint - whether disclosure is on balance in the public interest - privacy consideration.

Freedom of Information Act 1992 (WA) ss.68(1); 75(1); Schedule 1 clause 3(1).
Freedom of Information Regulations 1993 (WA) Regulation 8.

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).

Re Hayes and The State Housing Commission of Western Australia (Homeswest) (Information Commissioner WA, 17 June 1994, unreported).

DECISION

The decision of the agency of 15 March 1994 is confirmed. The matter to which access has been refused is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

**B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER**

23rd June 1994.

REASONS FOR DECISION

BACKGROUND

1. This is an application for review by the Information Commissioner, arising from a decision of the University of Western Australia ('the agency') to grant Professor Gray ('the applicant') edited access to a document described as a report entitled "Resource Allocation within the Department of Surgery of the University of Western Australia" ('the department').
2. The applicant is a Professor of Surgery located at one of four units operated by the department. In 1992 the Vice-Chancellor of the agency commissioned Professor C.A. Michael to inquire and report on resource allocation within the department. That report was commissioned by the Vice-Chancellor as a result of allegations of improper behaviour made by the applicant and another person, on behalf of some members of the department. As a result of the applicant's criticism of the initial report which was dated 3 April 1992, Professor Michael undertook further inquiries and produced a supplementary report dated 28 October 1992 ('the Michael Report'). It is the Michael Report which is the subject of this complaint.
3. On 2 November 1993 the applicant exercised his right of access under the *Freedom of Information Act 1992* ('the FOI Act') and formally applied to the agency for a copy of the Michael Report and other documents relating to the inquiry conducted by Professor Michael.
4. On 16 December 1993 the agency provided the applicant with an edited copy of the Michael Report. The agency claimed that the edited parts of the Michael Report were exempt under clause 3(1) of Schedule 1 to the FOI Act on the grounds that the edited parts contained personal information about third parties. The agency advised the applicant that other documents to which access had been sought, namely, tapes and transcripts of evidence from the enquiry, were no longer in existence.
5. On 20 January 1994 the applicant requested internal review of the agency's decision to provide edited access to the Michael Report. The internal review was duly conducted, such review being completed by the Registrar of the agency, Mr M. Orr, on 15 March 1994. Mr Orr varied the agency's original decision by providing access to certain parts of the edited material but affirmed the agency's claim that the balance of the edited material was exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act.
6. On 16 March 1994 the applicant sought external review by the Information Commissioner of the agency's decision of 15 March 1994. However, the applicant's complaint was not formally accepted as a valid complaint by my office until 16 May 1994 as the applicant had not provided my office with a copy of the agency's Notice of Decision as required by Regulation 8 of the *Freedom of*

Information Regulations 1993. The applicant was unable to provide my office with a copy of that Notice of Decision sooner, as he was out of the State.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 20 May 1994, pursuant to my obligations under s.68(1) of the FOI Act, I notified the agency of this complaint and sought production of the original document in dispute in accordance with my power under s.75(1) of the FOI Act. I considered it was necessary to view the document in order to determine the validity of the agency's claim for exemption for parts of the document and whether the editing was appropriate in the circumstances. The Michael Report was provided to me by the agency on 24 May 1994 together with further reasons to justify the exemptions claimed.
8. Initially, my office attempted to conciliate this complaint, as it was my preliminary view that the editing appeared appropriate in order to preserve the privacy of third parties referred to in the Michael Report. My preliminary view was conveyed to the applicant on 30 May 1994 but he declined to accept this view and requested a formal decision. On 10 June 1994 I provided both the applicant and the agency with an opportunity to make further submissions to support their respective claims about the disputed documents. The agency provided me with a further written submission on 15 June 1994. No additional material was supplied by the applicant.

THE DISPUTED MATTER

9. The Michael Report is a confidential report of 12 pages entitled "Resource Allocation within the Department of Surgery of the University of Western Australia" dated 28 October 1992. It is addressed to the Vice-Chancellor from CA Michael and purports to be a supplementary report.
10. The edited parts of this document to which access has been denied consist of the following:
 - (i) page 2 - the final sentence in the penultimate paragraph;
 - (ii) page 4 - the third sentence in the second paragraph;
 - (iii) page 4 - the first sentence in the final paragraph; and
 - (iv) page 5 - the names in sentences 2 and 3 in paragraph 2.
11. The agency claims that this material consists of personal information about third parties but does not contain information about the applicant and, therefore, the

agency claims the matter is exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act.

THE EXEMPTION

12. 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."*

13. In the Glossary in 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."*

14. 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); *Re Hayes and State Housing Commission of Western Australia (Homeswest)* (17 June 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.

15. I also said in *Re Kobelke* that the protection of personal privacy is an important feature of the FOI legislation in Western Australia and there is a public interest in maintaining that element of privacy for all Western Australians. However, there is also a public interest, which I recognise, in this applicant and others being able to exercise their rights of access under the FOI Act. These two competing public interests must be balanced by the agency, in the first instance, and then my office on external review, before a decision is made about where that balance should lie.
16. I am satisfied, from my examination of the unedited original of the Michael Report, that it contains personal information about third parties other than the applicant. The information, in general terms, identifies those third parties by name and includes opinions and conclusions drawn by those third parties about other third parties. It also consists of opinions and conclusions drawn by the authors of the Michael Report about third parties.
17. The agency claimed that there was no public benefit to be gained by releasing this information against the wishes of a third party. Although the agency did not identify any particular detriment to the public interest it found the balance of the public interest was in the protection of the individual privacy of the third parties referred to in the Michael Report.
18. The applicant claimed that the edited information was the essence of the report and that the report was commissioned at his request. It was his view that the purpose of the inquiry would be frustrated by the removal of this information. He told a member of my staff that prior to participating in the inquiry he was promised a complete copy of the report and, on this basis, he should be given an unedited copy.
19. Without more persuasive evidence from the applicant, I do not accept his view that the purpose of the inquiry would be frustrated by the refusal of access to the deleted matter. In my view, it is clear from the Michael Report itself that the purpose of the inquiry was for Professor Michael to investigate and report to the agency about a particular difficulty that had been identified within the department by the applicant and another person and to recommend procedures to deal with this problem. The report is addressed to the Vice-Chancellor and it is for the Vice-Chancellor to act upon the recommendations of the Michael Report, or otherwise, not the applicant. In my view, it does not follow that non-disclosure to the applicant of the unedited Michael Report will frustrate the purpose of the inquiry as asserted by the applicant. Further, what the applicant was or was not promised by the agency as to access before his FOI application is not relevant to my function in respect of his complaint to me, which I must deal with in accordance with the terms of the FOI Act.
20. The personal privacy of third parties which the FOI Act recognises, and seeks to protect, is an important public interest factor which may only be displaced by strong and convincing arguments. In this instance, the only countervailing public interest, if indeed there is one, that has been identified by the applicant is his right to know.

21. The applicant submitted, and it is confirmed in the Michael Report itself, that the inquiry arose as a result of the applicant raising certain matters with the agency. I accept that there is a public interest in a person who complains to an agency, whether on his or her own behalf or on behalf of others, being informed as to how the agency dealt with his or her complaint, and what the outcome of that dealing was, particularly where the complainant is an employee of the agency. However, in my view, in this case that public interest is satisfied by disclosure of the edited document, which clearly shows what action was taken by the agency in respect of the matters raised by the applicant and what recommendations were made to the Vice-Chancellor by Professor Michael.

22. The minimal amount of deleted matter, in my view, contains personal information about third parties. Having regard to the submissions made and to the material before me I am not satisfied that, on balance, the disclosure of that personal information would be in the public interest. Therefore, I find that matter to be exempt from disclosure under clause 3(1) of Schedule 1 of the FOI Act.
