

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

**File Ref: F2004058  
Decision Ref: D0142004**

Participants:

**Ronald Albertus Van de Klashorst**  
Complainant

- and -

**City of Melville**  
Respondent

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – refusal of access - documents on personnel file - clause 3(1) - whether information is personal information - whether information about third parties is prescribed details under clause 3(3) - clause 3(6) - whether disclosure, on balance, is in the public interest - section 24 - whether practicable to give access to an edited copy.

*Freedom of Information Act 1992*: sections 21, 24, 39(3)(a), 102(3); Schedule 1, Clause 3(1), 3(3), 3(6), 11(1)(c); Schedule 2, Glossary

*Freedom of Information Regulations 1993*: regulation 9(1)

*Equal Opportunity Act 1984*: section 86

*Equal Opportunity Regulations 1986*

*Police Force of Western Australia v Winterton* (1997) WASC 504

## DECISION

The decision of the agency to refuse access to the matter remaining in dispute following conciliation, referred to in paragraph 10, is confirmed. Document 3 and the disputed information in Document 4 is exempt under clause 3(1) of Schedule 1 to the FOI Act.

D A WOOKEY  
A/INFORMATION COMMISSIONER

24 August 2004

## REASONS FOR DECISION

1. Mr Van de Klashorst ('the complainant') seeks external review by the Information Commissioner of a decision made by the City of Melville ('the agency') to refuse access to certain documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

## BACKGROUND

2. The complainant is a Community Liaison and Security Service Officer employed by the agency. On 24 December 2003, he applied to the agency under the FOI Act for access "*to a copy of the entire contents of my personnel file or files...*".
3. On 5 January 2004, the agency notified the complainant of its decision "*... to grant you edited access to your personnel file*" but refused him access to three documents which it described as follows:  
  
*"Two of the documents are from co-workers and relate to an incident involving a poster of a dog in a suit...A third document, also from a co-worker is a detailed description of a chain of events over three days in August 2003, provided to the Manager of Neighbourhood Amenity, in relation to working hours and a GPS print out."*
4. The agency claimed that those three documents were exempt under clause 11(1)(c) of Schedule 1 to the FOI Act.
5. Since the agency's decision was made by the Acting Chief Executive Officer, internal review was not available to the complainant pursuant to section 39(3)(a) of the FOI Act. Accordingly, on 19 March 2004, the complainant applied directly to me for external review.

## REVIEW BY A/INFORMATION COMMISSIONER

6. I obtained the disputed documents and the agency's FOI file relevant to this matter. My office consulted with two third parties who consented to the disclosure of personal information about them to the complainant and, in consequence, the agency gave the complainant access to two of the documents in dispute. Following further discussions with my office, the agency gave the complainant access to an edited copy of another document (Document 4 on the agency's schedule of documents) and, in addition, claimed that the remaining material in dispute was also exempt under clause 3(1) of Schedule 1 to the FOI Act.
7. On 23 June 2004, I informed the parties, in writing, of my preliminary view of this complaint and my reasons, on the basis of the information then before me. It was my preliminary view that the other document remaining in dispute

(Document 3 on the agency's schedule of documents), four paragraphs in Document 4 and certain handwritten information on the attachment to Document 4 was exempt under clause 3(1) of Schedule 1 to the FOI Act. It was also my preliminary view that the attachment to Document 4 could be edited and a copy provided to the complainant. The agency subsequently provided the complainant with an edited copy of the attachment. The complainant advised me that he did not wish to withdraw his complaint and, on 21 July 2004, provided me with further submissions and material in support of his position.

### **The disputed documents**

8. Two documents remain in dispute:
  - Document 3 is an internal memorandum dated 27 August (2003) from an officer of the agency to two other officers of the agency, with four attachments; and
  - Document 4 is an internal memorandum dated 26 June 2003 from the Manager Neighbourhood Amenity, to the Executive Manager Development and Neighbourhood Amenity, with two attachments (one attachment is simply a photocopy of the other attachment adjusted to include all of a handwritten note in the top right hand corner of the document. I shall refer to those two attachments in the singular).
9. In its notice of decision, the agency stated that the disputed documents concern personal opinions about a matter that was being investigated in the context of possible disciplinary action.

### **Clause 3 - personal information**

10. The agency claims that Document 3; the last two paragraphs on page 1 and the first two paragraphs on page 2 of Document 4; and the handwritten names on the attachment to Document 4 are exempt under clause 3(1).
11. Clause 3 provides, insofar as it is relevant:

*“(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 matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
  - (a) *the person;*

- (b) *the person's position or functions as an officer; or*
- (c) *things done by the person in the course of performing functions as an officer.*

(4) ...

(5) ...

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

12. The term 'personal information' is defined in the Glossary in Schedule 2 to the FOI Act 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 finger print, retina print or body sample".*

13. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom 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 exempt information under clause 3(1). I consider that, in order to attract the exemption, disclosure of the disputed information must reveal something more about an individual than simply his or her name.

### ***The agency's submission***

14. In a letter to my office, dated 28 April 2004, the agency submitted that Document 3 relates to both the complainant and to a third person and, since the personal information about both is so interwoven that it is not practicable to edit it in any meaningful form, that document should be exempt in full under clause 3(1) of Schedule 1 to the FOI Act. The agency also submits that the four paragraphs deleted from Document 4 are exempt because they contain personal information about third parties.

15. The agency advises me that it issued a new Personnel File Procedure in November 2003 which was not in operation at the time that the disputed documents were placed on the complainant's personnel file. That procedure relevantly states:

*"Information on formal grievances raised against an individual will be retained in a separate grievance file, held by the Manager, Human*

*Resources. ...In accordance with the Equal Employment Opportunity procedure, any unsubstantiated claims are to be destroyed after two years.”*

16. In January 2004, the agency also issued a new Grievance Procedure which governs, among other things, an informal grievance resolution process and which states:

*“Under no circumstances should any documentation relating to an informal grievance be placed on a personal file.*

*If resolution is achieved at the informal stage, the only documentation that needs to be retained is the Contract Officer Record Sheet, which details what action occurred that achieved resolution and details of any agreed follow up action required.”*

17. As I understand it, at around the time that the complainant applied under the FOI Act for access to the requested documents, documents concerning informal and formal grievances were placed on the personal or personnel files of individuals who were the subject of a grievance. The agency advises me that, in line with its new procedures, this no longer happens, since the agency is not obliged under those procedures to retain any documentation on individual personnel files, other than - in relation to an informal grievance - a Contract Officer Record Sheet. The agency also advises me that since Document 3 relates to a grievance that was afterwards withdrawn, it has now been removed from the complainant’s personnel file, in line with its procedures.

### ***The complainant’s submission***

18. The complainant advises me that the agency’s Human Resources Manager told him that his personnel file contains “inappropriate material” and that, having previously examined his file, he considers that there are many examples of absurd and false comments and material placed on it. The complainant says that he has been given no opportunity to respond to those matters and he considers that information is being placed on his file in an attempt to discredit him. The complainant submits that it is in the public interest to give him access to the disputed material to ensure that it is accurate, complete, up to date and not misleading.
19. The complainant submits that it is also in the public interest to give him access to the disputed material in order to ensure that the agency is accountable. He advises me that the agency was issued with an Improvement Notice by the Department of Consumer and Employment Protection on 7 October 2003 (‘the Notice’), which directed the agency to implement certain measures to report, prevent and control bullying in the workplace. He has provided me with documents to show that the agency was given until 20 November 2003 - later extended to 30 January 2004 - to comply with that notice, including the training of contact and grievance officers. The complainant submits that the issuing of the notice highlights the broader community interest in the

disclosure of the disputed material, insofar as it concerns conditions in the workplace, in particular, the use of disciplinary action by the agency against officers who speak out about those workplace conditions.

20. The complainant says that the agency's Grievance Procedure should not be viewed as an initiative or safeguard brought about by the agency since it was implemented on the initiative of officers associated with the Australian Services Union and, further, the complainant contends that various measures relating to it have not been adhered to by the agency.
21. With regard to Document 3, the complainant says that he was at no time approached in relation to its content or was aware of any grievance or given any opportunity to respond but that the document was still placed on his personnel file. The complainant takes the view that this represents another example of "*targeting, bias and harassment*".
22. The complainant contends that Document 3 was withdrawn because it was a vexatious complaint and refers me to section 8 of the agency's Grievance Procedure which provides, in brief, that if a grievance is investigated and considered to be vexatious - on the grounds that it was designed to upset or annoy a respondent; to obtain retribution against others; or because it has no basis in fact - the person submitting that grievance may be subject to disciplinary action. The complainant says that he must be given an opportunity to respond to the matter referred to in Document 3 and submits that it is in the public interest to expose this complaint and have this deemed 'vexatious' because, in his view, it was obviously withdrawn on one of the three grounds referred to here.
23. With regard to Document 4, the complainant acknowledges that he was given an opportunity to respond to the incident it related to but says:

*"I haven't had the opportunity to respond to statements contained within this document.*

*If I had the opportunity to read this document I could have at least addressed some of the lies contained within it.*

*I could also have addressed the perception behind statements like, 'there was the normal silence'.*

*I could also have addressed the mind set behind the gathering of witness statements.*

*The edited section may have provided me with why I was specifically referred to and why I was attacked before commencing a 12 hour night shift."*
24. The complainant does not accept the truth of certain statements made in Document 4 or in other material placed on his personnel file, which he has identified to me. The complainant says that he is concerned that information that is untrue or misleading has been placed on his file and he queries the credentials of one of the agency's senior officers in relation to that information. In particular, the complainant says that what is recorded in his personnel file by that individual is in the nature of a personal attack against him and does not reflect the responses made by the complainant to the agency.

In brief, the complainant considers that certain information has been placed on his personnel file which is untrue, misleading, biased and absurd.

25. The complainant submits that the keeping of inaccurate and misleading records - and fostering a culture that condones that activity - has adverse effects on the workplace and the disclosure of this material would make the operations of the agency more effective.
26. In relation to the names that appear on the attachment to Document 4, the complainant advises me that he is probably aware of who those persons are and considers that the information relates to the gathering of witness statements. He submits that the disclosure of this information would be in the public interest as a safeguard against the abuse of authority.
27. The complainant submits that there is a strong public interest that requires the disclosure of the disputed information because it relates to officers of a local government who are required to be open and accountable and to that end are bound by a code of ethics. Accordingly, the complainant contends that no public officer should have qualms about personal information being released if that information is true.
28. The complainant contends that his purpose in seeking access to the disputed information is "*to highlight 'intent'*" and the material should be released for this purpose and not held back because it is technically exempt under clause 3(1). I understand the complainant to submit that, in this case, the agency should exercise its discretion to release the disputed material.
29. The complainant also submits that the information sought is relevant to claims that he is pursuing in the Equal Opportunity Commission and there is a public interest in the disclosure of information to assist people to determine whether they have legal rights which should be pursued through the courts.

### **Consideration**

30. It is clear from the information before me that the agency and the complainant are involved in a workplace dispute. However, my jurisdiction is restricted to deciding whether the disputed material is exempt under the provisions of the FOI Act and it is not my role to consider whether the allegations made against the complainant or by the complainant have a basis in fact, although the latter may have some relevance to the public interest issues raised by the complainant. Further, I can only deal with the two documents in dispute in this matter and not with other documents or material that may have been placed on the complainant's personnel file.
31. I have examined Documents 3 and 4, together with the agency's FOI file, the parties' submissions and further information provided to me by both parties to this complaint. In my opinion, disclosure of Document 3 and the disputed information in Document 4 would reveal personal information about the complainant and about other third parties who are also officers of the agency. The information about the third parties is personal information, as defined in

the Glossary to the FOI Act and is *prima facie* exempt under clause 3(1). However, clause 3(1) is subject to the limits on exemption provided by clauses 3(2)-3(6). In this case, I consider that only clause 3(3) and clause 3(6) are relevant.

### **Clause 3(3)**

32. Clause 3(3) of Schedule 1 to the FOI Act provides that “...[m]atter is not exempt under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to the person; the person’s position or functions as an officer; or things done by the person in the course of performing functions as an officer.” In my view, the use of the term ‘merely’ in clause 3(3), according to its ordinary dictionary meaning, means ‘solely’ or ‘no more than’, for example, an officer’s name or position.

33. The prescribed details are listed in regulation 9(1) of the *Freedom of Information Regulations 1993* (‘the Regulations’), as follows:

*“In relation to a person who is or has been an officer of an agency, details of –*

- (a) the person’s name;*
- (b) any qualifications held by the person relevant to the person’s position in the agency;*
- (c) the position held by the person in the agency;*
- (d) the functions and duties of the person, as described in any job description document for the position held by the person; or*
- (e) anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person”.*

34. Having examined Document 3 and the disputed information in Document 4, I consider that the disclosure of the personal information about the third parties would not ‘merely’ reveal prescribed details. In my view, the information concerning the third parties goes beyond the kind of information set out in regulation 9(1) and, in my opinion, the limit on exemption in clause 3(3) does not apply in this case.

35. Although it is not clear to me why certain names of officers of the agency appear on the attachment to Document 4, their presence does indicate a connection with a particular incident and, in the circumstances, I consider that their disclosure would not ‘merely’ reveal prescribed details, that is, the names of those officers. Accordingly, I consider that those names are not prescribed details for the purpose of clause 3(3) but personal information about those persons which is *prima facie* exempt under clause 3(1).

*Clause 3(6)*

36. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to section 102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of the disputed material would, on balance, be in the public interest.
37. I recognise that there is a public interest in the complainant's being able to exercise his rights of access under the FOI Act but I also recognise that there is a strong public interest in maintaining the personal privacy of other individuals. That public interest is recognised by the inclusion of the exemption in clause 3(1) and, in my view, it may only be displaced by some other considerably stronger public interest that requires the disclosure of private information about other people. Although the disputed matter contains personal information about the complainant, it could not be disclosed without also revealing personal information about other people.
38. Section 21 of the FOI Act requires that, if applicants request access to documents containing personal information about themselves, that must be considered as a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed, or the effect that the disclosure of the matter might have. Accordingly, I have considered that as a factor in my consideration of clause 3(6), as it applies in this case.
39. I accept that there is a public interest in ensuring the efficient and effective management of agencies and in an agency's observance of legislative requirements and due process in its dealings with staff and the public. However, having inspected the disputed matter, I do not consider that its disclosure to the complainant would serve those public interests.
40. I consider that there is a public interest in the accountability of agencies for their decision-making processes and particular public interests in people being informed of matters that might involve them in disciplinary proceedings; being afforded an opportunity to respond to those matters; and being advised of any action taken by an agency in respect of them and why.
41. The complainant contends that he should be given access to Document 3 because he has never had an opportunity to respond to it, although it was placed on his personnel file. He considers this to be an example of his being 'targeted' by the agency. He also claims that it concerns a vexatious complaint and it is in the public interest to expose it as such.
42. The agency advises me that the matter referred to in Document 3 was withdrawn and, therefore, there was no necessity to provide an opportunity for the complainant to respond to it. The agency acknowledges that Document 3 was inappropriately placed on the complainant's personnel file and should have been dealt with in accordance with the Grievance Procedure and advises that the document has now been removed from his personnel file. On the material before me there is nothing to show that Document 3 relates to a

vexatious complaint and it appears to me that it was not acted on by the agency because the person who made it decided not to pursue it, rather than its investigation having been discontinued because of any of the reasons suggested by the complainant. I have taken that into account in assessing where the balance of the public interest lies in this instance and also: the agency's explanation - which I accept; the fact that it is apparent from the material before me that there is a degree of animosity between the complainant and some other officers of the agency; the fact that the contents of Document 3 were not acted on by the agency and that the document has now been removed from the complainant's personnel file. Taking all those circumstances into account, in balancing the competing public interests, I do not consider that any of the public interests that favour disclosure outweigh the public interest in the protection of the personal privacy of other individuals in this instance. Therefore, I am not persuaded that the disclosure of Document 3 would, on balance, be in the public interest.

43. I understand that the complainant was given an opportunity to respond to the matter referred to in Document 4 and advised of the outcome. However, having been given access to an edited copy of that document, the complainant disputes the accuracy of certain statements in it and considers that he should have been given an opportunity to respond to them before now and that the deleted material may provide him with specific information that he is seeking.
44. In view of the fact that the complainant was advised of the substance of the matter; given an opportunity to respond; and informed of the outcome, I consider that the public interest in officers being afforded procedural fairness in respect of allegations made against them has been adequately served. The disclosure of the edited copy of Document 4 to the complainant under the FOI Act also provides him with the opportunity to apply to have any information that is untrue or misleading amended.
45. The complainant submits that the disclosure of the information deleted from the attachment would be in the public interest as a safeguard against the abuse of authority and in line with the policy of local government to be open and accountable. He says that he is, in any event, aware of the content of some of that material. However, I consider that the complainant's comments or views about the content of the information deleted from Document 4, including the attachment, is speculation. In my view, there is nothing before me to establish that there has been any abuse of authority or that the disclosure of the disputed material would serve to safeguard against any abuse of authority.
46. I note the complainant's comments in relation to the claim he is pursuing in the Equal Opportunity Commission. However, if the Equal Opportunity Commissioner considers it necessary or desirable for her investigation, she can obtain access to the disputed documents under section 86 of the *Equal Opportunity Act 1984*, as may the Tribunal under the *Equal Opportunity Regulations 1986*. The complainant has also advised that he intends to pursue complaints with the Ombudsman and the Commissioner for Public Sector Standards. All of those bodies exist to provide independent avenues for review of certain kinds of actions of government agencies, and thereby

provide mechanisms for ensuring the accountability of government agencies for certain of their actions.

47. In balancing the competing interests on the basis of the material presently before me, for the reasons given above, I consider that the public interest in protecting the personal privacy of third parties outweighs the public interests in disclosure in this instance and my preliminary view is that the limit on the exemption in clause 3(6) does not apply in this case.
48. Therefore, it is my preliminary view that Document 3, the four paragraphs referred to in Document 4, and the handwritten names on the attachment to Document 4, are exempt under clause 3(1). Given that view, there is no need for me also to consider the agency's claim for exemption under clause 11.

#### **Section 24**

49. I have also considered whether it would be possible to edit Document 3 and the four paragraphs referred to in Document 4 to delete exempt information and give the complainant access to an edited copy of that material.
50. Section 24 of the FOI Act states:
  - "If -
    - (a) *the access application requests access to a document containing exempt matter; and*
    - (b) *it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and*
    - (c) *the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,*

*the agency has to give access to an edited copy even if the document is the subject of an exemption certificate."*
  51. The application of section 24, and particularly the qualification contained in section 24(b) was discussed by Scott J, at page 16, in *Police Force of Western Australia v Winterton* (1997) WASC 504 as follows:

*"It seems to me that the reference to the word "practicable" is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s24 should not be used to provide access to documents which*

*have been so substantially altered as to make them either misleading or unintelligible."*

52. In the present case, I do not consider it practicable to edit Document 3 and the four paragraphs in Document 4 because, although that matter contains some personal information about the complainant, it is inextricably interwoven with personal information about other people. In my view, it is not possible to give the complainant access to the information about him without also giving him access to information about other people. To delete the information about other people would require the deletion of almost all of the record and such deletion would not be of a minor or inconsequential nature. The balance of the material would, in my view, be misleading or unintelligible and could be described in similar terms to those used by Scott J as "*making little or no sense*".

### **Additional documents**

53. In the course of my dealing with this matter, the complainant queried whether an additional document existed that came within the scope of his access application. The agency advises me that no such document exists. My office made further inquiries with the person the complainant named as the author of the document but no further information was put before me to establish that an additional document exists or should exist and, accordingly, I have not required the agency to make additional searches for it.

### **Conclusion**

54. For the reasons given above, I find that Document 3, the four paragraphs deleted from Document 4 and the handwritten names on the attachment to Document 4 are exempt under clause 3(1).

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