

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

**File Ref: F2005057
Decision Ref: D0142005**

Participants:

Mauro Patrick Fabbri
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refuse access to a document – transcript of statement given to police – clause 3(1) – whether disclosure of document would reveal personal information about third parties – whether disclosure would be in the public interest.

Freedom of Information Act 1992 (WA) ss.102(3); Schedule 1 clause 3(1)-(6).

DPP v Smith [1991] 1 VR 63

DECISION

The decision of the agency is confirmed. The disputed document is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

D A WOOKEY
A/INFORMATION COMMISSIONER

29 June 2005

REASONS FOR DECISION

1. This complaint arises from a decision made by the Police Force of Western Australia ('the agency') to refuse Mr Fabbri ('the complainant') access to a document on the ground that the requested document is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. In February 2004 the complainant was involved in an incident which resulted in him being charged with assault occasioning bodily harm. The complainant subsequently made a complaint of corruption against the police officers involved in the investigation of that incident and as a result an internal investigation was conducted into those allegations of corrupt behaviour by the police.
3. In an application dated 25 October 2004, the complainant applied to the agency for access to a copy of the file held by the agency in relation to the investigation of his complaint against the police officers. The agency identified 36 documents as coming within the scope of the complainant's access application. On 3 February 2005, the agency granted the complainant access in full to 14 documents; granted the complainant access to edited copies of 21 documents from which certain information was deleted on the ground that it is exempt information under clause 3(1) of Schedule 1 to the FOI Act; and refused the complainant access to one document claimed to be exempt in full under clause 3(1) of Schedule 1 to the FOI Act. The agency also advised the complainant that the cost of dealing with his access application was \$25.00.
4. By letter dated 17 February 2005, the complainant requested an internal review of the agency's initial decision, as he had not received any documents. Although the complainant did not query the charges of \$25.00 imposed by the agency for dealing with his access application, it appears that he misunderstood the agency's right to charge for dealing with an access application. As the complainant had not paid the \$25.00, the agency had not released any documents to him. On 3 March 2005, the agency confirmed its original decision.
5. The agency also confirmed to the complainant that he needed to pay the charges of \$25.00 for dealing with his access application before any documents would be released to him.
6. Following that, by letter dated 19 March 2005, the complainant applied to the Information Commissioner for external review of the agency's decision.

REVIEW BY THE A/INFORMATION COMMISSIONER

7. I obtained the disputed documents and the agency's FOI file in relation to the complainant's access application. My office confirmed with the complainant that the agency was entitled to impose charges for dealing with his access

application and suggested that he pay the \$25.00 imposed by the agency and then confirm whether he wished to pursue his complaint. The complainant subsequently paid the charges and, on receipt of the documents from the agency, confirmed to my office that he wished to pursue his complaint, but in respect of one document only. My office consulted with a third party and sought submissions from the complainant.

THE DISPUTED DOCUMENT

8. There is one document in dispute in this matter. It is a transcript of a statement given by a third party ('the third party') to police officers investigating the complainant's allegations of corruption against the officers who arrested him.

THE EXEMPTION CLAIMED

Clause 3 – personal information

9. Clause 3 of Schedule 1 to the FOI Act provides:

“Exemption

- (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) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*
 - (a) *the person;*
 - (b) *the contract; or*

- (c) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*

“Personal information”

10. In the Glossary to the FOI Act the term "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. The definition of "personal information" in the Glossary makes it clear that any information or opinion about a person whose identity is apparent, or whose identity can reasonably be ascertained from the information or opinion, is, on the face of it, exempt information under clause 3(1), subject to the application of any of the limits on exemption in clause 3(2)-3(6).

Consideration

12. I have examined the disputed document. The disputed document contains not only the name of the third party, but also of a number of other third parties and the complainant. If disclosed, the disputed document would reveal information that would clearly identify particular persons, and would reveal personal information, as defined, about a number of people. Apart from perhaps a small amount of information on the first page, it seems to me that none of the document could be released without revealing information about the third party. In my view, all of that matter is, on its face, exempt under clause 3(1) and therefore exempt unless any of the limits on exemption in subclauses (2)-(6) applies.

The limits on exemption

13. The limits on exemption provided by clause 3(1) are contained in clauses (2)-(6) and are set out in paragraph 9 above.

Clause 3(2)

14. Clause 3(2) provides that matter will not be exempt under subclause (1) merely because its disclosure would reveal personal information about the access applicant (in this case, the complainant). The disputed document contains some personal information about the complainant. However, none of that information could be disclosed without also disclosing personal information about at least one other person. As the information would not reveal “solely” personal information about the complainant, its disclosure would not “merely” reveal personal information about the complainant, in my view. Therefore, the limit in clause 3(2) does not apply.

Clause 3(3) and (4)

15. Similarly, although the document contains some information about officers of the agency which may be described as prescribed details for the purposes of clause 3(3), in my view, that information is so inextricably entwined with personal information about other people who are not officers of an agency that it could not be disclosed without also disclosing personal information about those other people. As that information would not merely or solely reveal prescribed details, the limit in clause 3(3) does not apply. There is no evidence before me that any person identified in the document was performing services for an agency under a contract for services. Therefore, the limit in clause 3(4) does not apply.

Clause 3(5)

16. The limit on exemption in clause 3(5) does not apply because there is evidence before me that the third party, to whom a great deal of the personal information in the disputed document relates, does not consent to personal information about the third party being disclosed to the complainant.
17. As the limits in subclauses 3(2)-3(5) do not apply in this case, the only limit on exemption which might apply to the disputed document is the limit on exemption in clause 3(6).

Clause 3(6)

18. 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 s.102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of personal information about third parties would, on balance, be in the public interest. The complainant was given the opportunity to make submissions to me following receipt of a letter from my Investigations Officer, who had conducted this matter on my behalf, informing him of her preliminary assessment of his complaint.

The complainant's submission

19. The complainant submits that the disputed document should be disclosed because it is in the public interest that the agency and its officers are responsible for their actions; that any crime and corruption within the agency be exposed; that justice be served so he can clear his name of the charges against him; and the right of access to documents is enshrined by the FOI Act.

The public interest

20. The term “public interest” is not defined in the FOI Act, nor is it a term that is easily defined. However, it is not merely something that may be of interest to the public; rather, it is something which is of serious concern or benefit to the public.

21. In *DPP v Smith* [1991] 1 VR 63, at 65, the Victorian Supreme Court said:

“The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well being of its members ... There are ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest”.

22. The former Information Commissioner said, in a number of her decisions relating to the meaning and interpretation of clause 3, that the exemption in clause 3(1) is intended to protect the privacy of individuals about whom personal information may be contained in documents held by State and local government agencies and that the FOI Act is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit to the public interest in doing so. I too recognise that there is a very strong public interest in the maintenance of personal privacy and that the protection of an individual's privacy is a public interest which is recognised and enshrined in the FOI Act by clause 3.
23. I understand that the complainant has a personal interest in the disclosure of the disputed document to him. However, the public interest is not primarily concerned with the personal interests of the particular access applicant, or with public curiosity. Rather, the question is whether disclosure of the information would be of some benefit to the public generally, that is, whether it would be of benefit to the public for the information he seeks – being personal information about other people – to be disclosed, and whether that public benefit is sufficient to outweigh any public interest in confidentiality being maintained.

24. Determining whether or not disclosure would, on balance, be in the public interest therefore involves identifying the public interests for and against disclosure, weighing them against each other and deciding where the balance lies.
25. The exemption in clause 3(1) is designed to protect the privacy of third parties. As I have said, I consider that there is a strong public interest in maintaining personal privacy and that that public interest may only be displaced by some other stronger and more persuasive public interest that requires the disclosure of personal information about one person to another person. The FOI Act is intended to make government, its agencies and officers more accountable, not to call to account or unnecessarily intrude upon the privacy of private individuals.
26. I agree with the complainant that there is a public interest in ensuring that: the agency and its officers are held responsible for their actions; any crime and corruption in the agency is exposed; and people who consider that they have been wrongly accused are given the opportunity to “clear their names.” However, I am not persuaded that any of those public interests requires the disclosure to the complainant of the contents of the disputed document.
27. If the complainant is of the view that there has been corrupt or criminal behaviour on the part of the police officers who dealt with him, then there are avenues by which he can have those matters investigated. I understand that the complainant did, in fact, make a complaint to the agency and that complaint was investigated by the agency’s Internal Investigations Unit. I understand that all investigations by that unit are reviewed by the Corruption and Crime Commission and also that complaints about corruption or criminal conduct by police officers can be made directly to that body. The Corruption and Crime Commission has extensive powers for the investigation of such matters, including powers to obtain documents where it considers it necessary or desirable to do so. Whether or not that body were to decide to investigate the matters alleged by the complainant, the fact is that it exists for the purpose of assessing and, if necessary, investigating, such matters and that there is therefore a means by which public officers can be held accountable for conduct of the kind alleged. Therefore, I do not consider that particular public interest to require the disclosure to the complainant of the personal information about the third party contained in the disputed document in this instance.
28. In addition, those public interests (identified in paragraph 25 above) have been satisfied to some extent by the disclosure to the complainant of the other documents, edited and unedited, already given to him by the agency. I agree that there is a public interest in people being able to exercise their rights under the FOI Act. As the complainant has submitted, that right is enshrined in the FOI Act in recognition of the public interest in the openness and accountability of government. It is not, however, an absolute right; it is expressed to be subject to the FOI Act, which includes a range of exemptions designed to protect other particular public interests. In this case, the public interest in the exercise of the right has to be weighed against the public interest

in the protection of the privacy of private individuals who have dealings with government. As I have indicated above, I do not consider that the complainant has identified any other public interest of sufficient weight to outweigh that one in this instance.

Conclusion

29. Therefore, in balancing the competing public interests, and based on the material presently available to me, it appears to me that the strong public interest in protecting the personal privacy of the third party is not outweighed by the public interests favouring disclosure in this instance. I therefore find that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act.
