

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

**File Ref: F0711999
Decision Ref: D0221999**

Participants:

Leslie Donald Ayton
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – speech notes – document prepared for an address to Police Service Command – clause 3(1) – personal information about third parties – whether document contains personal information – clause 6(1) – deliberative processes of agency – identification of the particular deliberative process – whether disclosure would be contrary to the public interest.

Freedom of Information Act 1992 (WA) Schedule 1 clauses 3(1) and 6(1).

Re Ayton and Police Force of Western Australia [1999] WAICmr 8.

Ministry for Planning v Collins (1996) 93 LGERA 69.

Re Waterford and Department of the Treasury (No.2) (1984) 5 ALD 588.

DECISION

The decision of the agency is set aside. In substitution it is decided that the disputed document is not exempt. The complainant is entitled to be given access to a copy of that document with the names of the third parties that appear on pages 4 and 5 deleted.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

4 August 1999

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Police Force of Western Australia ('the agency') to refuse Mr Ayton ('the complainant') access to a document requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. Mr W Robertson, a former Assistant Commissioner with the Victoria Police, was engaged as a consultant by the agency in July 1997. The purpose of his employment was to implement recommendations arising from a review of the Human Resource Division of the agency that had been conducted earlier that year. During the period of his employment, Mr Robertson also reviewed the agency's promotion system.
3. When his period of engagement ended, Mr Robertson prepared a report for the agency entitled "*HRD Review Implementation – Exit Report*". I also understand that Mr Robertson was invited by the then Commissioner of Police, Mr Falconer, to address the members of the Police Service Command and to give his views on the implementation of the Delta reforms in the agency and the effect of those reforms. To that end, Mr Robertson prepared notes for his address to the Police Service Command on Monday, 8 February 1999 and spoke to those officers on that day.
4. By letter dated 12 April 1999, the complainant lodged an application with the agency seeking access under the FOI Act to a copy of any record or document prepared by Mr Robertson, addressed to or seen by the Police Commissioner, outlining Mr Robertson's views concerning the management of human resources in the agency.
5. By letter dated 4 May 1999, Chief Inspector Rae identified one document entitled "*Address to Command – Monday 08/02/99*" as falling within the scope of the complainant's access application. Although Chief Inspector Rae disclosed the existence of the document entitled "*HRD Review Implementation – Exit Report*", he decided that it did not fall within the terms of the access application. I understand that that document is the subject of a separate application for access made by the complainant.
6. After receiving advice from senior officers in the agency, Chief Inspector Rae refused the complainant access to the one document, "*Address to Command – Monday 08/02/99*", on the ground that it is exempt under clause 6(1) of Schedule 1 to the FOI Act. He also decided that the name of a third party appearing on folio 5 of the document constituted exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

7. On 11 May 1999, the complainant requested an internal review of the agency's decision. On 24 May 1999, Assistant Commissioner D H McCaffery confirmed the agency's initial decision that the requested document is exempt under clause 6(1) and that the name of a third party on folio 5 is exempt under clause 3(1) of Schedule 1 to the FOI Act. On 27 May 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. I obtained the disputed document from the agency, together with the agency's FOI file relating to this matter. I also sought further information from the agency to justify its refusal of access under clause 6(1). That information was delivered to my office on 18 June 1999.
9. After considering the material before me, on 22 July 1999 I informed the parties in writing of my preliminary view of this complaint. It was my preliminary view that the disputed document may not be exempt as claimed, save for the names of third parties appearing on pages 4 and 5.
10. The complainant informed me that he did not seek access to the names of third parties. Therefore, that matter is no longer in dispute. The agency made no further submissions in support of its claim for exemption for the balance of the document.

THE DISPUTED DOCUMENT

11. The disputed document is headed "*Address to Command – Monday 08/02/99*". It consists of 5 typed pages and is unsigned.

THE EXEMPTION

12. Clause 6, so far as is relevant, provides:

"6. *Deliberative processes*

Exemptions

(1) Matter is exempt matter if its disclosure -

(a) would reveal –

(i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or

(ii) any consultation or deliberation that has taken place,

in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency;

and

(b) would, on balance, be contrary to the public interest."

13. The requirements of both paragraphs (a) and (b) must be satisfied in order to establish a valid claim for exemption under clause 6(1). I have discussed and considered the purpose of the exemption in clause 6 and the meaning of the phrase "deliberative processes" in a number of my formal decisions, most recently in my decision involving the agency in *Re Ayton and Police Force of Western Australia* [1999] WAICmr 8, at paragraphs 35-38.
14. I agree with the view of the Commonwealth Administrative Appeals Tribunal ('the Tribunal') in *Re Waterford and Department of the Treasury (No 2)* (1984) 5 ALD 588 that the deliberative processes of an agency are its "thinking processes", the process of reflection, for example, on the wisdom and expediency of a proposal, a particular decision or course of action: see also the comments of Templeman J in *Ministry for Planning v Collins* (1996) 93 LGERA 69 at 72.
15. However, not all documents of an agency fall within this potentially broad exemption. I also agree with the Tribunal's view that:

"It by no means follows, therefore, that every document on a departmental file will fall into this category...Furthermore, however imprecise the dividing line first may appear to be in some cases, documents disclosing deliberative processes must, in our view, be distinguished from documents dealing with the purely procedural or administrative processes involved in the functions of an agency..."

It is documents containing opinion, advice, recommendations etc. relating to the internal processes of deliberation that are potentially shielded from disclosure...Out of that broad class of documents, exemption under s 36 only attaches to those documents the disclosure of which is "contrary to the public interest"..."

16. In order to establish that a document is of a kind described in clause 6(1)(a), I consider it is necessary to identify the particular deliberative processes to which a requested document is relevant. In this instance, the agency states that Mr Robertson had contact with a broad range of personnel from various areas of the agency and was exposed to much of the Delta reform process. It is the contention of the agency that its ongoing deliberations as to the future direction of the reform process constitute the particular deliberative processes to which the document relates.

17. In particular, when asked to identify the particular deliberative process to which the document is claimed to relate, the agency informed me that deliberations were continuing in various areas of the agency and that the opinions of Mr Robertson were being considered in the course of those processes. Some of those were specified by the agency in its submission to me.
18. Among other things, the agency claims that the release of the notes made by Mr Robertson would have an adverse effect on the deliberations by the agency upon various matters. The agency claims that there is a danger that members could become disaffected in relation to their work and their future and the notes could be taken as providing an official blueprint for change, despite the fact that no position has been arrived at and certain things may or may not occur in the future.
19. The agency submits that it is not in the public interest for Mr Robertson's opinion to be published because, among other things, it could lead to a lessening of confidence in the ability of the agency to carry out its core functions. The agency submits that excerpts of the document could be taken out of context, before their relevance and reliability are fully considered and before the agency is in a position to respond accordingly to the comments. The agency considers that the integrity of the deliberative process could be jeopardised if disclosure is made before the agency has had an opportunity to fully consider and deliberate upon its response to the opinions of Mr Robertson. It is the view of the agency that disclosure could prejudice any planned assessment or actions in respect of the issues raised in the disputed document.
20. For those reasons, the agency contends that its ongoing deliberations about the reform process would be compromised if the document were to be disclosed. The agency informs me that, whilst it cannot set a time frame for the completion of these deliberations, where business re-engineering is concerned a result is unlikely to be presented within three years.
21. From my examination of the disputed document, I accept that it contains the opinions of Mr Robertson who was, at the material time, an officer of the agency as that term is defined in the Glossary to the FOI Act. However, I do not consider that the disputed document contains opinions that were obtained, prepared or recorded in the course of, or for the purpose of, the deliberative processes of an agency, as required by the exemption in clause 6(1).
22. The agency's own records reveal that the disputed document comprises speech notes prepared by Mr Robertson to assist him with his address to the Police Service Command on his observations from working in the agency for some 20 months.
23. Clearly, the disputed document consists of speech notes in which Mr Robertson expresses his views on a range of subjects. Neither the document itself, nor the agency's reasons, persuades me that those opinions were recorded in the course of, or for the purposes of, any deliberative process. They seem to me to have been recorded for the purpose of the address to Command and nothing more, the address being merely for the purpose of informing the Command of Mr

Robertson's general observations rather than for any particular deliberative process.

24. In my view, the fact that copies of the speech notes were subsequently made available to various people in the agency, does not mean that the document comes within the terms of the exemption in clause 6(1). To the extent that any of those comments might reflect opinions provided to the agency in formal documents for the purpose of any of its deliberative processes in relation to which Mr Robertson was engaged – for example, the review of the Human Resources Directorate and the review of the promotional system – then it may be that disclosure of the document would reveal some matter of the kind described in clause 6(1)(a). However, the agency has not identified any such matter.
25. In any event, even if I were to accept that the disputed document meets the requirements of clause 6(1)(a) (which I do not), the exemption is only established if disclosure would, on balance, be contrary to the public interest as required by clause 6(1)(b).

Public interest

26. Some of the factors identified by the agency as weighing against disclosure are similar to those identified by the agency in *Re Ayton*. I recognise that there is a public interest in the effective operation of the agency, and in maintaining public confidence in the agency's ability to operate effectively. However, I am not persuaded that either the operational activities of police or the administrative activities of the agency's managers are likely to be affected by the disclosure of the disputed document to any significant degree or at all, nor, therefore, that public confidence in the agency is likely to be affected.
27. The agency asserts that the notes could be taken "*...as an official blueprint for change despite the fact that no position has been arrived at...*" and that this could cause members to become disaffected in relation to their work and their future. I do not accept that a document that is notes for an address and clearly on its face concerns the personal observations of one person only could be taken by anybody to be a "blueprint for change" and have the effect suggested by the agency.
28. The agency argues that disclosure of the document may cause the community to take the view that the agency is not well managed and directed, and thereby damage public confidence in the agency to carry out its core functions. However, having examined and considered the contents of the document, I am not persuaded that its disclosure would have that effect.
29. Once again I observe that the opinions are clearly the personal opinions of one person. Further, it is no secret from the public that a need for reform has been identified and that the process of reform is underway. I am inclined to the view that openness about the kinds of issues being considered in the reform process would be more likely to enhance public confidence in both the process and the agency's management and direction. I am not persuaded, therefore, that the

public interest in public confidence in the agency would be damaged by disclosure of the document.

30. Favouring disclosure, I recognise a public interest in the accountability of government agencies for their actions. I recognise, as the agency does, that there is a public interest in the public being informed about the views held by people with expertise in a particular field concerning the operations of an agency so that the public can assess whether an agency is properly managed and whether adequate steps have been taken by the agency to address any genuine concerns raised about such issues.
31. The former Commissioner of Police publicly emphasised the importance of the Delta reform process to the agency and, ultimately, to the safety and security of the community of Western Australia. Given that, I am of the view that there is a public interest in the disclosure of independent observations made about aspects of that reform process, as part of the general public interest in the accountability of public bodies, particularly as Mr Robertson's expertise and experience were paid for out of the public purse.
32. In summary, I am not persuaded that the disputed document falls within the terms of clause 6(1). Accordingly, I find that the disputed document is not exempt under clause 6(1) of Schedule 1 to the FOI Act.
