

SMITH AND SGIC

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

**File Ref: 94113
Decision Ref: D02194**

Participants:

Donald Ian Smith
Applicant

- and -

**State Government Insurance
Commission**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - access to edited copy - statutory declaration - clause 3(1) - personal information - clause 3(6) - public interest - third party objections to release - protection of personal privacy.

Freedom of Information Act 1992 (WA) s.13(1)(b);30; 68(1); 72(1)(b); 75(1); 102(3); ss.3; 21; Schedule 1; clauses 3(1), 3(2), 3(3), 3(4), 3(5), 3(6).

Re Manly and Ministry of the Premier and Cabinet (16 September 1994, unreported).

DECISION

The decision of the agency of 9 September 1994 that the edited matter is exempt under clause 3(1) of the FOI Act is confirmed.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

5th December 1994.

REASONS FOR DECISION

1. This is an application for review by the Information Commissioner arising out of a decision of the State Government Insurance Commission ('the agency') to provide Dr Donald I Smith ('the applicant') access to an edited copy of a document the subject of an access application made by the applicant under the *Freedom of Information Act 1992* ('the FOI Act'). The disputed document is a statutory declaration of a research psychologist formerly employed by the agency and who worked under the supervision of the applicant.

BACKGROUND

2. On 10 June 1994 the applicant lodged an access application with the agency under the FOI Act seeking access to copies of various documents consisting of letters, reports and attachments, statutory declarations and notes of telephone conversations relating to his worker's compensation claim against his employer, which claim had been settled out of court.
3. On 25 July 1994 the agency granted the applicant access to some of the documents identified by the applicant and advised him that certain others did not exist. The applicant was also advised that access to 5 statutory declarations had been deferred pending the outcome of consultations with the authors of those documents. Subsequently, on 24 August 1994, the agency provided the applicant with access to 3 statutory declarations and access to an edited copy of another. Access to the remaining statutory declaration was provided to the applicant on 2 September 1994.
4. On 3 September 1994 the applicant applied to the agency for internal review of the decision to provide him with edited access to one of the statutory declarations. The initial decision-maker, Mr D Williams, Acting Manager, Government Insurance, had decided to delete one paragraph from this document on the ground that it contained information personal to a third party which the third party had requested be withheld.
5. The initial decision was confirmed on internal review, that decision being made by Mr V Evans, Managing Director of the agency, on 9 September 1994 and communicated to the applicant on 13 September 1994. In his reasons, Mr Evans confirmed that the paragraph deleted from the disputed document contained personal information about the author and that she objected to its release. Although the paragraph concerned was not specifically identified by Mr Evans as being exempt from disclosure to the applicant under clause 3(1) of the FOI Act, that is the relevant clause of Schedule 1 to the FOI Act.
6. On 2 October 1994 the applicant applied to the Information Commissioner for external review of the decision of Mr Evans to give him access to an edited copy of the disputed document.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 31 October 1994, after the applicant had provided my office with the required notice of decision under regulation 8 of the *Freedom of Information Regulations 1993*, in accordance with my statutory obligation under s.68(1) of the FOI Act, I notified the agency that I had formally accepted this complaint for review. In accordance with my usual practice and pursuant to my authority under s. 75(1) and s.72(1)(b), I also required the production to me of the disputed document and the agency's file maintained in respect of this access application.
8. Although the initial decision-maker had identified the edited matter as consisting of information personal to a third party, in my view, neither the notice dated 24 August 1994 nor the one dated 13 September 1994, being notices under s.13(1)(b) of the FOI Act, were in the form required by s.30 of that Act. Consequently, I required the agency to provide additional reasons to support its claim that the edited matter was exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act. This additional information was provided to me on 2 November 1994 and a copy was subsequently provided to the applicant by my office.
9. On 15 November 1994, after considering the material before me, including the deleted matter itself, I advised the applicant that it was my preliminary view that the paragraph deleted from the disputed document contained personal information about the third party and that the edited matter was *prima facie* exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The applicant was invited, in light of my preliminary view, to reconsider his complaint. He was invited, if he wished nonetheless to pursue his complaint, to provide further evidence and submissions. In particular, he was invited to consider clause 3(6) and to identify the public interest factors for and against disclosure and why he considered those for disclosure outweighed those against.
10. The applicant provided me with his response to this invitation on 20 November 1994 and made further submissions in support of his request for access to the one paragraph to which he had been denied access.

EXEMPTION UNDER CLAUSE 3

11. The agency refused access to the relevant paragraph in the disputed document on the ground that it contained personal information about the author of that document, which information the author had requested not be disclosed. Clause 3(1) of Schedule 1 to the FOI Act provides:

"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."*

12. In the Glossary in Schedule 2 of the FOI Act, "**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."*

13. As I have said in previous decisions, and most recently in *Re Manly and Ministry of the Premier and Cabinet* (16 September 1994, unreported), in my view, this exemption is designed to protect the privacy of individuals. The protection of personal privacy is an important feature of the legislation in Western Australia and I consider there to be a strong public interest in maintaining this right to privacy, subject only to some clearly demonstrated countervailing public interest that requires the disclosure of such information.

14. I have examined the original of the document in dispute. I have also inspected the agency's FOI file on the matter. Amongst the documents on that file is a response to the agency in which the author of the disputed document informed the agency that, with the exception of clause 5 of that document, she did not object to the applicant seeing that document.

15. From my examination of the disputed document I am satisfied that the matter deleted from the disputed document consists of personal information as defined in the FOI Act, about the third party. That third party is clearly identified by name, address and other matter that has already been disclosed to the applicant in the edited copy of the document.

16. In addressing the public interest factors in favour of release of paragraph 5, the applicant said:

"...the purpose for which I am seeking the paragraph is clearly to ensure that personal information held by the State Government about me is accurate, complete, up to date and not misleading. The public clearly has an interest in the maintenance of accurate records by the State Government, as demonstrated by the passing by State Parliament of the Freedom of Information Act, 1992.

...if access to the paragraph is not given to me, then this will mean that because I agreed to settle my workers' compensation case out of Court, I will be denied access to the paragraph. Such a situation would clearly be contrary to the public interest, for it would discourage out of Court settlements. It is particularly relevant to note that the State Government has a policy of encouraging parties to settle worker's compensation cases out of Court.

...Failure to grant me access to the paragraph will mean that one of the important aims of the Freedom of Information Act of enabling persons to obtain copies of documents relevant to themselves has been ignored. Such a situation would clearly not be in the public interest."

17. The FOI Act recognises that there is a public interest in ensuring that personal information held by State and local government agencies is accurate, complete, up to date and not misleading, and in the subjects of that information being able to access and correct such information where it can be shown to be inaccurate, incomplete, out of date or misleading (see ss.3, 21 and Part 3 of the FOI Act). However, in this instance, the edited matter does not relate to or concern the applicant in any way. It is not "personal information" about him.
18. I also recognise a public interest in parties agreeing to settle cases out of court where it is appropriate to do so in order to avoid the costs and delays associated with litigation. However, the applicant has not provided me with any evidence or reasons to support his claim that the non-disclosure of the deleted matter in this document would discourage out of court settlements and I do not accept that it would.
19. In my view, having settled his case and thus having no right of access through discovery proceedings, the applicant's right to access this information must depend on him being able to exercise his rights of access under the FOI Act, subject to any claims for exemption that may be established in accordance with the requirements of that Act. As the matter deleted from the edited document is personal information about a third party and does not relate to the applicant, it is *prima facie* exempt under clause 3(1) and the applicant has no entitlement to access this information except where any of clauses 3(2)-3(6) operates to limit the exemption. In this instance, clauses 3(2)-3(5) do not apply and the applicant will only be entitled to access if he has established that it would, on balance, be in the public interest that he is given access.

20. The applicant has not provided me with any convincing material that would persuade me that there is any public interest in the disclosure to him of this information. Therefore, he has not satisfied his onus of proof under s.102(3) of the FOI Act, and, accordingly, I find that disclosure of the deleted matter would not, on balance, be in the public interest.
