

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Court and Department of Transport* [1999] WAICmr 23

COMPLAINT No: F0381999

DECISION No: D0231999

PARTIES: Robert Bruce COURT

Complainant

DEPARTMENT OF TRANSPORT

Respondent

No. of documents in dispute: 3

Exemption clause(s): Clause 5(1)(e); Clause 3

Mr Court ('the complainant') is a licensed taxi driver. The taxi he drives and the taxi plates are owned by another person. Licensed taxi drivers and taxi plate owners are subject to the provisions of the *Taxi Act 1994* and the *Taxi Regulations 1995* administered by the Taxi Unit of the Department of Transport ('the agency'). The *Taxi Act 1994* empowers the agency, among other things, to impose conditions on the owners of taxi plates and to prescribe qualifications and standards to apply in relation to taxi drivers.

In 1998, the agency required the complainant to undertake a taxi driver aptitude test. I understand that the complainant undertook the required test in early December 1998. On 14 January 1999, the complainant, through his solicitor, lodged an application with the agency seeking access under the FOI Act to a copy of his file.

The agency granted the complainant access to his file, save for three documents which the agency claimed were exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. On 2 March 1999, the complainant sought internal review of that decision. On 17 March 1999, the agency's internal reviewer confirmed the initial decision to refuse access to those three documents based on clause 5(1)(e). On 30 March 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the disputed documents from the agency and information relating to the background to this complaint. On 14 July 1999, after considering the material, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the disputed documents may not be exempt under clause 5(1)(e), but they may be exempt under clause 3(1) of Schedule 1 to the FOI Act.

Nothing further was received from the complainant or his solicitor. I am not dissuaded from my preliminary view that the disputed documents are exempt under clause 3(1). A summary of my reasons follows.

The disputed documents

There are three disputed documents. Document 1 is a 3 page letter dated 19 October 1998 from a third party to the agency. Document 2 is a print out of internal e-mail transmissions between officers of the agency dated 28 October 1998 and 29 October 1998. Document 3 is a different print out of internal e-mail transmissions between officers of the agency dated 28 October 1998 and 29 October 1998.

Clause 5(1)(e)

Clause 5(1)(e) provides that matter is exempt matter if its disclosure could reasonably be expected to endanger the life or physical safety of any person.

The words "*could reasonably be expected to*" in the opening sentence of this clause appear in other exemptions and in like provisions in the FOI Acts of the Commonwealth and the other States. In *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 108 ALR 163, the Federal Court held that the phrase "could reasonably be expected to" should be given its ordinary meaning. That is, the words in the exemption require a judgement to be made by a decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to

expect the stated consequences to follow from disclosure of the documents. I accept that that interpretation applies to the same words wherever they appear in the FOI Act.

The agency claims that the disputed documents contain information provided to it in confidence. Taken together with other confidential information about the complainant's behaviour, the agency claims that disclosure of the disputed documents could reasonably be expected to endanger the life or physical safety of a person.

In this instance, there is some material before me concerning the possible consequences of disclosure of the disputed documents. However, that material appears to be speculative and no direct evidence in support of the agency's claims about the consequences of disclosure has been provided to me. Therefore, I am not satisfied that the disputed documents are exempt under clause 5(1)(e).

Clause 3(1)

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The disputed documents contain a considerable amount of personal information, as defined in the FOI Act, about third parties, including names and addresses and other information that would identify those third parties, and information about them that appears to be quite private and sensitive in nature. Unless any of the limits on exemption in sub-clauses (2)-(6) of clause 3 applies, that kind of information is, on its face, exempt under clause 3(1).

In the circumstances of this matter, I do not consider that any of the limits on exemption provided in clause 3(2)-(5) applies. The only limit that might apply is the limit on exemption in clause 3(6) which 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 complainant bears the onus of persuading me that the disclosure of personal information about the third parties would, on balance, be in the public interest. Nothing was received from the complainant on that point.

Public interest

I recognise that there is a strong public interest in maintaining personal privacy. I consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance. I also recognise a public interest in the agency maintaining an ability to receive unsolicited information that may affect the discharge of its duties in relation to taxi services.

Balanced against those public interests, I recognise that there is a public interest in the accountability of the agency for the discharge of its duties. There is also a public interest in a person such as the complainant being able to exercise his or her rights under the FOI Act and to be given access to documents that contain personal information about that person. In particular, I have recognised a public interest in people being informed of any allegations made against them to government agencies and in being given an opportunity to respond to such allegations.

The agency advises me that the specific allegations made to it about the complainant have been put to him in some detail, in particular at a meeting between the complainant and the agency where those issues were discussed. I also understand from the agency that the complainant has been given an opportunity to respond to those allegations and to give his version of the facts to the agency.

I am not persuaded that the public interest in the complainant being informed of the allegations and given an opportunity to address those allegations requires disclosure of the disputed documents. Nor do I consider that that public interest requires the disclosure of the identities of the person or persons providing information to the agency, which would necessarily occur if the documents were to be disclosed.

I have taken into account the fact that the disputed documents contain some personal information about the complainant. However, that information is so interwoven with personal information about third parties that he could not be given access to personal information about him without also disclosing the personal information about other people. In those circumstances it is not possible to give the complainant access to copies of the documents with exempt matter deleted. I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act and vary the decision of the agency to that extent.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
5 August 1999