

O'NEILL AND POLICE

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

**File Ref: 95120
Decision Ref: D02695**

Participants:

Robert Eion O'Neill
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents related to investigation of complaint to agency - clause 3(1) - personal information about third parties - public interest factors for and against disclosure - limitations in clause 3 - public interest.

Freedom of Information Act 1992 (WA) ss.68(1); 72(1)(b); 75(1); 102(3); Schedule 1 clause 3(1); Glossary in Schedule 2.

DECISION

The decision of the agency of 14 June 1995 is confirmed. The matter deleted from the requested document is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

17 August 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Police Force of Western Australia ('the agency') to grant Mr O'Neill ('the complainant') access to an edited copy of a document of the agency requested by him under the *Freedom of Information Act 1992* ('the FOI Act'). The agency claims that the matter deleted from the requested document is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
2. The complainant's original access application was dated 13 June 1994. However, the terms of that application did not enable the agency to identify the requested documents. On 29 August 1994, after consultation with the agency, the complainant clarified the ambit of his request and the agency proceeded to deal with that request in accordance with the FOI Act.
3. Subsequently, the agency located one document and provided the complainant with access to a copy of that document with exempt matter, being the name of a third party, deleted from that copy. On 21 May 1995, the complainant applied to the agency for internal review of its decision to deny access to the name. Although the statutory period within which an application for internal review must be made had expired, the agency accepted the request and conducted the review.
4. On 14 June 1995, Acting Commander Hawkes, the internal reviewer, confirmed the decision of the agency in the first instance and decided that the matter deleted from the requested document, consisting of the name of a third party, was exempt matter under clause 3(1) of Schedule 1 to the FOI Act. On 4 July 1995, the complainant applied to the Information Commissioner for external review of the decision of Acting Commander Hawkes.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 10 July 1995, pursuant to my obligation under s.68(1) of the FOI Act, I notified the agency that I had accepted this complaint for review. In accordance with my authority under ss.75(1) and 72(1)(b) of the FOI Act, I sought the production to me of the document in dispute together with the agency's file maintained in respect of this matter. Those documents were provided to my office on 10 July 1995.
6. After examining the requested document and considering the submissions of the parties, on 17 July 1995 I provided the complainant with my preliminary view, and reasons for that view, of the agency's claim for exemption. It was my preliminary view that the name of a third party appearing in the requested

document was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The complainant was invited to reconsider his position in light of my preliminary view. By letter dated 25 July 1995, the complainant provided further background material relating to his complaint for my consideration, together with his submissions as to the relevant public interest considerations.

THE EXEMPTION

7. The document identified by the agency as being within the ambit of the complainant's request is a three page computer print-out recording the details of a report to the agency of alleged offences by the complainant. The agency claims that the name of a third party appearing in that document is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Clause 3(1) 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."*

8. In the Glossary in the FOI Act, "**personal information**" is defined as meaning "*...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."*

9. I have previously expressed the view that the purpose of the exemption in clause 3 is to protect the privacy of individuals. That exemption is a recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that

- information of that kind should not generally be accessible by other persons without good cause.
10. Although in some instances, the mere mention of a person's name may be "personal information" about that person, there usually must be more information than a name in order to establish the exemption under clause 3. Parts (a) and (b) of the definition in paragraph 8 above suggest that disclosure of the document must reveal something more about an individual, other than his or her name, to attract the exemption. In my view, a document consisting of an untitled list of names and nothing more would be unlikely to be exempt under clause 3. However, a document containing a list of names that also discloses something personal and private about the people mentioned in that list because of the context in which the names appear in that document or because of the title of the document, may well attract the exemption.
 11. When an agency decides that a document contains personal information about a person, and that document is the subject of an access application under the FOI Act by some other person, it may provide access to that document with personal information deleted. An agency has the option of deleting all of the personal information, including the relevant name of the person to whom the information relates from which that person could be identified. In some instances, this may be achieved by deleting the name only and providing access to the remaining information if the identity of the person to whom the information relates is not able to be ascertained from that information itself. I consider providing access to a document with only the name deleted, wherever possible, to be in accordance with the objects and intent of the FOI Act.
 12. In this instance the complainant has been provided with a copy of the requested document with the name of the third party deleted. The third party, when consulted by the agency, objected to disclosure of any information in the document that may identify the third party. I am satisfied, from my examination of that document and the context in which the name appears, that the document contains personal information about the third party. The matter that I consider to be personal information, whether it is true or not, that is recorded in the document has already been disclosed to the complainant in the edited copy of the document. However, without the name of the third party, that information is not personal information as defined in the FOI Act as the identity of the third party cannot be ascertained from it. In those circumstances, I am of the view that disclosure of the identity of the third party would reveal personal information about that person and, therefore, I find that the name of the third party is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
 13. The complainant sought to persuade me, in accordance with the onus on him under s.102(3) of the FOI Act, that disclosure of the exempt matter would, on balance, be in the public interest. The complainant informed me that he was in the process of taking legal action in the civil courts against another person and several police officers. It was his opinion that he had been the subject of a false report and he submitted that he required access to all relevant information to pursue alternative remedies against those individuals. He claimed it was in the public interest for that information to be provided to him.

14. I recognise a public interest in maintaining the privacy of individuals whose personal information may be disclosed in documents held by State and local government agencies. In my view, that public interest factor may only be displaced by strong and convincing arguments. In this instance, I am not persuaded by the arguments of the complainant in favour of disclosure. I am not satisfied that there is any countervailing public interest, other than the public interest in the complainant having access to personal information about him. That public interest, in my view, has been satisfied by the disclosure of an edited copy of the document. I find the name of the third party to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
