

RULE AND SGIC

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

**File Ref: 95125
Decision Ref: D03595**

Participants:

Richard Ernest Sydney Rule
Complainant

- and -

**State Government Insurance
Commission**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - edited access - copies of letters to agency - clause 3(1) - personal information about a third party - public interest factors for and against disclosure.

Freedom of Information Act 1992 (WA) ss. 68(1), 72(1)(b), 75(1), 102(3); Schedule 1 clauses 3(1), 3(6), 8(2); Schedule 2 Glossary.

Re Veal and Town of Bassendean (Information Commissioner, WA, 25 March 1994, unreported).

Re Kobelke and Minister for Planning and others (Information Commissioner, WA, 27 April 1994, unreported).

Re A and Heathcote Hospital (Information Commissioner, WA, 9 June 1994, unreported).

Re Hayes and the State Housing Commission of Western Australia (Homeswest) (Information Commissioner, WA, 17 June 1994, unreported).

Re Gray and University of Western Australia (Information Commissioner, WA, 23 June 1994, unreported).

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

Re C and Department for Community Development (Information Commissioner, WA, 12 October 1994, unreported).

Re Smith and State Government Insurance Commission (Information Commissioner, WA, 5 December 1994, unreported).

Re Edwards and Ministry of Justice (Information Commissioner, WA, 12 December 1994, unreported).

Re James and Others and Australian National University (1984) 6 ALD 687.

DECISION

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

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

14th September 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the State Government Insurance Commission ('the agency') to refuse Mr Rule ('the complainant') access to certain matter in documents to which access was sought under the *Freedom of Information Act 1992* ('the FOI Act').
2. By letter to the agency dated 7 April 1995, the complainant sought access to copies of two letters forwarded to the agency in 1982 containing personal information about him. On 18 May 1995, Mr R Locke, the agency's FOI Co-ordinator, advised the complainant that Mr D Williams, Manager, Government Insurance Division, had decided to refuse access on the ground that the requested documents are exempt under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act.
3. On 30 May 1995, the complainant sought internal review of that decision. That review was undertaken by Mr V Evans, Managing Director of the agency. On 6 June 1995, Mr Evans decided to grant access to edited copies of the requested documents from which certain matter had been deleted. The agency claims that the matter deleted from the documents, consisting of the author's name and address, is exempt matter under clause 3 of Schedule 1 to the FOI Act.
4. On 7 July 1995, the complainant sought external review by the Information Commissioner of the decision of the agency to provide him with access to edited copies of the requested documents.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 17 July 1995, in accordance with my statutory obligation under section 68(1) of the FOI Act, the agency was notified that I had accepted this complaint for review. Pursuant to my authority under ss. 75(1) and 72(1)(b) of the FOI Act, I required the production to me of the originals of the documents in dispute together with the agency's file maintained in respect of this access application. Those documents were delivered by hand to my office on 17 July 1995.
6. On 27 July 1995, after an examination of the documents, it was my preliminary view that the matter deleted from those documents was, *prima facie*, exempt matter under clause 3(1). The parties were informed of my preliminary view and reasons for that view. In response to that preliminary view, the complainant provided a further submission in order to persuade me that disclosure would, on balance, be in the public interest.

THE DISPUTED DOCUMENTS

7. The disputed documents consist of two letters sent by a third party to the agency in 1982. Those letters both contain allegations against the complainant concerning a workers' compensation claim then before the agency for settlement.

THE EXEMPTION

8. The agency claims that the matter deleted from the two disputed documents is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, so far as is relevant, 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."*

9. In the Glossary in Schedule 2 to 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*

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- (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."*

10. Although, in some instances, the mere mention of a person's name may be "personal information" about that person, as I have said before, there usually must be more information than a name in order to establish the exemption under clause 3. Paragraphs (a) and (b) of the definition quoted in paragraph 9 above

- suggest that disclosure of the document must reveal something more about an individual than his or her name to attract the exemption.
11. From my examination of the disputed documents I am satisfied that the matter deleted from those documents is personal information as defined in the FOI Act. That matter consists of, in one document, the name of the third party, and in the other document, the name and address of the third party.
 12. 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. The exemption is, however, limited by 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. The onus of persuading me that disclosure of personal information about a third party would, on balance, be in the public interest lies on the complainant by virtue of s.102(3) of the FOI Act.
 13. The third party, who is the author of the disputed documents, was contacted by my office. The third party resides at the same address that is recorded in the disputed document. The third party does not consent to the disclosure of the matter that would reveal that third party's identity.

The public interest

14. As I have said before, the exemption in clause 3(1) is designed to protect the privacy of third parties (see *Re Veale and Town of Bassendean* (25 March 1994, unreported, at para 34); *Re Kobelke and Minister for Planning and others* (27 April 1994, unreported at para 68); *Re A and Heathcote Hospital* (9 June 1994, unreported, at para 23); *Re Hayes and The State Housing Commission of Western Australia (Homeswest)* (17 June 1994, unreported, at para 20); *Re Gray and University of Western Australia* (23 June 1994, unreported, at para 14); *Re Manly and Ministry of the Premier and Cabinet* (16 September 1994, unreported, at para 46); *Re C and Department for Community Development* (12 October 1994, unreported, at para 22); *Re Smith and State Government Insurance Commission* (5 December 1994, unreported, at para 13); *Re Edwards and Ministry of Justice* (12 December 1994, unreported, at para 15)).
15. As I am satisfied that the matter deleted from the disputed documents is, *prima facie*, personal information about a third party, the question is whether, and in what circumstances, the public interest in maintaining the privacy of an individual is outweighed by some other public interest that favours disclosure of that personal information.
16. The complainant informed me that he is seeking access to the deleted matter in order to achieve his own peace of mind in relation to the identity of the complainant, and that it was not his intention to take action against that person.

It was his contention, supported by independent advice from his physician, that the allegations against him had been the source of considerable stress to himself and his wife for over 10 years. After that length of time, it was his view that there was a public interest in the release of the disputed documents.

17. In my view, in this case there are two competing public interests which must be balanced against each other. On the one hand there is a public interest in maintaining personal privacy so that disclosure of documents should not, unnecessarily, breach that privacy principle. On the other hand, there is a public interest in the complainant being able to exercise his legal right to access documents.

18. I note the comments of Deputy President Hall in *Re James and Others and Australian National University* (1984) 6 ALD 687 at paragraph 87 where, quoting from another matter, he said:

"But what is important is that His Honour clearly considered that there was a public interest in a citizen having such access in an appropriate case, so that if the citizen's "need to know" should in a particular case be large, the public interest in his being permitted to know would be commensurately enlarged."

19. There is material before me which suggests that the complainant feels a strong need to access the matter deleted from the disputed documents, for his own peace of mind. The fact that there is a strong "need to know" by this complainant is supported by a submission received by my office from his physician. I consider that there may be a point in time when the confidentiality of documents and the sensitivity with respect to personal information contained within those documents may well be displaced by other public interests.

20. However, in my view, whilst this is a case where the competing interests are finely balanced, I am not persuaded by the material before me that the general right of access and the regime of openness and accountability inherent in the FOI Act is sufficient to tilt the balance in favour of disclosure of the deleted matter to the complainant. Therefore, I am of the view that the right to privacy and the non-disclosure of information that is, *prima facie*, exempt matter in the disputed documents must prevail. I find the matter deleted from the disputed documents to be exempt under clause 3(1) of Schedule 1 to the FOI Act.
