

RODDAN AND LEGAL AID

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

**File Ref: 95048
Decision Ref: D03695**

Participants:

Lindsay Gordon Roddan
Complainant

- and -

**Legal Aid Commission of Western
Australia**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - access to edited copies - matter identifying the source of information to the agency - clause 5(1)(e) - whether disclosure could reasonably be expected to endanger the life or physical safety of any person.

FREEDOM OF INFORMATION - clause 8(2) - confidential communications - confidential information obtained in confidence - whether disclosure could reasonably be expected to prejudice the future supply of information of that kind - whether, on balance, in the public interest to disclose.

Freedom of Information Act 1992 (WA) ss. 30, 68(1), 72(1)(b), 74(2), 75(1);
Schedule 1 clauses 5(1)(e), 5(4), 8(2).

Legal Aid Commission Rules 1990 (WA).

Searle Australia Pty Ltd v Public Interest Advocacy Centre (1992) 108 ALR 163.

Roddan v The Queen (Supreme Court of Western Australia, 8 July 1994, unreported).

DECISION

The decision of the agency is varied. The matter deleted from Documents 1, 3, 5, 6, 7, 8, 9, 10, 11 and 12 is exempt matter under clause 5(1)(e) of Schedule 1 to the *Freedom of Information Act 1992*. The matter deleted from Document 2 is not exempt.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

25th 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 Legal Aid Commission of Western Australia ('the agency') to refuse Mr Roddan ('the complainant') access to various documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. In August 1992, the complainant applied for and was granted legal aid in relation to a civil matter in the Local Court in which he was named as a defendant. On 10 February 1993, as a result of information received by the agency, the agency sought further information from the complainant regarding his financial circumstances. The grant of aid was suspended pending receipt by the agency of the complainant's response. On 2 April 1993, the agency terminated the grant of legal aid to the complainant, and advised the complainant of the reason for the termination.
3. In September 1993, the complainant sought legal assistance from the agency with respect to a criminal matter with which he had been charged. In light of the agency's concerns regarding the complainant's financial circumstances, the agency commenced an investigation into his financial circumstances prior to making any decision relating to the granting of legal aid. Following the investigation, the agency decided that legal aid would not be granted to the complainant, and the complainant was advised accordingly.
4. On 29 December 1994, the complainant lodged an access application under the FOI Act seeking access to his files, and particularly to details of the allegations and sources of the information provided to the agency about his financial circumstances. On 14 February 1995, Mr J Brash, an FOI decision-maker in the agency, granted the complainant access to a number of documents, but denied him access to other documents either in full or in part, and claimed that the matter to which access had been refused is exempt under clause 8 of Schedule 1 to the FOI Act.
5. On 16 February 1995, the complainant applied for internal review of the agency's decision. On 14 March 1995, Ms C Bahemia, the principal officer of the agency, varied the initial decision of the agency by releasing certain documents to which access had previously been refused. However, the agency maintained its claim for exemption in relation to certain matter within the documents sought by the complainant on the ground that the matter is exempt under clause 8.
6. On 21 March 1995, the complainant sought external review by the Information Commissioner of the decision of the agency.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 24 March 1995, pursuant to 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 authority under ss.75(1) and 72(1)(b) of the FOI Act, I required the agency to produce for my inspection the documents within the ambit of the access application together with the FOI file maintained by the agency with respect to the complainant's access application. Further, as I was of the view that neither the initial decision nor the decision on internal review complied with the requirements of section 30 of the FOI Act, I also sought further information from the agency to justify the agency's claim that the matter within the requested documents is exempt under clause 8 of Schedule 1 to the FOI Act.
8. On 31 March 1995, I received the requested documents and the additional information from the agency. On 18 April 1995, I provided a copy of the additional information to the complainant and sought additional submissions from him. In accordance with that invitation, the complainant provided further submissions to me on 28 April 1995.
9. On 18 August 1995, after examining the requested documents and considering the submissions of the parties, I informed the parties of my preliminary view on this complaint. It was my preliminary view that, save for the matter deleted from one document, the matter claimed by the agency to be exempt may be exempt from disclosure under clause 5(1)(e) of Schedule 1 to the FOI Act. Although the agency claimed that the deleted matter is exempt under clause 8(2), on the material then before me, it was also my preliminary view that the requirements for exemption under clause 8(2) had not been established with respect to all of the matter deleted from the documents within the ambit of the access application. Further, I advised the agency that, in relation to the one document, it was my preliminary view that the matter within that document may not be exempt under the FOI Act. Both parties were invited to make any further submissions to me in support of their claims, and to respond to my preliminary view that the documents contained matter that may be exempt under clause 5(1)(e). However, neither party responded to that invitation.

THE DISPUTED DOCUMENTS

10. There are parts of 12 documents remaining in dispute between the parties. Those documents are described as follows:

Document File Number	Folio	Date	Description
3/18/92/0034			
1	18	undated	Facsimile to agency from third party.

2	22-23	15/03/93	Letter from solicitor to agency.
3	44	05/02/93	Letter from solicitor to agency.
Document File Number 3/18/93/0011	Folio	Date	Description
4	6	10/01/95	Copy letter from agency to third party.
5	31	02/02/94	Internal memorandum between officers of the agency.
6	32	13/01/94	Internal memorandum between officers of the agency.
7	36	09/12/93	Internal memorandum between officers of the agency.
8	37	10/12/93	Copy letter from agency to third party.
9	44-45	17/11/93	Internal memorandum between officers of the agency.
10	97	24/01/94	Internal memorandum between officers of the agency.
11	98-122	13/01/94	Report to agency from third party.
12	123	18/01/94	Invoice from third party to agency.

THE EXEMPTIONS

(a) Clause 5(1)(e)

11. The complainant has received copies of the disputed documents from which certain matter has been deleted. Although the agency claims that the deleted matter is exempt under clause 8(2) of Schedule 1 to the FOI Act, I am of the view that the matter deleted from all of the documents other than the matter deleted from Document 2 is exempt under clause 5(1)(e). However, in providing my reasons for reaching that view, it is necessary that I describe that matter in general terms only in order to avoid breaching my obligation under s.74(2) of the FOI Act not to reveal exempt matter in my reasons for decision.
12. Clause 5(1)(e) provides:

“5. Law enforcement, public safety and property security

Exemptions

(1) *Matter is exempt matter if its disclosure could reasonably be expected to -*

...

(e) endanger the life or physical safety of any person;”

13. Clause 5(1)(e) exempts from disclosure matter which, if disclosed, could reasonably be expected to endanger the life or physical safety of any person. The words “could reasonably be expected to” appear in other exemptions and in like provisions in the FOI Acts of the Commonwealth and the other States. The leading authority on the meaning of this phrase is the decision of the Full Federal Court in *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 108 ALR 163. That case held that, on an objective view of the evidence, there must be real and substantial grounds for expecting certain consequences to follow from the disclosure of documents.
14. The submissions of the agency in support of its claims for exemption clearly indicate that the matter deleted from the disputed documents has been so deleted to prevent disclosure of the identities of the persons who have either supplied information to the agency, or who have been the source of information received by the agency, relating to the financial circumstances of the complainant. Some of the deleted matter is simply the name and address of a person. In some cases, the deleted matter also includes the substance of the information given to the agency, in circumstances where the disclosure of the substance of the information would, because of its very nature, reveal the source of that information. The agency informed me that the people whose identity is being protected fear potential reprisals if their involvement in providing information to the agency is made known to the complainant.
15. The agency has provided me with sufficient information to satisfy me that the fear of the individuals concerned for their safety if their identity is made known to the complainant is reasonably based. There is material before me evidencing the threats to the safety of individuals who have previously provided information concerning the complainant to the authorities, regardless of whether that information was provided pursuant to an obligation to do so or simply following a request. That material includes the discussion of the history of a bail application made by the complainant as discussed in *Roddan v The Queen* (Supreme Court of Western Australia, 8 July 1994, unreported).
16. From my examination of the disputed documents, and taking all of the material before me into account, including the submissions of both parties, I am satisfied that disclosure of the matter deleted from the disputed documents described in paragraph 10 above, save for Document 2, could reasonably be expected to endanger the physical safety of persons from whom the agency received that information. I find that matter to be exempt matter under clause 5(1)(e) of Schedule 1 to the FOI Act.
17. In his submission to me, the complainant identified a number of public interest factors in support of his claim that the deleted matter should be disclosed, including the need for the identity of those providing information to the agency to be made known, so as to enable the information to be tested and rebutted.

However, as I have found that the deleted matter in all but Document 2 is exempt under clause 5(1)(e), the public interest for and against disclosure of that matter does not arise unless one of the limitations in clause 5(4)(a) applies. I am satisfied that the limitation in clause 5(4)(a) is not applicable to the deleted matter, and, accordingly, it is not open to me to consider whether disclosure would, on balance, be in the public interest.

(b) Clause 8(2)

18. The agency claims that the matter deleted from Document 2 is exempt matter under clause 8(2) of Schedule 1 to the FOI Act. Clause 8(2) provides:

"8. Confidential communications

Exemptions

- (2) *Matter is exempt matter if its disclosure -*
- (a) *would reveal information of a confidential nature obtained in confidence; and*
 - (b) *could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency."*

19. Document 2 is a letter to the agency from the solicitor to whom the agency assigned the conduct of the Local Court action. The letter contains advice to the agency as to the progress of the Local Court matter. The final three paragraphs of the letter have been deleted.
20. From my examination of Document 2 and the submissions of the agency, I accept that the deleted matter may consist of confidential information obtained in confidence, such that it would, *prima facie*, satisfy the requirements of paragraph (a) of clause 8(2). It is evident from the deleted matter itself that it had been known to only a few people and that its author intended it to be treated confidentially by the agency. Accordingly, I consider that the deleted matter may have been given to the agency in confidence. There is some indication in the information provided to me by the agency that the agency received the deleted matter in confidence, although it is not entirely clear that that is the case. It may be, therefore, that the deleted matter comprises information of a confidential nature obtained in confidence.
21. However, I am not persuaded that disclosure of the deleted matter in Document 2 could reasonably be expected to prejudice the future supply of such information by an assigned practitioner in circumstances where the assigned practitioner is under an obligation to provide such reports. A solicitor assigned the conduct of the matter for which legal aid is granted is under an obligation, pursuant to the *Legal Aid Commission Rules 1990*, to report to the agency in respect of the status of the matter of which the solicitor has conduct and for which he or she is funded by the agency. I consider that that obligation would include a

requirement to provide information of the kind contained in the first paragraph from page 2 of the letter.

22. The matter contained in the second paragraph deleted from page 2 appears to me to have been given in the context of then on-going proceedings. Given that those proceedings are no longer on foot, I do not accept that the agency's ability to obtain information of that kind in the future could reasonably be expected to be prejudiced by its disclosure. Similarly, I am not persuaded that disclosure of the matter in the third paragraph deleted from that page could reasonably be expected to prejudice the future supply of information of that kind to the agency. That paragraph contains a routine request of a kind that I have no doubt will continue to regularly be made by many legal practitioners.

23. Therefore, I find the matter deleted from Document 2 is not exempt under clause 8(2) of Schedule 1 to the FOI Act. Although the agency also claimed that the other disputed documents contain matter that is exempt under clause 8(2), my finding that that matter is exempt under clause 5(1)(e) necessarily means that I do not need to make a finding on that point.
