

DOW AND RACING AND GAMING

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 97183

DECISION No: D03897

PARTIES: George Ogilvie DOW

Complainant

OFFICE OF RACING, GAMING AND LIQUOR

Respondent

No. of documents in dispute: 1

Exemption clause(s): Clause 3

By letter dated 23 June 1997, Mr Dow ('the complainant') lodged an access application with the Office of Racing, Gaming and Liquor ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents concerning a complaint made to the agency about him.

After the complainant agreed to an extension of time for the agency to make its decision on access, by letter dated 22 August 1997, the agency refused access to the requested document on the ground that it is exempt under clause 3(1) of Schedule 1 to the FOI Act. The complainant sought internal review of the agency's initial decision. By letter dated 2 October 1997, the principal officer of the agency confirmed the initial decision.

By letter dated 27 October 1997, 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 document from the agency. After examining that document and considering the material before me, I provided the parties with my preliminary view of this complaint, and my reasons. It was my preliminary view that the disputed document may be exempt under clause 3(1) as claimed by the agency.

The complainant advised my office that he did not wish to withdraw from his complaint. However, he did not provide any further submissions for me to consider. In the circumstances, I am not dissuaded from my preliminary view. The parties have been fully informed in writing of the reasons for my view. A summary of those reasons follows.

The disputed document

The disputed document is a hand-written letter of 3 pages containing several matters of complaint about the management of the Paynes Find Tavern. Although the document is undated, it is date-stamped 3 June 1997, indicating the date it was received by the agency. I understand that at the time the complaint was made, the complainant was the manager of the Paynes Find Tavern.

The exemption – Clause 3(1)

The agency claims exemption for all of the matter in the disputed document 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) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*

(3)...

(4)...

(5)...

(6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*

In the Glossary in 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".*

There is information in the disputed document that clearly identifies a number of third parties. In my view, that matter is, *prima facie*, exempt under clause 3(1). There is also some information in the document that is personal information about the complainant. However, that matter is so inextricably entwined with personal information about other people that it could not be disclosed to the complainant without also disclosing the personal information about the third parties.

I consider that the purpose of the exemption in clause 3(1) is to protect the privacy of third parties. Clause 3 is subject to a number of limits on exemption. In my view, the only limit which may apply in this instance is the limit in clause 3(6).

Public interest

I recognise that there is a public interest in a person being informed of any allegations made against him or her to government agencies and in being given an opportunity to respond to such allegations. However, there is also a strong public interest in maintaining personal privacy. I also consider that there is a public interest in maintaining the capacity of the agency to receive and act on complaints pursuant to its responsibilities under the *Liquor Licensing Act 1988*.

I have also considered the fact that the disputed document contains some personal information about the complainant as being relevant in the balancing process. However, as I have already stated, that information is entwined with other exempt matter and it cannot be separated from that exempt matter so that it is practicable for the agency to give access to a copy of the document from which exempt matter has been deleted.

It is evident from the material before me that the complainant has been informed of the allegations against him and he has been given the opportunity to respond to those allegations. It is my understanding that the agency does not propose to take any further action in respect of them, and the complainant has been informed of that by the agency.

In this instance, I am not persuaded that the public interest requires the disclosure of personal information about third parties. The public interest has already been satisfied, to some extent, by the actions of the agency in informing the complainant of the allegations and in him having the opportunity to respond to those matters of complaint. Therefore, in balancing the competing interests, I am not persuaded that the public interest in maintaining personal privacy is outweighed by any other public interest.

Conclusion

Accordingly, I find that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the agency's decision.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
18 December 1997