

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Stewart and Western Australian Trotting Association* [2001] WAICmr 39

COMPLAINT No: F2001118

DECISION No: D0392001

PARTIES: **Brent James STEWART**

Complainant

WESTERN AUSTRALIAN TROTTING ASSOCIATION

Respondent

No. of documents in dispute: 4

Exemption clause(s): Clauses 6, 3(1), 4 & 8(2).

On 27 June 2001, Mr Stewart ('the complainant') made an application to the Western Australian Trotting Association ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents of the agency relating to the issue of the testing of TCO2 levels in the blood of harness-racing horses.

The agency granted the complainant access to some of the requested documents, but refused access to other documents on the ground that they are exempt under clause 6(1) of Schedule 1 to the FOI Act. Subsequently, following an internal review, the complainant was granted access to some additional documents in full and in part. Access to one document was refused on the ground that it pertained to "*third party confidential commercial relationships*" and was, in the opinion of the agency, therefore, exempt. The matter deleted from 3 documents was claimed to be exempt under clause 6(1).

On 31 August 2001, 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 examined them. It was not apparent to me that the disputed documents were exempt as claimed by the agency. The agency had merely cited clause 6 as the ground for refusal of access to parts of 3 documents and claimed that one document related to "*third party confidential commercial relationships*", but no reasons were given to justify the decision to refuse access.

My office made inquiries into this complaint. On 16 October 2001, I informed the parties, in writing, of my preliminary view of this complaint and my reasons. It was my preliminary view that the disputed documents may not be exempt. The agency did not respond. Under s.102(1) of the FOI Act, the onus is on the agency to establish that its decision to refuse access was justified. Clearly, it has not done so. Accordingly, I am not dissuaded from my preliminary view that the disputed documents are not exempt. A summary of my reasons follows.

The disputed documents

There are 4 disputed documents. Document 1 consists of email messages dated 9 April 2001, 10 April 2001, 11 April 2001, and 18 April 2001. These are messages to and from the agency and an officer of the Department of Agriculture, NSW ("the NSW officer"). Included is a copy of a letter dated 10 April 2001 from the Chemistry Centre WA to the agency. Documents 2-4 are internal agency memoranda dated 10 April 2001, 7 May 2001 and 11 May 2001.

Clause 6 – Deliberative processes

The agency claims the matter deleted from Documents 2-4 is exempt under clause 6(1). Clause 6 provides that matter is exempt if its disclosure would reveal any opinion, advice or recommendation that has been obtained, prepared or recorded; or any consultation or deliberation that has taken place, in the course of, or for the purpose of the deliberative processes of the Government, a Minister or an agency and would, on balance, be contrary to the public interest.

Having examined Documents 2-4, I accept that they contain some opinion and some advice, which, as I understand it, was placed before the Committee of the agency, for its deliberations about the level of TCO2 and the agency's testing policies.

I recognise that there is a public interest in ensuring the proper workings of the agency and consider that, in some circumstances, it may be contrary to that public interest to prematurely disclose deliberative process documents whilst deliberations are continuing (for example, a recommendation or some advice that is not final and which may be subject to change or amendment) but only to the extent that disclosure would adversely effect the decision-making process or that disclosure would, for some other reason, be demonstrably contrary to the public interest.

In this instance, nothing has been put before me to explain why it would be contrary to the public interest to disclose Documents 2-4 or how disclosure would affect any deliberative process of the agency and it is not apparent to me that any other public interest would be harmed by disclosure, such that it would be contrary to the public interest to do so.

I also recognise a public interest in citizens being informed of the processes of government and the means by which decisions are made. The web site of the agency publishes information about various TCO2 levels in horses tested during various race meetings. It also informs the public that the Racing Industry Chemistry Laboratory determines the published levels and that the reported results are obtained after subtracting a measurement for uncertainty.

In my view, the disclosure of documents that would inform participants in the harness racing industry about testing procedures, results and levels would enable those citizens to participate in and contribute to discussions about the TCO2 levels and policies of the agency. Therefore, in balancing the competing interests, and in the absence of any material to the contrary, I am not persuaded that it would be contrary to the public interest to disclose the disputed documents. Accordingly, I find that Documents 2-4 are not exempt. I note that Document 4 contains the name of a third party on page 2, point 8. I do not consider that that name should be disclosed, since it would reveal personal information about the third party. I find the name is exempt under clause 3(1) and consider that it would be practicable for the agency to delete it before access is given to that document.

Document 1

The agency has not cited any exemption clause as a ground for refusing access to Document 1. The only reason given by the agency for its decision to refuse access to Document 1 is that it pertains to "*third party confidential commercial relationships*". In light of that statement, I have considered whether the document might be exempt under any of the subclauses in clause 4. I do not consider that there are any grounds for a claim for exemption under clause 4(1), which deals with trade secrets.

I have been unable to identify any information in Document 1 that has a commercial value to any person. Therefore, I do not consider that there are any grounds for exemption under clause 4(2). Further, I have not been able to identify any information about the business, professional, commercial or financial affairs of any person in that document. Therefore, I do not consider that there are any grounds for exemption under clause 4(3).

I have also considered whether Document 1 might be exempt under clause 8(2), which deals with confidential communications. There is nothing on the face of Document 1 which points to the fact that its disclosure would reveal information of a confidential nature obtained in confidence by the agency. Even if that were the case, it would also be necessary for the agency to establish that disclosure could reasonably be expected to prejudice the future supply of information of that kind to the agency.

Document 1 deals with technical issues relating to the testing of TCO2 and laboratory sampling procedures. The NSW officer provided the information to the agency. As I understand it, the NSW officer has considerable experience in the testing procedures and was the chairperson of the TCO2 subcommittee of the Australian Harness Racing Council. It appears to me that the committee of the agency sought the advice of the NSW officer during its deliberations.

Given those facts, I do not accept that the ability of the agency in the future to obtain expert advice from the NSW officer or from any other professional experienced in the testing field, could reasonably be expected to be prejudiced by the disclosure of Document 1. Accordingly, I am not persuaded that there are any grounds for the exemption in clause 8(2) to apply to Document 1.

In the absence of any reasons from the agency, and based on my examination of Document 1, I find that Document 1 is not exempt. I set aside the decision of the agency.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
29 October 2001