

WELTON AND POLICE

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

**File Ref: 95137
Decision Ref: D04395**

Participants:

Gregory John Welton
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - file note of meeting - clause 8 - confidential communications - clause 8(2) - information provided by third parties - confidential source of information - confidentiality of sources - prejudice future supply of information to the agency - public interest factors for and against disclosure - public interest in protecting effective functioning of recruitment procedures - public interest in complainant being informed of reasons for agency's decision.

Freedom of Information Act 1992 (WA) ss. 21, 30, 75(1), 102(3); Schedule 1 clauses 3(1), 8(2), 8(4).

Freedom of Information Act 1982 (C'wlth) s. 43(1)(c)(ii).

Police Force Regulations 1979 (WA) Regulation 505.

Re Egan and Medical Board of Western Australia (Information Commissioner, WA, 28 September 1995, unreported).

Attorney-General's Department v Cockcroft (1986) 10 FCR 180.

Richards v Law Institute of Victoria (County Court of Victoria, 13 August 1984, unreported).

DECISION

The decision of the agency is confirmed. The document in dispute is exempt under clause 8(2) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

23rd October 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 refuse Mr Welton ('the complainant') access to a document requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant has applied on a number of occasions to join the agency as a police recruit in training. Although his earlier applications were unsuccessful, on the last occasion he was successful, at least to the point of attending at the Police Academy for orientation to his new career. However, on 10 March 1995, his offer of employment was deferred for the purpose of enabling further inquiries into his application for employment by the Recruiting Branch of the agency. On 1 May 1995, the complainant was advised by the Recruiting Branch that his employment application had been rejected.
3. Following that notification, the complainant sought and was given an explanation for that rejection by officers of the Recruiting Branch. My understanding is that the complainant received a detailed explanation on more than one occasion as to why his application had been rejected, including the fact that the agency had taken into account information received from various third parties including currently serving police officers.
4. On 16 May 1995, without referring to the FOI Act, the complainant sought access to documents of the agency relating to his employment application and, in particular, to information supplied to the agency by various third parties. Without reference to the agency's Freedom of Information Unit, Acting Superintendent Grant of the Recruiting Branch refused the complainant access on the ground that the information contained in the complainant's personal file is confidential information. Acting Superintendent Grant notified the complainant of his decision on 2 June 1995.
5. On 15 June 1995, the complainant applied to the agency for internal review and referred specifically to the FOI Act. On 3 July 1995, Mr M Hollier, Manager, Workforce Management and Administration in the agency, without identifying the number or type of documents in dispute, confirmed the original decision and refused the complainant access to his Recruiting Branch file on the ground that the information contained in that file is confidential. On 20 July 1995, the complainant applied to the Information Commissioner for external review of the agency's decision to deny him access to the requested documents.

REVIEW BY THE INFORMATION COMMISSIONER

6. Following receipt of that complaint, it was apparent to me that neither the decision of Acting Superintendent Grant nor the decision of Mr Hollier had been made in accordance with the requirements of the FOI Act. When that fact was brought to the attention of the agency, the agency's FOI Unit undertook to provide the complainant with a notice of decision that complied with the requirements of s.30 of the FOI Act. Subsequently, the complainant was provided with access to the majority of the requested documents, but the agency refused the complainant access to seven documents, in full or in part, on the basis that those documents contain matter which the agency claimed was exempt matter under clauses 3(1) and 8(2) of Schedule 1 to the FOI Act.
7. The complainant did not pursue his claims in relation to one other document for which an exemption under clause 3(1) was claimed by the agency for parts of that document. Thereafter, the complainant confirmed his complaint to my office in respect of 6 documents to which access had been refused. On 27 July 1995, pursuant to my power under s.75(1) of the FOI Act, I required the agency to produce to me for my inspection the originals of the documents that remained in dispute. Those documents were provided to me by the agency on 4 August 1995.
8. Following my examination of the requested documents and a consideration of the agency's reasons for denying access to those documents, I formed the preliminary view that one document may be exempt under clause 8(2) of Schedule 1 to the FOI Act, but that the five remaining documents may not be exempt documents as claimed by the agency. The parties were informed of my preliminary view and the reasons for that view, on 14 September 1995. Following receipt of my preliminary view, the agency abandoned its claims for exemption for five documents which, in my preliminary view, may not have been exempt documents and released copies of those documents to the complainant.
9. The complainant wishes to pursue his claim for access to the document which, in my preliminary view, may be exempt under clause 8(2), and which is the only document remaining in dispute between the parties.

THE DISPUTED DOCUMENT

10. The disputed document is a file note dated 10 March 1995, from the complainant's file in the Recruiting Branch of the agency. It records the substance of a meeting held between officers of the Recruiting Branch and third parties where the complainant's employment application to the agency was discussed.
11. It is my understanding that, after receiving anonymous information about the complainant, the Recruiting Branch instituted further inquiries into the suitability of the complainant for employment in the agency. The further inquiries conducted by the Recruiting Branch included meeting with certain third parties

who were alleged to have information of relevance to the Recruiting Branch. The meeting was attended by Acting Superintendent Grant who recorded a file note of the substance of his discussion with those third parties. That file note constitutes the disputed document.

12. The agency publishes in the *Police Gazette* the names, addresses, birth dates and occupations of prospective applicants. The reason for that practice is to ensure that any information known about prospective applicants by serving police officers is brought to the attention of the Recruiting Branch. Following the publication of the complainant's details on 1 February 1995, two serving police officers submitted reports to the Recruiting Branch in accordance with their obligations under regulation 505 of the *Police Force Regulations 1979*. Regulation 505 provides:

"Where a member possesses any information about any applicant that should be brought to the attention of the Commissioner, the member shall immediately communicate that information to his officer-in-charge for forwarding to the Officer-in Charge, Recruiting."

13. In addition, a military Policeman who had served with the complainant in the Army also submitted a report to the Recruiting Branch. That report, and the reports of the serving police officers have been released to the complainant.

THE EXEMPTION

14. The agency claims that the disputed document is exempt under clause 8(2) . Clause 8, so far as is relevant, provides:

"Confidential communications

Exemptions

(1)...

(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.

Limits on exemption

(3)...

(4) *Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest."*

15. In previous decisions, and most recently in my decision in *Re Egan and Medical Board of Western Australia* (28 September 1995, unreported), at paragraphs 25-26, I discussed the meaning of clause 8(2). To establish a *prima facie* claim for exemption under clause 8(2), the agency must not only show that the document contains information of a confidential nature that was obtained by the agency in confidence, that is, information of the type described in paragraph (a) of sub-clause 2, but also that it meets the requirements of paragraph (b) of sub-clause 2. Once I am satisfied that the matter is of a type referred to in sub-clause 8(2)(a), the agency must also persuade me that disclosure of the disputed document could reasonably be expected to prejudice the future supply to the agency of information of the relevant kind.
16. The words "*could reasonably be expected to...*" appear in several exemption clauses in Schedule 1 to the FOI Act. Those words are usually followed by a reference to some degree or type of harm that is expected to follow from the disclosure of the document for which exemption is sought. The meaning of the phrase "*could reasonably be expected to prejudice the future supply of information*" in s.43(1)(c)(ii) of the Commonwealth FOI Act, the Commonwealth equivalent to the exemption in clause 8(2) of the FOI Act, was considered by the Full Federal Court in *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180. The Full Federal Court said, at 190, that those words were intended to receive their ordinary meaning and required a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that those who would otherwise supply information of the relevant kind to the Commonwealth would decline to do so if the documents in question were disclosed. I accept that as the correct test to be applied in the interpretation of clause 8(2).
17. In *Richards v Law Institute of Victoria* (County Court, 13 August 1984, unreported) at page 9 Dixon J. said:

" [T]he words 'similar information' refer to information of the class or character contained in the case under consideration, and the precise contents of the information in the particular case are not relevant."
18. I consider that paragraph (b) of the exemption in clause 8(2)(b) of the FOI Act is directed at the ability of the agency to obtain similar information of the class or character under consideration in this matter. Thus, the exemption in clause 8(2) requires the agency's decision-maker to make a judgement about the reasonableness of the expected prejudice to the ability of the agency to obtain that kind of information in the future, if the disputed document were to be disclosed to the complainant.

Does the disputed document contain confidential information obtained in confidence?

19. Information is inherently confidential if it is not in the public domain. That is, the information must be known by a small number or limited class of persons.

Further, where the person supplying the information specifically requests that the information should not be disclosed, and the person receiving it agrees, then an obligation of confidence arises.

20. The agency informed me that the information in the disputed document was provided to the agency in confidence for the purpose of assisting officers of the Recruiting Branch to make a decision as to the suitability of the complainant for employment as a police officer. From my examination of the disputed document, I am satisfied that the information recorded in that document is matter of a type that is known only to a small group of people and is not otherwise in the public domain. The information contained in the disputed document is, therefore, inherently confidential. From my consideration of the nature of the information in the disputed document and the submissions from the agency, I am satisfied that the disputed document contains information of a type described in paragraph (a) of clause 8(2).

Could disclosure of the disputed document reasonably be expected to prejudice the ability of the agency in the future to obtain similar information?

21. From my examination of the disputed document, I am satisfied that the confidential information in it was provided to the agency voluntarily. In my view, the fact that it was provided voluntarily, the absence of any obligation or requirement on the general public to provide such information and the fact that the agency has no power to compel the supply of that kind of information, must be matters for consideration when determining whether a claim that the future supply of information of that kind could be expected to be prejudiced, is reasonably based. In some circumstances, I consider that information supplied to an agency on a voluntary basis may not be supplied in the future without an assurance of confidentiality.
22. In this instance, it is clear from the contents of the disputed document that the information was provided reluctantly. That information is of such a nature that I accept the agency's claim that the disclosure of this document could reasonably be expected to prejudice the agency's ability to obtain such information in the future because members of the public will be less likely to volunteer information to the agency about potential recruits, in order to assist the agency to make informed and considered judgements for recruiting purposes.
23. Therefore, taking into account all of the material before me, I am of the view that there are real and substantial grounds to find that the agency's claims under clause 8(2) are established. The question then arises as to whether the limitation placed upon the exemption in clause 8(4) can be established. Under clause 8(4) matter is not exempt if its disclosure would, on balance, be in the public interest. The onus of persuading me that disclosure would be in the public interest, lies on the complainant under s.102(3) of the FOI Act.

The public interest

24. The complainant submits that the agency made a decision to reject him as a police recruit on the basis of lies told to the agency by a third party. The complainant assumes to know the source of the information provided to the Recruiting Branch and his submission to me is based upon the correctness of his belief. It is the complainant's submission that the agency has rejected him as a suitable police recruit on the basis of unsubstantiated allegations which the agency did not attempt to verify. It is my understanding that the complainant submits that it would be in the public interest for the disputed document to be disclosed to him for two reasons. Firstly, because he claims that disclosure would act as a deterrent against anyone telling lies about applicants in the future. Secondly, if it were the case that any action or lack of action by the agency could be shown to have prejudiced his recruitment then he submits that disclosure would ensure that that situation did not occur again.
25. I recognise that there is a public interest in a person such as the complainant, being able to exercise his or her right of access under the FOI Act to documents containing personal information about that person. I also recognise a public interest in persons being informed of information about them that is held by government agencies. In particular, I recognise a public interest in a person who finds himself or herself being rejected for employment or advancement in a State or local government agency, having access to information that has influenced the decisions of that agency in that regard.
26. I must also have regard to the provision of s.21 of the FOI Act when making a decision as to whether it is in the public interest for personal information about an applicant to be disclosed to that applicant, or the effect that disclosure of the matter might have.
27. However, in this instance, I consider that the public interest has been met by the release of all the relevant documents except the disputed document and by the evidence before me which clearly establishes that the complainant was informed of all allegations against him during an interview with Acting Superintendent Grant. I am also satisfied by the material before me, that the substance of the personal information about the complainant and the opinions of him held by third parties have been either disclosed to him in those other documents and that he has been fully informed of those opinions. However, it is not my function to comment upon the correctness or otherwise of that information.
28. I also recognise that there is a public interest in the agency adopting procedures to ensure that only the most suitable applicants are selected to be trained as police officers. In my view, there is a public interest in the agency being able to receive information in confidence and to act upon that information for the benefit of the wider community. I consider that the agency has the right to adopt a variety of screening devices to ensure that applicants meet the high physical, psychological, educational and integrity standards expected by the community of its police officers. I also consider that there is a public interest in maintaining public confidence in the quality of policing services that requires the agency to

adopt more stringent screening processes than would otherwise be employed by State government agencies.

29. Weighing the competing public interests, I am of the view that the public interest in ensuring the integrity of the agency's recruiting processes outweighs the public interest in the complainant being able to exercise his right of access under the FOI Act. Accordingly, I find that the disputed document is exempt under clause 8(2) of Schedule 1 to the FOI Act.
