

KELLY AND MINERALS/ENERGY

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: 96087

DECISION No: D04496

PARTIES: John Patrick Kelly

Complainant

Department of Minerals and Energy

Respondent

No. of documents in dispute: 28

Exemption clause(s) : 3(1)

On 2 April 1996, Mr Kelly ('the complainant') lodged an access application with the Department of Minerals and Energy ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to an industrial accident that occurred in 1995 in which he was injured. The agency identified 44 documents that it held that were within the scope of the access application and granted the complainant full access to 12 documents and access to edited copies of 32 others. The agency informed the complainant that the matter deleted from the 32 documents is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

On 23 May 1996, the complainant sought internal review of the agency's initial decision to give him access to edited copies of 32 documents. On 31 May 1996, Mr C Branch, Assistant Director General of the agency decided that the matter deleted from the 32 documents is exempt matter under clause 3(1) and he confirmed the agency's initial decision to refuse access to that matter. On 11 June 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

I obtained copies of the disputed documents from the agency and a schedule listing and describing those documents. My Investigations Officer met with the parties to this complaint on separate occasions to discuss the resolution of this matter. On 26 June 1996 the complainant informed my office that he is not seeking access to personal information about other people contained in 4 witness statements which were amongst the edited copies of documents released to him by the agency. Following that advice, number of documents in dispute was reduced from 32 to 28.

On 9 July 1996, after examining the remaining disputed documents and considering the submissions of the parties, I provided the parties with my preliminary view of this matter. It was my preliminary view that the matter deleted from the disputed documents is matter which is, *prima facie*, exempt matter under clause 3(1). I also gave the parties detailed reasons for holding that view. Although the complainant made further submissions to me, pursuant to his obligation under s.102(3) of the FOI Act, as to why he considered it would, on balance, be in the public interest to disclose that matter to him, the complainant's submissions have not dissuaded me from my preliminary view that the matter deleted from the documents by the agency is exempt under clause 3(1). My reasons follow.

The disputed matter

The disputed documents have been identified and described to the complainant in a schedule prepared by the agency and provided to the complainant with the agency's initial notice of decision. The complainant has also been provided with access to edited copies of each of those documents with disputed matter deleted from them. The matter deleted from the 28 disputed documents consists of the names, addresses and employment details of a number of third parties associated with the investigation into the circumstances surrounding the industrial accident in which the complainant was injured. None of those third parties is an officer of an agency; all are employed in the private sector.

The Exemption - Clause 3(1) (Personal information)

Clause 3, so far as is relevant provides:

“Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).”*

In the Glossary in Schedule 2 to 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.”*

I have compared the original documents with the copies provided to the complainant and I am satisfied that the matter deleted from each of the 28 documents is personal information about third parties from which the identity of those parties is apparent or could reasonably be ascertained. In my view, that matter is, *prima facie*, exempt matter under clause 3(1) of schedule 1 to the FOI Act.

I am also satisfied that none of the limitations in clauses 3(2)-3(5) applies to the disputed matter. Therefore, pursuant to s.102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure to him of personal information about third parties would, on balance, be in the public interest.

The complainant’s submission

The complainant informs me that he is seeking access to complete copies of the disputed documents because he believes that the disputed documents contain inaccurate and untrue information about the industrial accident in which he was injured. The complainant submits that the public interest favours disclosure of the disputed matter because the industrial accident was life-threatening and there was no investigation into that accident by a District Inspector of the agency until 11 months after the accident. The complainant submits that people who have a responsibility to report accidents, and to keep safe work places, should not be able to hide behind FOI laws.

Public interest

I recognise that there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act. However, I also recognise that there is a public interest in the protection of the privacy of persons about whom personal information is contained in documents held by State and local government agencies.

In balancing those competing interests, in this instance, I am of the view that the latter interest should prevail. In reaching that conclusion, I note that the complainant has been given access to personal information about him contained within the disputed documents. In addition, save for the names, addresses and employment details of individuals other than himself, he has also been given access to all the information held by the agency in respect of the industrial accident in which he was injured. The complainant is, therefore, in a position to challenge the veracity of the agency’s record and to request the agency correct any personal information about him that may be inaccurate, incomplete, out of date or misleading. In my view, the disclosure of personal information about third parties will neither add to, nor detract from, his ability to exercise his rights under Part 3 of the FOI Act in that regard.

Accordingly, I am satisfied that the public interest in maintaining the personal privacy of individuals other than the complainant outweighs the public interest in the complainant being able to exercise his right of access under the FOI Act. I find that the matter deleted from the disputed documents is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

24th July 1996