

**CHRISTIAN AND THE ARTS AND HULL**

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

**File Ref: 95174  
Decision Ref: D05195**

Participants:

**Bret Ronald Christian**  
Complainant

- and -

**Department for the Arts**  
Respondent

- and -

**Andrea Hull**  
Third Party

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - correspondence between the Federal and State governments - correspondence between the third party, the Australia Korean Foundation and the Australia Japan Foundation - administrative documents of the agency - clause 3 - personal information - personal information about third parties - personal information about the third party - public interest factors for and against disclosure of personal information.

*Freedom of Information Act 1992 (WA)* ss. 10(2), 72(1)(b), 75(1), 102(2); Schedule 1 clause 3; Schedule 2 Glossary.

## DECISION

The decision of the agency is confirmed. Except for the matter described in the schedule attached to this decision, which I find is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, the requested documents are not exempt.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

14th November 1995

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Department for the Arts ('the agency') to refuse Mr Christian ('the complainant') access to documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. In 1988, Ms Andrea Hull ('the third party') held the position of Director of Strategic Development Division of the Australia Council for the Arts in Canberra. Following her appointment as Chief Executive Officer of the agency in July 1988, she was granted leave without pay until 30 October 1993 under the relevant Commonwealth Public Service conditions of employment. In May 1992 the third party was appointed to the Board of the Australia-Japan Foundation ('the AJF'). In June 1992 she was also appointed to the Board of the Australia-Korea Foundation ('the AKF'). Those appointments required the third party to attend interstate meetings of the Boards.
3. On 18 April 1995, the complainant applied to the Ministry of the Premier and Cabinet for access to documents related to the appointment of the third party to membership of the AJF and the AKF. The access application was transferred to the agency on the same day and, on 20 April 1995, the complainant was provided with an estimate of costs. Subsequently, on 2 May 1995, the complainant informed the agency that he wished to proceed with his access application.
4. By agreement between the complainant and the agency, the "permitted period" within which the agency was obliged to deal with the complainant's access application, was extended to 23 June 1995. On 21 June 1995, the agency granted the complainant access to 4 documents but refused the complainant access to 72 documents on the ground that those documents were exempt under clause 3 of Schedule 1 to the FOI Act. The complainant sought internal review and, on 21 July 1995, the agency confirmed its initial decision that the requested documents were exempt under clause 3. By letter dated 30 August 1995, received on 4 September 1995, the complainant applied to the Information Commissioner for external review of the agency's decision.

### REVIEW BY THE INFORMATION COMMISSIONER

5. On 11 September 1995, I informed the agency that I had accepted this complaint. In accordance with my usual practice and my authority under s.75(1) of the FOI Act, I sought the production to me of the documents in dispute. Pursuant to my authority under s.72(1)(b) of the FOI act, I also required the production of the agency's FOI file maintained in respect to this matter, together with additional information concerning the duties and functions of the Chief Executive Officer of

the agency. Those documents and information were received by my office on 14 September 1995.

6. On 3 October 1995, after examining the documents in dispute and considering the submissions of the agency and the complainant, it was my preliminary view that a number of the disputed documents may not be exempt and that others contained matter that may be exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency and the complainant were provided with my preliminary view and reasons for that view. A copy of my preliminary view was also sent to the third party and she was advised of her right to be joined as a party to this complaint. Following receipt of that letter, the third party applied to be joined as a party and was so joined. The third party also provided a submission for my consideration in which she claimed that all of the disputed documents were exempt under clause 3(1).
7. After receiving my preliminary view, the agency withdrew its claims for exemption for those documents and parts of documents which, in my preliminary view, may not have been exempt. The complainant also accepted my preliminary view and withdrew his claims in respect of those documents which, in my preliminary view, were outside the ambit of his access application. However, as the third party maintains her claim that the remaining documents are exempt under clause 3, that claim is the subject of this determination.

## **THE DISPUTED DOCUMENTS**

8. There are 56 documents in dispute in this matter. The agency originally provided the complainant and the third party with a schedule listing and describing the disputed documents. I am satisfied, therefore, that the third party is aware of the number and contents of the documents in dispute and I need not describe those documents in detail. The disputed documents primarily relate to the decisions to appoint the third party to the AJF and the AKF. They include official correspondence between the Federal and State governments, letters to and from the third party, the AKF and the AJF, and administrative documents of the agency recording leave, travel approvals and the arrangements for attending meetings, both interstate and overseas, and the like.

## **THE EXEMPTIONS**

9. The third party claims that all of the disputed documents are exempt 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)...  
(3)...  
(4)...  
(5)...

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

10. In the Glossary in Schedule 2 to the FOI Act, "**personal information**" is defined as meaning "...*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."*

11. I have previously expressed the view that paragraphs (a) and (b) of the definition quoted in paragraph 10 above suggest that disclosure of matter must reveal something more about an individual than his or her name to attract the exemption in clause 3(1). In my view, the purpose of the exemption in clause 3 is to protect the privacy of individuals, the exemption being a recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause.

12. I am also satisfied, from my examination of the disputed documents, except for the attachments to Document 6 which are dealt with in paragraphs 22 and 23 below, that the disputed documents contain personal information about the third party and, to a lesser extent, about other third parties. In my view, that matter is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The exempt matter consists of the signatures of various persons other than the third party, the previous private addresses of the third party, her personal bank account details, references to her family and health, leave taken and leave entitlements, and superannuation details.

13. I consider that, under s.102(2) of the FOI Act, the third party bears the onus of establishing that access should not be given to the disputed documents. In her submission dated 17 October 1995, the third party informed me that her objection to disclosure is based on her belief that her membership of the AKF and the AJF related to matters that were outside the terms of her employment as the then Chief Executive Officer of the agency and they did not form part of her Job Description for that position. The third party claims that her membership on the AKF and the AJF did not affect her departmental duties, nor did it affect those of any other person in the agency and the documents are, therefore, exempt.
14. I accept the claim by the third party that her membership of the AKF and the AJF was outside the terms of her Job Description. However, in the case of the AKF, that is simply because the AKF was not established until 1992, four years after the third party's appointment as Chief Executive Officer.
15. I also accept as statements of fact, the third party's assertions that the appointments to the AKF and the AJF were made with the permission of the then Minister for the Arts, and that the interstate trips necessitated by her membership on the AKF and the AJF, occurred with the permission of the Minister for the Arts. I also accept the claim by the third party that she combined departmental duties as Chief Executive Officer of the agency, with those interstate visits. However, those facts merely emphasise the difficulty I have in accepting the third party's claim that her appointments to the AKF and the AJF were made in her private capacity and not as a consequence of, nor related to, her position as a senior public servant in Western Australia.
16. Many of the disputed documents are addressed to the third party in her capacity as Chief Executive Officer of the agency. At least one document discloses that she conducted agency business between meetings interstate (Document 18); one discloses that she was entitled to the payment of normal travel allowances by the agency for interstate business connected with her position (Document 19); at least one document discloses that her normal salary was to be paid for by the agency during an overseas visit that was paid for by the AKF (Document 20); and one document indicates that she intended to provide a report on her overseas visit for the benefit of Western Australia. I have some difficulty in reconciling the third party's claims that the disputed documents contain matters of private concern and are unrelated to her former responsibilities as a public servant, with those facts.
17. In my view, it is evident from the contents of the disputed documents, that they are related to, and connected with, the third party's role and responsibilities as a senior public servant in Western Australia. I consider that there is a public interest in the performance of Chief Executive Officers of government departments being open to scrutiny, and in high level public servants who are paid from the public purse, being accountable for the discharge of their responsibilities.
18. I am not suggesting that the third party did not perform her duties in a responsible fashion. In fact, I accept her claim and the claim of the agency, that

the nature of her position required her to work out of hours on a regular and consistent basis and that she more than compensated for her absences from the State, by performing additional duties, both at nights and weekends.

19. Whilst I recognise that there is a public interest in protecting the privacy of individuals, in the main the disputed documents do not contain the type of sensitive and private information that should be protected from disclosure by the exemptions in Schedule 1 to the FOI Act. Where the disputed documents do contain that type of information, I consider it to be minimal. Further, I also consider it is practicable to provide access to edited copies of some of the disputed documents with exempt matter deleted from those documents.
20. I am not persuaded by the material before me that the complainant should not be given access to the disputed documents, either in full or in edited form. The third party is concerned that the complainant will selectively publish parts of the disputed documents in a local newspaper, "The Subiaco Post", of which he is the Editor. Section 10(2) of the FOI Act provides that a person's right to be given access under the FOI Act is not affected by any reasons the person gives nor by the agency's belief as to what the reasons for wishing to obtain access might be. I consider the third party's concerns are related, not unnaturally, to a current legal dispute that she has with the complainant. However, the complainant's reasons for seeking access to the documents, whatever those reasons might be, are not matters to which I am permitted to have regard.
21. Therefore, I find that, except for the matter described in the schedule attached to this decision, which matter I find to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act, the remaining matter in the documents listed on that schedule and the other disputed documents is not exempt matter under clause 3 of Schedule 1 to the FOI Act.

### **The attachment to Document 6**

22. Document 6 is a copy of a letter dated 13 May 1992 from the AKF to the third party. Attached to that letter is a copy of a Minute Paper dated 17 May 1992, prepared by the Minister for Foreign Affairs and Trade for Executive Council. The Minute Paper consists of an Order signed by the Governor-General establishing the AKF, with Explanatory Memorandum. In my view, the attachments to Document 6 are not exempt under clause 3(1) as they contain no personal information about the third party or any other person.
23. However, I consider those attachments fall outside the ambit of the complainant's access application because they contain no information of the kind described in that application. Accordingly, I find the attachments to Document 6 to be outside the ambit of the complainant's access application and, I confirm the decision of the agency to refuse access to those documents.

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**SCHEDULE OF EXEMPT MATTER UNDER CLAUSE 3**

<b>No</b>	<b>Description of document</b>	<b>Exempt matter</b>
1	Copy of letter dated 20 August 1992 from the third party to AJF.	All the text after the word “account” in the second paragraph to the beginning of the third paragraph.
2	Copy of letter dated 14 May 1993 from the third party to AKF.	The address in line 2 of paragraph 2.
3	Copy of letter dated 15 June 1993 from the third party to AJF.	The handwritten address on the bottom of the page.
4	Copy of a letter dated 28 April 1992 from the AKF to the third party.	The signature only of the author of that letter.
5	Copy of letter dated 4 May 1992 from the third party to AKF with Curriculum Vitae attached.	The third party’s date of birth on page 1 of the Curriculum Vitae; and the whole of paragraph 1 on that page.
6	Copy of letter dated 13 May 1992 from AKF to The third party.	Page 1 of letter: the signature only of the author of that letter.
7	Copy of facsimile Message Cover dated 5 June 1992 from AKF to The third party.	The signature only that appears immediately under the words “Best Regards”.
9	Copy of a letter dated 22 June 1992 from the AKF to The third party.	The signature only of the author of that letter.
12	Copy of a letter dated 21 May 1992 from AJF to The third party.	The signature only on page two of that letter.
13	Copy of a letter dated 25 May 1992 from The third party to AJF with attached Curriculum Vitae.	The same matter that has been edited from the Curriculum Vitae attached to Document 5.
22	Copy of a Memorandum dated 14 September 1993 from The third party to the then State Minister for the Arts.	The signature only on page two of that memorandum.
24	Copy of a Memorandum dated 16 December 1993 from The third party to the then State Minister for the Arts.	All the text from “1994” in the second sentence in the first paragraph.
26	Copy of a Memorandum dated 10 March 1994 from the Acting Executive Director of the agency to the then State Minister for the Arts.	The signature only of the author of that memorandum.
34	Copy of a letter dated 14 August 1992 from the AKF to The third party.	The signature only of the author of that document.



35	Copy of a letter dated 25 August 1992 from the AKF to The third party.	The signature only of the author of that letter.
37	Copy of a letter dated 16 November 1992, from the AJF to the The third party.	The signature only of the author of that letter.
38	Copy of a letter dated 18 November 1992 from the AKF to The third party.	The signature only of the author of that letter.
39	Copy of a letter dated 10 May 1993 from the AKF to The third party.	The signature only of the author of that letter.
39(a)	Copy of Document 39 with handwritten note on it.	As above.
40	Consisting of 17 Leave application forms for The third party.	Except for the name and employee number of The third party, and the amount and dates of leave taken - all other information on those forms.
41	Copy of Memorandum dated 8 July 1994 from The third party to Margaret Gill of the agency.	The signature only.
42	Copy of a Memorandum dated 25 November 1994 from The third party to Margaret Gill of the agency.	Page two: for the date 12-13 Dec: all the text after that date.
47	Copy of a letter dated 7 July 1988 from the Public Service Commission of Western Australia to The third party.	The address appearing immediately under the name "Ms Andrea Hull.
48	Copy of a letter dated 28 October 1993 to the Australia Council from The third party.	The text in the top left hand corner appearing immediately above the 28 October 1993.
50	Copy of a letter dated 15 November 1988 from the Australia Council to the agency.	All the text in lines 2-6 inclusive under the heading "Long Service Leave"; all the text in lines 2-4 inclusive under the heading "Sick Leave"; and the signature of the author of that letter.
51	Copy of a dated 2 January 1990 from Australia Council to the agency, with attachment, being copy of a letter from the Commonwealth department of Finance to the Australia Council	Page 1, paragraph 1 - the first mentioned name; Page 1, paragraph 2 - the last two sentences, then the remainder of that page; Page 2 - first two paragraphs; The attachment - the whole document.
52	Copy of a letter dated 6 February 1990 from the agency to the Australia Council.	Paragraph 1 - the first mentioned name; Paragraph 3 - all the text in sub-paragraph 1.
56	Copy of undated hand-written note.	All the text under the heading "Superannuation".