

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re "H" and Shire of Serpentine-Jarrahdale* [2000] WAICmr 59**

**COMPLAINT No:** F1602000

**DECISION No:** D0592000

**PARTIES:** "H"

Complainant

**SHIRE OF SERPENTINE-JARRAHDAL**

Respondent

**No. of documents in dispute:** 10

**Exemption clause(s):** Clause 3(1); clause 4(2)

In June 2000, the Shire of Serpentine-Jarrahdale ('the agency') decided to grant an applicant access to edited copies of documents requested under the *Freedom of Information Act 1992* ('the FOI Act'). However, the agency delayed the giving of access to allow a third party, "H" ('the complainant'), time to exercise his rights of review under the FOI Act. On 12 September 2000, the complainant made a complaint to the Information Commissioner seeking external review of the agency's decision to give access to edited copies of the requested documents. The complainant claimed that the edited copies of all the documents were exempt under clause 3(1) and that one document was exempt under clause 4(2) of Schedule 1 to the FOI Act.

#### **Review by the Information Commissioner**

After examining the disputed documents, I formed the view that they contained personal information about other individuals, as well as personal information about the complainant. However, it appeared to me that the agency had not consulted those other individuals before making its decision to release the documents to the applicant in edited form. Subsequently, the agency consulted with most, but not all, of the third parties. All but one of the individuals consulted by the agency consented to the disclosure of personal information about them in the disputed documents.

Following that, the agency informed me that it proposed to delete from the disputed documents personal information about the person who did not consent and personal information about the individuals who had not been consulted. In addition, the agency proposed to delete other information about the complainant. I examined copies of the documents edited in the manner proposed by the agency. On 25 October 2000, I informed the parties in writing of my preliminary view of this complaint, including my reasons.

It was my preliminary view that 8 of the disputed documents, edited in the manner proposed by the agency, may not be exempt under clause 3(1). However, it was also my preliminary view that 2 others contain personal information about the complainant and may, therefore, be exempt under clause 3(1). It was also my preliminary view that the complainant had not satisfied me that Document 5 was exempt under clause 4.

The matter which I considered to be exempt under clause 3(1) is contained in Documents 1 and 4 and consists of comments written in the complainant's handwriting. I considered that, in the circumstances of this matter, the complainant's identity could reasonably be ascertained from the handwriting and that its disclosure would reveal personal information about the complainant. Following receipt of my preliminary view, the agency informed me that it proposed to grant access to those documents by providing the applicant with typed versions of the handwritten parts, excluding a small amount of matter that I had indicated may be exempt under clause 3(1), whether or not it were handwritten.

#### **The complainant's submission**

The complainant objects to the disclosure of typed versions of the comments in Document 1 and Document 4. The complainant submits that it is unusual and objectionable to release documents in that manner, given that he has previously been denied access to typed documents. The complainant submits that the documents will be used to detract from the business value of his property and to undermine his integrity. However, no material was provided by the complainant to support his claims and, in any event, they do not go to the question of whether or not disclosure of the typed versions would reveal personal information about the complainant.

I have re-examined the disputed documents in light of the complainant's objections. I am not dissuaded from my preliminary view. A summary of my reasons follows.

### **The onus on the complainant**

Section 102(2) of the FOI Act provides that, if a third party initiates or brings proceedings under the FOI Act opposing the giving of access to a document, the onus is on the third party to establish that access should not be given or that a decision adverse to the access applicant should be made. In this matter, the complainant bears the onus of establishing that access should not be given to edited copies of the requested documents or that a decision adverse to the access applicant should be made.

### **Clause 3(1) – Personal information**

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The phrase "personal information" is defined in the Glossary in Schedule 2 to the FOI Act to mean: (a) information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead 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 examined the disputed documents, edited in the manner proposed by the agency. In their edited form, they do not, in my view, contain any details from which the identity of the complainant could reasonably be ascertained, neither is the identity of the complainant apparent on the face of those documents.

Documents 2, 3, 5, 6, 7, 8, 9 and 10 are typed. In my opinion, the format of those documents is unremarkable. In my view, none of them contains any identifying marks or expressions that are out of the ordinary or from which the complainant's identity could reasonably be ascertained. Accordingly, I find that edited copies of Documents 2, 3, 5, 6, 7, 8, 9 and 10 are not exempt under clause 3(1).

Two of the documents, Documents 1 and 4, contain handwritten comments made by the complainant to the agency. In the circumstances of this matter, I am satisfied that disclosure of the handwriting would reveal "personal information" as that term is defined in the FOI Act. Accordingly, I am satisfied that the handwritten parts of Documents 1 and 4 are exempt under clause 3(1). The agency accepts that those documents are exempt and the handwritten parts of those documents are not in dispute.

### **Form of access**

However, the agency proposes to grant access to typed versions of the handwritten parts of those documents. I have been provided with typed versions of the handwritten comments and I have examined those and compared them to the originals. In my view, the typed versions of the handwritten parts of Documents 1 and 4 do not contain any personal information about the complainant. Whilst the agency is not required to create a document in order to satisfy the applicant's request for access, the action it proposes to take appears to me to be a practical means of satisfying the competing needs of both the applicant and the complainant.

### **Clause 4(2) – Commercial or business information**

Clause 4(2) provides that matter is exempt matter if its disclosure would reveal information (other than trade secrets) that has a commercial value to a person and could reasonably be expected to destroy or diminish that commercial value. The only submission made by the complainant to support his claim that Document 5 is exempt under clause 4(2) is to state that the documents will be used to detract from the business value of his property. Having examined Document 5, I am of the view that it does not contain information that has a commercial value to a person, and the complainant has identified none to me. Accordingly, I find that Document 5 is not exempt under clause 4(2).

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

13 November 2000