

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

**File Ref: F2009365  
Decision Ref: D0072010**

Participants:

**V**  
Complainant

- and -

**Department of the Premier and  
Cabinet**  
Respondent

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access to a name – clause 3(1) – personal information – clause 3(6) – the public interest – whether disclosure, on balance, in the public interest.

*Freedom of Information Act 1992*: ss. 3, 10, 66(3) and 102(2); Schedule 1, clauses 3(1) and 3(6).

*DPP v Smith* [1991] 1 VR 63

*Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University and Others* [2001] WAICmr 1

*Re Mahoney and City of Melville* [2005] WAICmr 4

## DECISION

The decision of the agency is confirmed. The disputed information is not exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

Sven Bluemmel  
INFORMATION COMMISSIONER

23 March 2010

## REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of the Premier and Cabinet ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') to give an access applicant access to a document. V ('the complainant') is a third party whose name appears in that document and who objects to the disclosure of that matter to the access applicant.

### BACKGROUND

2. On 10 July 2009, the access applicant applied to the agency for access to the following:

*"All documents relating to travel claims by former WA State Parliament politicians since February 2001 up to and including the 2008-09 financial year ..."*

3. In the present case, I understand that the travel entitlements in question were available to former MPs who had served for the relevant time and to former Ministers and Premiers who had served for prescribed minimum periods.
4. The application specifically requested, among other things, the names of each of the former politicians receiving travel entitlements. Following discussions with the agency, the access applicant agreed to limit the scope to one document, a report itemising all claims, including travel claims, made by 39 former Members of Parliament ('MPs') for the 2008-2009 financial year ('the disputed document').
5. The agency consulted with the individuals identified in that document, including the complainant. On 30 July 2009, V advised the agency that V had no objections to the release of the information in the document relevant to V but noted *"...if as a third party I am entitled to have my name omitted I would expect that to be done."*
6. On 10 August 2009, the agency notified the access applicant of its decision to give access in edited form to the disputed document, deleting the names of all individuals who had objected to the disclosure of their names but giving access to the type and amount of expenses claimed by the former MPs for the period 2008-2009.
7. The access applicant applied for an internal review of that decision. By notice of decision dated 14 September 2009, the agency reversed its initial decision and decided to give access to all of the names of the former MPs. The agency gave the access applicant an edited copy of the disputed document which included the names of six former MPs who had consented to the disclosure of their names but which excluded the names of the remaining 33 individuals, pending those persons' exercise of their external review rights.

8. All third parties, including the complainant, were advised of their rights to seek external review of the agency's decision by the Information Commissioner. Pursuant to s.66(3) of the FOI Act, the third parties had 30 days after being given written notice of the agency's decision in which to lodge a complaint against that decision with the Information Commissioner. On 25 September 2009, the complainant applied to me for external review of the agency's decision to give the access applicant personal information about the complainant that was contained in the disputed document.

### **REVIEW BY THE INFORMATION COMMISSIONER**

9. Following the receipt of this complaint, I required the agency to provide me with the disputed document, together with its FOI file maintained in relation to the access application.
10. On 19 October 2009, the agency advised me that it considered that the thirty days in which third parties could lodge a complaint under s.66(3) of the FOI Act had expired, at which time no other third party apart from V had applied for external review of the agency's decision, although one person had contacted my office to express dissatisfaction with the agency's decision.
11. Following that advice, my Senior Investigations Officer invited the access applicant to be joined as a party to this complaint or to consider accepting access to a copy of the disputed document from which the complainant's name and that of the other person who had contacted my office had been deleted. With regard to the latter, my officer proposed disclosing those names in random – rather than alphabetical – order to avoid the possibility that the identities of V and the other third party could be ascertained.
12. On 11 December 2009, I was advised that the access applicant wished to pursue access to an unedited copy of the disputed document but did not seek to be joined as a party to this complaint.
13. On 12 January 2010, my officer wrote to advise both the complainant and the other third party mentioned in paragraph 10 that it may, on balance, be in the public interest to disclose the names of all persons receiving the entitlements as listed in the disputed document. He invited both to make further submissions to me, if they wished to pursue the matter. Following that advice and further discussions with my officer, the other third party consented to the disclosure of that person's name.
14. In response, I was advised that the complainant wished to maintain the complaint and to rely on the written submissions already provided to me. My officer confirmed that, should this complaint be finalised by way of a published decision, the complainant's identity and certain other information would not be disclosed, in order to avoid the release of matter that is claimed to be exempt.
15. On 18 February 2010, I provided the parties with a letter setting out my preliminary view of this complaint, which was, for the reasons set out in my letter, that the disputed information was not exempt under clause 3(1) of

Schedule 1 to the FOI Act. V replied to my letter on 20 February 2010 to make a factual correction but provided me with no further submissions in support of the claim that the disputed information is exempt under clause 3(1).

### **THE DISPUTED INFORMATION**

16. The information in dispute in this matter is the complainant's name as it appears in the disputed document. The remainder of the information that appears in connection with that name is not in dispute and has been disclosed to the access applicant.

### **CLAUSE 3 - PERSONAL INFORMATION**

17. The complainant submits that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, insofar as it is relevant, provides:

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

#### **Limits on exemption**

...

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

18. The term 'personal information' is defined in the Glossary to the FOI Act 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 finger print, retina print or body sample”.*

19. The purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies. The definition of 'personal information' in the Glossary makes it clear that 'personal information' is information about an identifiable person.

### **The agency's submissions**

20. In its notice of decision dated 14 September 2009, the agency stated that:

*“[d]etermining whether or not disclosure would, on balance, be in the public interest involves identifying the public interests for and against disclosure, weighing them against each other and deciding where the balance lies.*

*The major consideration is whether disclosure of the information would be of some benefit to the public generally and whether that public benefit is sufficient to outweigh any public interest in confidentiality being maintained.”*

21. In brief, the agency’s submissions, insofar as they relate to the disputed information, are as follows:
- There is a strong public interest in protecting the privacy of individuals where State and local governments hold documents containing information about those persons. That particular public interest may only be displaced by some stronger and more persuasive public interest.
  - Although now private citizens, former MPs are in receipt of public funds (the relevant travel entitlements being provided from consolidated revenue) by virtue of their former public role and by determination of an independent public body, the Salaries and Allowances Tribunal. Despite the fact that the public service of those former MPs may have ended, the public retains a right to know how and to whom public funds are expended in order to contribute to ongoing public debate about issues such as remuneration and entitlements of MPs and former MPs.
  - The right of taxpayers to be properly informed about payments made from consolidated revenue and the promotion of robust and informed public debate and discussion are factors favouring the release of the disputed information.
  - The public interest in revealing all of the details in the disputed document to allow a more robust debate over the merits or otherwise of such entitlements is a stronger public interest than the confidentiality of the individuals concerned.

### **The complainant’s submissions**

22. In V’s letter to me seeking external review, V made a number of submissions, which I have summarised as follows:
- The agency has confused what is in the public interest and what may interest the public and has applied a faulty test in deciding that the public interest in the privacy of individuals is overridden in this case.
  - The public and the media would be interested in the disputed information so that people can complain about the inflated remuneration of politicians, although the justification at the time the benefits were granted was that they were compensation for the inadequacy of MPs’ pay. Since MPs now

supposedly have adequate remuneration, those benefits have now been abolished.

- The agency's submissions that the travel entitlements in the disputed document have arisen only by virtue of the third parties' public role and the determination of the Salaries and Allowances Tribunal and that disclosure would allow a robust debate of the merits of such entitlements are arguments for disclosing the quantum of payment and are not arguments for disclosing personal information. Moreover, since the benefit is now abolished, there is no longer any need for robust public debate.
  - There is no public interest in knowing which former MPs received travel benefits as those individuals are not standing for public office and electors have no decisions to make about them.
  - The only consequence of disclosing the relevant names is that those persons will be subject to another newspaper article and the usual abuse that follows from that.
23. V advises that, although V ceased to be an MP some years ago, V is still subject to public recognition and both V and V's family have paid a huge penalty for V's having held public office, including the associated publicity. V submits that disclosure of the disputed information would renew that unwanted publicity and that the financial details already disclosed adequately satisfy the public interest, if not public curiosity.

## CONSIDERATION

24. Section 102(2) of the FOI Act provides that if - as here - a third party initiates or brings proceedings opposing the giving of access to a document, the onus is on that third party to establish that access should not be given or that a decision adverse to the access applicant should be made. Consequently, the onus is on the complainant in this matter, to establish that access should not be given to the disputed information.
25. Having examined the disputed information, I consider that it is personal information (as defined in the Glossary to the FOI Act) about the complainant because V's identity is apparent from that information. In my opinion, the disputed information is *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act. However, clause 3(1) is subject to the limits on that exemption contained in clauses 3(2)-3(6).
26. Having examined the material before me, I consider that, in the present case, the only relevant limit on the exemption in clause 3(1) is that contained in clause 3(6).

*Clause 3(6)*

27. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The application of the public interest ‘test’ in clause 3(6), as the agency notes, involves identifying the public interest factors for and against disclosure and weighing them against each other to determine where the balance lies.
28. The term ‘public interest’ is not defined in the FOI Act. In my view, the term is best described in the decision by the Supreme Court of Victoria in *DPP v Smith* [1991] 1 VR 63 at p.75, where the Court said:

*“The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals ... There are ... several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community, events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.”*

29. I consider that information about the way in which a government spends public money is a matter of legitimate public interest and is not simply a matter of public curiosity.
30. In the present case, the agency has identified a strong public interest in protecting the complainant’s privacy but considers that particular public interest to be outweighed by the public interests in the community’s right to know how money from the public purse is expended and on whom and in ongoing debate on the entitlements of MPs and former MPs. In applying clause 3(6), the agency has identified the public interests that favour disclosure in this case and those that do not and has given more weight to the former. In my view, the agency has applied the appropriate test in deciding that clause 3(6) applies in this matter.
31. Favouring non-disclosure of the disputed information, I recognise that there is a strong public interest in maintaining personal privacy. That public interest is recognised by the inclusion in the FOI Act of the exemption in clause 3(1) and, in my view, that particular public interest may only be displaced by some other, considerably stronger, public interest that requires the disclosure of private information, in this case about the complainant.
32. I acknowledge the complainant’s concerns about potential media interest and the unwanted publicity that might be generated from the disclosure of the disputed document. However, having examined the disputed document, it does



not appear to me that the disclosure of the disputed information is likely to single V out from V's peers in any way, such that V would be subject to greater publicity.

33. Favouring disclosure of the disputed information, I recognise that there is a public interest in the access applicant being able to exercise the general right of access to documents set out in s.10 of the FOI Act.
34. I also recognise that there is a public interest in the accountability of government for the expenditure of public funds, including the payment of benefits from the public purse, and a public interest in the community being informed of how taxpayer funds are spent. In my view, the fact that the relevant travel benefits have now been abolished does not affect those particular public interests.
35. Nor do I consider that disclosure should be limited solely to quantum. In my opinion, the identities of persons receiving entitlements for performing or having performed functions on behalf of the public of Western Australia – as well as the amounts of those entitlements – are matters of legitimate public interest.
36. I do not accept the complainant's submission that there is no longer any need for robust debate on the issue of travel benefits. Section 3(1) of the FOI Act provides that the objects of the Act are to:
  - “(a) enable the public to participate more effectively in governing the State; and*
  - (b) make the persons and bodies that are responsible for State and local government more accountable to the public.”*
37. The provision of the disputed information would assist in informing the public how and to whom taxpayer funds are distributed, and provide a basis for discussion on the general and on-going subject of MPs' benefits and remuneration. In my view, disclosure of that kind of information would further the objects of the FOI Act.
38. In *Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University and Others* [2001] WAICmr 1, the complainant sought access to documents relating to the remuneration of, and benefits received by, Murdoch University's senior management team. In that case, the former Information Commissioner considered the application of clause 3(6) and took the view that the public is entitled to know how much of its money is received in salary and entitlements by senior public officers for performing functions on behalf of the public. The Commissioner considered that such information is the subject of legitimate public interest and discussion and that there was a strong public interest in favour of disclosing the requested information in that case.
39. Although the issue in that case concerned senior employees of a government-funded agency, I take the view that in general there is a public interest in

identifying which elected representatives are or have been in receipt of benefits paid from the public purse in recognition of the service they have undertaken on behalf of the Western Australian public, together with the amounts of those benefits.

40. In *Re Mahoney and City of Melville* [2005] WAICmr 4 at [77]-[78], the former A/Information Commissioner, in considering the application of clause 3(6), observed as follows:

*“In this case, very broadly, the competing public interests are essentially the accountability of the local authority and the personal privacy of the individuals concerned. In cases such as this, where the individuals are public officers, the balance can be a fine one.”*

41. In my view, the competing public interests in this case, which relate as they do to the benefits paid to elected representatives, are also finely balanced. However, I find that the public interests in disclosure outweigh the complainant’s right to privacy in this case. Consequently, I consider that the limit on the exemption in clause 3(6) applies and disclosure of the disputed information would, on balance, be in the public interest.

## CONCLUSION

42. I find that the disputed information is not exempt under clause 3(1) of Schedule 1 to the FOI Act.

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