

## LITHGO AND PERTH

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

**File Ref: 94116  
Decision Ref: D00195**

Participants:

**Margaret Rose Lithgo**  
Applicant

- and -

**City of Perth**  
Respondent

### DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - anonymous complaint to agency - typed extract - public interest in applicant knowing allegations against her - clause 3(1) - personal information about third parties - sufficiency of search - section 26.

*Freedom of Information Act 1992 (WA)* ss. 72(1)(b); 75(1); 102(3); Schedule 1 clause 3(1); Glossary in Schedule 2 to the FOI Act.

*Re Veale and Town of Bassendean* (25 March 1994, unreported).

*Re Kobelke and Minister for Planning and others* (27 April 1994, unreported).

*Re A and Heathcote Hospital* (9 June 1994, unreported).

*Re Hayes and the State Housing Commission of Western Australia (Homeswest)* (17 June 1994, unreported).

*Re Gray and The University of Western Australia* (23 June 1994, unreported).

*Re Manly and Ministry of Premier and Cabinet* (16 September 1994, unreported).

*Re C and Department for Community Development* (12 October 1994, unreported).

*Re Smith and State Government Insurance Commission* (5 December 1994, unreported).

*Re Edwards and Ministry of Justice* (12 December 1994, unreported).

*Re Morton and City of Stirling* (5 October 1994, unreported).

## DECISION

The decision of the agency of 5 October 1994 is confirmed. The documents to which access has been refused are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

Further, the deemed refusal of access to the document subsequently identified by the applicant is confirmed on the basis that the agency has taken reasonable steps to locate the document and the document is either in the agency's possession but cannot be found or no longer exists.

B.KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

3rd January 1995

## REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision of the City of Perth ('the agency') to refuse to grant Ms Margaret Lithgo ('the applicant') access to copies of certain documents requested by her under the *Freedom of Information Act 1992* ('the FOI Act').

## BACKGROUND

2. For some time now the agency has been in receipt of various letters of complaint from the applicant and her neighbours, in which each party has complained about aspects of the behaviour of the other. Whilst the agency has inquired into those matters of complaint within its jurisdiction, some of the complaints have resulted in the attendance of police at the applicant's home. On 27 July 1994 the applicant wrote another letter to the agency. Although it is not clear from that correspondence, the agency apparently treated the letter as an application under the FOI Act for access to the letters of complaint that had been made against the applicant.
3. On 8 September 1994 the agency's FOI Co-ordinator advised the applicant that it was the decision of the agency to grant her full access to 54 documents. It had also been decided by Lesley Ferguson, Records Manager for the agency, in consultation with Richard Currie, Controller Health Services for the agency, on 7 September 1994, that two other documents within the ambit of the access application contained matter exempt under clause 3(1) of the FOI Act and access to those documents was denied. However, the applicant was provided with a typed extract of the two documents with exempt matter deleted.
4. On 9 September 1994 the applicant wrote to the agency. That letter was treated by the agency as a request for internal review of its decision of 7 September 1994 to deny access to two documents. Those documents ('the disputed documents') are a letter of complaint dated 12 February 1993 and a duplicate copy of that letter with a file note recorded on the bottom. On 5 October 1994, Mr Rod Durey, Manager, Information Resources, advised the applicant that it was his decision to confirm the original decision to deny access to the two documents on the ground that they contain personal information about third parties and are exempt under clause 3(1) of the FOI Act.
5. On 6 October 1994 the applicant wrote to the Chief Justice of the Supreme Court of Western Australia, a copy of which letter the applicant sent to my office. It appeared from that letter that the applicant was dissatisfied with the agency's decision upon her access application and was seeking a review of that decision. However, it was not clear from that letter whether the applicant was seeking external review by the Information Commissioner. Subsequently, it was confirmed by the applicant by letter to my office dated 11 October 1994, that she was seeking external review of the agency's decision to deny her access to copies of the two letters of complaint.

## REVIEW BY THE INFORMATION COMMISSIONER

6. On 14 October 1994 I advised both the agency and the applicant that I had formally accepted this complaint for review. In accordance with my authority under s.75(1) and s.72(1)(b) of the FOI Act I sought the production to me of the documents in dispute together with the agency's file maintained in respect of the access application. Those documents were provided to me by the agency on 19 October 1994 together with further reasons for the claim for exemption under clause 3(1) of Schedule 1 to the FOI Act.
7. In the course of dealing with this matter the applicant provided my office with a copy of a document of the agency, being a notice from the Engineering Department of the agency, addressed to the applicant, citing an offence that had been committed under By-laws and requiring the applicant to remove garden prunings from the verge outside her home. That document had not been included in those provided to the applicant by the agency and I requested that the agency conduct a further search of its records for any additional documents relevant to this access application.
8. On 17 November 1994, the agency advised the applicant by letter that it was unable to locate a copy of the Engineering Department's notice. However, it had located another document which was considered to be within the ambit of the access application and a copy of that additional document was provided to the applicant.
9. Having examined the disputed documents and the agency's claim for exemption, it was my preliminary view that the documents contain personal information about a third party which is, *prima facie*, exempt matter under clause 3(1). On 7 November 1994, the applicant was advised of my preliminary view and the reasons for reaching this conclusion. The applicant was invited, in light of my preliminary view, to reconsider her complaint. She was also invited, in the event that she did nonetheless wish to pursue her complaint, to make any further submissions in support of her claim for access in order to discharge the onus upon her by s.102(3) of the FOI Act.
10. On 9 and 11 November 1994 I received submissions from the applicant in support of her claim for access to the copies of the disputed documents. Most, if not all, of the information contained in those submissions consists of a recitation of the history of the applicant's neighbourhood problems and her resulting complaints to various agencies including the State Ombudsman. However, the applicant did raise some public interest factors which she claimed favoured disclosure. Further, in her submission of 9 November 1994, the applicant identified a specific document which she claimed should exist in the agency's records, but to which she had not been granted access.

### EXEMPTION UNDER CLAUSE 3

11. The agency claimed exemption for the disputed documents on the ground that they contain personal information about a third party and are exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3 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."*

12. In the Glossary in Schedule 2 of 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."*

13. As I have said in previous decisions, this exemption is designed to protect the privacy of third parties (see *Re Veale and Town of Bassendean* (25 March 1994, unreported, at para 34); *Re Kobelke and Minister for Planning and Others* (27 April 1994, unreported, at para 68); *Re A and Heathcote Hospital* (9 June 1994, unreported, at para 23); *Re Hayes and the State Housing Commission of Western Australia (Homeswest)* (17 June 1994, unreported, at para 20); *Re Gray and The University of Western Australia* (23 June 1994, unreported, at para 14); *Re Manly and Ministry of Premier and Cabinet* (16 September 1994, unreported, at para 46); *Re C and Department for Community Development* (12 October 1994, unreported, at para 22); *Re Smith and State Government Insurance Commission* (5 December 1994, unreported, at para 13); *Re Edwards and Ministry of Justice* (12 December 1994, unreported, at para 15)).

14. From my examination of the disputed documents it is apparent that they contain information about a third party who is identifiable by name, address, hand-writing and other details disclosed in the letters of complaint. This information is clearly "personal information" about the author of the documents and is, therefore, *prima facie*, exempt from disclosure unless the public interest requires that it be disclosed.
15. The applicant claims to know the identity of the third party and informed me that she was seeking access to the disputed documents in order to expose the complaints as unsubstantiated and to stop their occurrence. Further, she identified a public interest in ensuring that the principles of natural justice are met and in having these matters cleared.
15. I recognise a public interest in a person being informed of the nature of complaints made against him or her and being given an opportunity to respond so that neighbourhood disputes may be finalised and matters cleared once and for all. In this instance, I consider that that public interest has been served by the agency adopting a sensible and practical procedure of providing the applicant with a typed extract of the complaint with the personal information about the third party deleted (*contra* the lack of such procedures in the agency in *Re Morton and City of Stirling* (5 October 1994, unreported)). Further, in my view, the applicant has, on this occasion, been adequately informed by the agency of the results of its investigations into the complaints. This notification, in my opinion, is sufficient to satisfy the public interest identified by the applicant.
16. From my reading of the disputed documents and the submissions of the parties, I am satisfied that there is no public interest that, on balance, requires the disclosure of the disputed documents to this applicant and I find that they are exempt under clause 3(1) of Schedule 1 to the FOI Act.

## ADEQUACY OF SEARCHES

17. During my consideration of this complaint, following the applicant's submission of 9 November 1994, it was necessary to ask the agency to conduct a further search of its records for documents which the applicant claimed ought to exist. That search located one additional document within the ambit of the access application, but failed to locate the specific document identified by the applicant in her submission, that being the agency's copy of a notice issued to the applicant by the Engineering Department of the agency.
18. The agency's search efforts to locate a duplicate copy of this notice consisted of checking all electronic indexes and manually searching storage facilities where the duplicate was likely to be found. On 29 November 1994, a member of my staff attended at the agency and was shown the record-keeping system and the searches that had been undertaken by the agency in its endeavours to satisfy the applicant's access application. That visit included the Engineering Department where it was explained that searches in that department had included searches of

the archives, the computer system and vehicles used by field officers. None of those sources had revealed the agency's copy of the document.

19. I am satisfied that the searches were adequate and that the agency's efforts to locate the document have been, in all the circumstances, reasonable. I am further satisfied that it is not possible for the agency to give the applicant access to that document (even though the applicant has a copy of the document) because the document either no longer exists or is in the possession of the agency but cannot be found.

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