

## Hepburn and Premier and Cabinet

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

**Decision title and citation:** *Re Hepburn and Ministry of the Premier and Cabinet* [1999] WAICmr 5

**COMPLAINT No:** F0151999

**DECISION No:** D0051999

**PARTIES:** Iain MacGregor HEPBURN

Complainant

MINISTRY OF THE PREMIER AND CABINET

First Respondent

Patricia Jean MARTIN

Second Respondent

**No. of documents in dispute:** 1

**Exemption clause(s):** Clause 3(1)

By letter dated 8 October 1998, Mr Hepburn ('the complainant') sought access to the *curriculum vitae* ('the CV') of Ms Martin, the former Acting Chief Executive of Sir Charles Gairdiner Hospital ('the agency'). Following discussions between the complainant and the agency, the request was accepted by the agency as an application for access pursuant to the *Freedom of Information Act* ('the FOI Act').

After consulting with Ms Martin, the agency decided to grant the complainant access to an edited copy of the CV. The agency claims that the matter deleted from the CV is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The complainant sought internal review of the agency's initial decision on access. The internal reviewer decided to release some further parts of the document to the complainant. By letter dated 8 February 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision to refuse access to the balance of the document.

#### Review by the Information Commissioner

I obtained the disputed document from the agency and examined it. After considering the contents of the disputed document, on 11 March 1999, I informed the parties in writing of my preliminary view of this complaint, and my reasons for that view. It was my preliminary view that the matter deleted from the document consists of personal information about Ms Martin and is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. I considered whether any of the limits on exemption in clauses 3(2)-3(6) may apply to the deleted matter. It was my preliminary view that the limit on exemption in clause 3(6) may apply. That is, the deleted matter may not be exempt if disclosure would, on balance, be in the public interest. The complainant was informed that, pursuant to s.102(3) of the FOI Act, the onus is on him to establish that the disclosure of personal information concerning Ms Martin would, on balance, be in the public interest.

Subsequently, the complainant informed my office that he only sought access to the deleted matter listed under the heading "PREVIOUS POSITIONS" in the CV, and he provided further material for my consideration by way of a facsimile message and a telephone discussion with the Senior Investigations Officer in my office. Ms Martin sought to be joined as a party to this complaint, and was so joined. Having considered all of the material before me, I am not dissuaded from my preliminary view that the matter remaining in dispute between the parties is exempt under clause 3(1) of Schedule 1 to the FOI Act. A summary of my reasons follows.

#### The disputed matter

The disputed document is a six page CV dated December 1993 of Ms Martin. The disputed matter consists of all of the text under the heading "PREVIOUS POSITIONS" appearing on pages 1 and 2 of the CV.

#### The exemption – Clause 3 (Personal information)

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**

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

In the Glossary to the FOI Act, “personal information” is defined to mean:

*“personal information” means 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;”*

The disputed matter lists the previous employment positions held by Ms Martin, both in Western Australia and elsewhere. I am satisfied that information linked to a specific position, time and place comprises personal information as defined in the FOI Act. It is information about an individual whose identity is apparent or can reasonably be ascertained from that information. In my view, the disputed matter is, *prima facie*, exempt matter under clause 3(1).

**Public Interest**

The protection of the personal and private aspects of an individual’s life is a public interest enshrined in the FOI Act by the exemption in clause 3(1). I recognise that there is a strong public interest in ensuring the maintenance of personal privacy and consider that that public interest will only be displaced by a very strong countervailing public interest that requires the public disclosure of personal information.

The complainant submits that there is a public interest in determining how well the selection process works for filling vacancies at senior executive level in the public sector and that access to documents which reveal the workings of such a system and the relative merits of the candidate selected for a position is in the public interest. He submits that members of the community should be able to obtain access to details of the employment history of persons employed in the position of Chief Executive Officer of agencies such as public hospitals. He submits that, as most of the information is probably related to the employment of Ms Martin in the public sector, it cannot be exempt and that it was in the public interest for people to be able to determine whether individuals have the credentials to perform the duties of senior public sector positions.

I recognise a public interest in State Government agencies adopting proper standards of accountability in the selection processes for the filling of vacancies, particularly in the Senior Executive Service. However, the disclosure of the disputed matter would not add to this aspect of the public interest, nor would it assist in understanding the reasons for a particular selection decision. The agency provided the complainant with a detailed explanation about the process for selecting officers to fill temporary vacancies in the public sector in an acting capacity. Nothing in the disputed matter would, if disclosed, reveal anything of the selection process adopted and the matter already disclosed to the complainant in the edited copy of the document is sufficient, in my view, to inform the complainant of Ms Martin’s qualifications for the position.

Therefore, in balancing the competing public interests, I am not persuaded that there is any other public interest that outweighs the public interest in protecting personal privacy. Accordingly, I find that the disputed matter is exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to that matter.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
18 March 1999

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