

FITZGERALD AND LOCAL GOVT

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

**File Ref: 96186
Decision Ref: D00797**

Participants:

Peter Leon Fitzgerald
Complainant

- and -

Department of Local Government
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access to documents - clause 3(1), personal information - matter that is outside the ambit of the access application - personal information about the complainant.

Freedom of Information Act 1992 (WA) ss.24, 69(4), 74(2); Schedule 1 clauses 3(1), 3(2), 7.

Local Government Act 1960 (WA)

DECISION

The decision of the agency is set aside. The matter deleted from the document is outside the ambit of the access application. The balance of the document is not exempt.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

7th March 1997

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Department of Local Government ('the agency') to refuse Mr Fitzgerald ('the complainant') access to a document requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is the former Shire Clerk of the Shire of Chittering. By letter dated 16 August 1996, the complainant applied to the agency under the FOI Act for access to documents of the agency containing personal information about him. Following correspondence between the agency and the complainant, the access application was narrowed and it was dealt with by the agency as a request for access to documents relating to allegations about a breach of the pecuniary interest provisions of the *Local Government Act 1960*, a report to the relevant Minister concerning the allegations, and documents referring the matter to the Crown Law Department and that agency's response.
3. On 29 October 1996, the agency granted the complainant access to an edited copy of one document with exempt matter deleted, and refused access to two others on the ground that those documents are exempt under clause 7 of Schedule 1 to the FOI Act. On 30 October 1996, the complainant applied to the agency for internal review of its decision and, on 14 November 1996, the agency confirmed its initial decision. Thereafter, on 12 December 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

4. I obtained copies of the documents to which access had been denied. In the course of my office dealing with this complaint, the agency agreed to withdraw its claims in respect of one document and a copy of that document was given to the complainant. The complainant withdrew his request for access to two documents, being a request to the Crown Solicitor for legal advice and a copy of the legal advice provided, after I had informed him that it was my preliminary view that those documents were exempt under clause 7. Accordingly, only one document remains in dispute in this matter.
5. The complainant had indicated that he did not want access to personal information concerning third parties and was prepared to accept access to an edited copy of the disputed document, and I considered that it was practicable to provide the complainant with access to an edited copy of that document in accordance with the provisions of s.24 of the FOI Act. It was also my preliminary view that - with all names, other than that of the complainant, and

certain other matter deleted - the disputed document may not be exempt under clause 3(1) as claimed by the agency.

6. I received a submission from two third parties who objected to the disclosure of an edited copy of the document. I received that submission in accordance with s.69(4) of the FOI Act and have taken it into consideration in reaching my decision on this complaint. Those persons did not seek to be joined as third parties to the complaint, even though they were informed of their right to be joined. The agency maintains its claims that disclosure of an edited copy of the disputed document would reveal personal information about those two third parties ('the third parties'). However, I am not persuaded that an exemption under clause 3(1) for the whole document has been established by either the agency or the third parties. My reasons are as follows.

THE DISPUTED DOCUMENT

7. The disputed document consists of a letter to the Minister for Local Government dated 11 September 1995, to which are attached six pages of typed notes. I am unable to describe the disputed document in any more detail without breaching my duty under s.74(2) of the FOI Act to avoid the disclosure of exempt matter in my reasons for decision.

THE EXEMPTION

8. 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.”

9. In the Glossary in 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.*”
10. From my own examination of the disputed document, I am satisfied that it contains personal information as defined in the Glossary in the FOI Act concerning the complainant and a number of other people, including the third parties. However, as the complainant does not seek access to personal information about other people and I consider that it is practicable to delete that information from the document, I consider that matter to be outside the ambit of the access application and I do not intend to deal with it in this decision. That means that this decision and my reasons concern the question of whether the balance of the matter contained in the document is exempt or not and whether the complainant should be given access to an edited copy of the disputed document from which the matter I consider to be personal information about other people has been deleted, in accordance with the schedule attached to these reasons for decision (‘the schedule’).

The agency’s submission

11. The agency submits, and the third parties agree, that the disclosure of the disputed document would reveal the identity of the author of that document because of the high probability that its format would be recognisable by the complainant. The agency is of the view that, as the complainant has been provided with access to documents containing the reports of the investigations, the public interest in persons being informed of the nature of complaints made against them, and being given an opportunity to respond to those complaints, has been satisfied by the provision of access to those documents.

Consideration

12. The question of whether disclosure of an edited copy of the document would, on balance, be in the public interest, does not arise unless and until the agency or the third parties have established a *prima facie* claim for exemption under clause 3(1) in respect of the disputed document edited in the manner described in the schedule.
13. I am constrained to some extent by the provisions of s.74(2) of the FOI Act which requires that I avoid the disclosure of exempt matter in these reasons for decision. Suffice to say that I am not satisfied that the typed format of the disputed document in any way points to the identity of its author. The format is unremarkable, and it does not appear to me to contain any identifying marks or expressions that are out of the ordinary or from which the identity of its author could be ascertained. In all, neither the agency nor the third parties have persuaded me that there is anything in that document from which the author of that document is apparent or could reasonably be ascertained.

14. In my view, an edited copy of the disputed document does not contain personal information, as defined in the FOI Act, about any individual, other than the complainant. Pursuant to clause 3(2), matter is not exempt merely because its disclosure would reveal personal information about the complainant. Therefore, I find that that matter in the document which comprises personal information about the complainant is not exempt. Further, I find that the balance of the matter contained in the document edited in accordance with the schedule does not reveal personal information, as defined in the FOI Act, about any other person. Accordingly, I find the disputed document, edited as described, is not exempt under clause 3(1) of Schedule 1 to the FOI Act.

**SCHEDULE OF MATTER OUTSIDE AMBIT OF ACCESS APPLICATION
AND TO BE DELETED FROM THE DISPUTED DOCUMENT BEFORE
ACCESS IS GIVEN.**

Covering letter

Page 1	The address appearing at the top of the letter above the date and all of the text below the words " <i>Yours faithfully</i> " and above the abbreviation " <i>Encs.</i> "
---------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Attachment

Page 1	All of line 9 and the first word of line 10; the title, initial and name in line 14; the title, initial, name, the brackets and all the words within the brackets in line 19; the initial and name and the twelfth word in line 21; the title, initial and name in line 22; the first two words of line 29; the fourth and fifth words of line 31.
Page 2	The eleventh and twelfth words and the title, initial and name in line 6; the title, initial and name in line 7; the title, name and third, fourth and fifth words of line 8; the list of titles, initials and names and all the words in brackets alongside those names appearing under line 17; the title, initial and name and the words in brackets alongside those in line 25; the first word, the title, the initials, the names and the fifth word in line 26; the three names and the seventh word in line 27; the initials, names and the thirteenth word in line 28 and the name in line 29.
Page 3	The first word and the title, initial and name in line 1; the second initial and name in line 4; the initial and name in line 5; the title and name in line 6; the title and name in line 8; the first two words of line 13; the two names in line 18; the second name and initial appearing in line 28; the initial, name and tenth and eleventh words in line 29; the two names in line 31.
Page 4	The first name in line 1; the title and name in line 3; the first word and the name in line 4; the last word in line 5; the name in line 6; the twelfth word in line 11; the two names in line 13; the title, initial and name in line 29; the title and name in line 31.
Page 5	The title and name in line 1; the title and name in line 3; the two names in line 8; the title and name in line 24; the two names and the word in between them in line 31.
Page 6	The title and name in line 2; the first three words of line 3; all of lines 10, 11 and 12 and the eleventh, twelfth, thirteenth and fourteenth words of line 18.