

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

**File Refs:
F2005022/F2005043
Decision Ref: D0082005**

Participants:

Cynthia Monika Schatz
Complainant

- and -

Department of Treasury and Finance
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – access to edited copies – documents relating to First Home Owners’ Grant and land tax exemption applications – correspondence to and from third parties – clause 3(1) – whether disclosure of documents would reveal personal information about third parties – whether disclosure would be in the public interest.

Freedom of Information Act 1992 (WA): sections 74, 102(3); Schedule 1, clauses 3(1), 3(2), 3(3), 3(4), 3(5), 3(6).

DECISION

The decision of the agency is confirmed. The requested documents are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

D A WOOKEY
A/INFORMATION COMMISSIONER

13 May 2005

REASONS FOR DECISION

1. Mrs Schatz ('the complainant') seeks external review by the Information Commissioner of two decisions made by the Office of State Revenue ('the agency') to refuse access to certain documents on the ground that the requested documents are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The complainant is the executor of her late father's estate, which includes a property in Marmion Street, Booragoon ('the Booragoon property'). The complainant's late father's wife ('the third party') has a life tenancy interest in the Booragoon property in accordance with the terms of the complainant's late father's will, which ceases if, among other things, the third party stops occupying the premises for a period of more than six months. It appears that, prior to 2003, the Booragoon property had been granted a residential land tax exemption by the agency. However, that situation changed when the agency granted a residential land tax exemption for a property in South Lake purchased by the third party, and in 2003/04 there was no such exemption granted for the Booragoon property.
3. It is my understanding that the complainant believes that, despite being granted a First Home Owners' Grant for the property in South Lake, the third party has not occupied that property and that her situation may have been mis-represented to the agency in order to obtain a grant to which the complainant believes the third party was not entitled.
4. I also understand that the complainant seeks to ascertain whether or not the third party's principal place of residence is at the Booragoon property, so that she can either obtain a residential land tax exemption for that property or establish that the third party is no longer using the Booragoon property as her principal place of residence, thereby allowing the Booragoon property to be sold.
5. In December 2004, the complainant made two separate access applications to the agency, one relating to a residential land tax exemption and the other to a First Home Owners' Grant, as follows.

(1) Access application - residential land tax exemption

6. In an application dated 3 December 2004, the complainant applied to the agency for access to "... *all papers relating to the exemption granted to [the third party] on her property in South Lake.*" The agency identified three documents that fell within the scope of her access application. On 11 January 2005, the agency refused the complainant access to the requested documents, as it considered them to be exempt under clause 3(1) of Schedule 1 to the FOI Act.
7. By letter dated 17 January 2005, the complainant requested an internal review of the agency's initial decision, submitting that the release of the information would be in the public interest and that the limit on exemption in clause 3(6) of Schedule 1 to the FOI Act would therefore apply to the requested documents. On 27 January 2005, the agency confirmed its original decision to refuse the

complainant access to the documents relating to the land tax exemption granted to the South Lake property on the ground that those documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

(2) Access application – First Home Owners’ Grant

8. By letter dated 6 December 2004, the complainant applied to the agency for access to a copy of the following documents:

“First Home Owners’ Grant given to [the third party], Property address: [address given], South Lake. All papers relating to the First Home Owners’ Grant – specifically any documentation to say that the property is her principal place of residence and she will live there for a minimum of six months.”

9. The agency identified one document, with several attachments, which fell within the scope of the complainant’s access application. On 11 January 2005, the agency refused the complainant access to the document and attachments on the basis that they were all exempt under clause 3(1) of Schedule 1 to the FOI Act. The complainant sought internal review of that decision on 17 January 2005. On 27 January 2005, the agency confirmed its decision to refuse her access to the requested documents on the ground that they were exempt under clause 3(1).
10. Following that, by letter dated 10 February 2005, the complainant applied to the Information Commissioner for external review of the agency’s decisions in relation to both of her access applications.

REVIEW BY THE A/INFORMATION COMMISSIONER

11. I obtained the disputed documents and the agency’s FOI files in relation to the complainant’s access applications. My office consulted with the third party and sought and considered submissions from the complainant in support of her claim that, on balance, it would be in the public interest to disclose the personal information concerned. On 22 April 2005, I informed the parties of my preliminary view of these complaints and my reasons, on the basis of the material then before me. It was my preliminary view that the requested documents were exempt under clause 3(1) of Schedule 1 to the FOI Act. I invited the complainant to provide me with further submissions in relation to the clause 3(1) exemption claim. The complainant did not respond.
12. Although the complainant made two separate access applications to the agency and requested internal review of the agency’s decisions in relation to each of them, the agency’s internal review decision-maker also dealt with both applications for internal review together. In the circumstances, as the documents relate to the same third party and the agency has dealt with each matter together, I consider that it is appropriate to deal with both complaints together, although they remain separate complaints.

THE DISPUTED DOCUMENTS

13. The agency identified four documents – some with attachments – as being within the scope of the complainant’s access application. The documents include correspondence between the third party and the agency and between the third

party and another third party, as well as a number of other annexures to that correspondence.

14. In the course of my examination of the agency's FOI file, I identified another document which appeared to me to fall within the scope of the complainant's access application. The document consisted of a computer screen dump of the address details of the complainant and the third party and a handwritten file note of a telephone conversation with the third party. At my request, one of my officers made further inquiries with the agency about that document and the agency subsequently confirmed that it should have been identified as a relevant document. However, the agency advised me that it considers the file note section of the document to be exempt under clause 3(1) of Schedule 1 to the FOI Act because it contains personal information about a third party. In my opinion, the balance of the document is not within the scope of the access application because it does not pertain to the third party's First Home Owners' Grant or land tax exemption and, therefore, it is not within the scope of this complaint.
15. As I have a statutory duty under s.74 of the FOI Act not to disclose exempt matter, I am unable to describe the disputed documents with any greater degree of particularity in this instance because to do so may disclose information which the agency claims is exempt information.

THE EXEMPTION CLAIMED

Clause 3 – personal information

16. Clause 3(1) of Schedule 1 to the FOI Act provides:

Exemption

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

Limits on exemption

- (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
 - (a) *the person;*
 - (b) *the person's position or functions as an officer; or*
 - (c) *things done by the person in the course of performing functions as an officer.*
- (4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*

- (a) *the person;*
 - (b) *the contract; or*
 - (c) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*

Would disclosure of the disputed matter reveal personal information?

17. In the *Glossary* to the FOI Act the term ‘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;”*
18. The definition of ‘personal information’ in the Glossary to the FOI Act makes it clear that any information or opinion about a person whose identity is apparent, or whose identity can reasonably be ascertained from the information or opinion is, on the face of it, exempt information under clause 3(1), subject to the application of any of the limits on exemption in clause 3(2) – 3(6).
19. The former Information Commissioner said, in a number of her decisions relating to the meaning and interpretation of clause 3, that the exemption in clause 3(1) is intended to protect the privacy of individuals about whom personal information may be contained in documents held by State and local government agencies and that the FOI Act is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit to the public interest in doing so. I too recognise that there is a very strong public interest in the maintenance of personal privacy and that the protection of an individual’s privacy is a public interest which is recognised and enshrined in the FOI Act by clause 3.
20. I have examined the disputed documents. Each of those documents contains the name and other personal, private details and information about the third party, as well as some personal information about other third parties, including such things as their addresses, their contact telephone numbers and other information of a personal nature. In my opinion, the disputed documents would, if disclosed to the complainant under the FOI Act, clearly reveal personal information, as defined in the FOI Act, about the third party and several other third parties. In my view, that information is, on the face of it, exempt information under clause 3(1). The exemption in clause 3(1) is, however, subject to a number of limits which are set out in subclauses 3(2) – (6), as set out on page four above.

The limits on exemption

21. The limit on exemption in clause 3(2) does not apply to the information recorded in the disputed documents because none of those documents contains any personal information about the complainant. The limits on exemption in clauses 3(3) and 3(4) do not apply because, although some of the information consists of prescribed details about officers of the agency, in my opinion, that particular information is inextricably intertwined with the personal information about the other third parties who are not officers of an agency. It could not be disclosed without revealing personal information about other people. Its disclosure would not, therefore, merely reveal prescribed details about officers.
22. The limit on exemption in clause 3(5) does not apply because there is no evidence presently before me that any of the third parties identified in the disputed documents has consented to his or her personal information being disclosed to the complainant. To the contrary, both the agency and my office have consulted with the third party identified in the complainant's access application. The third party has advised the agency and me that she does not consent to the disputed documents being disclosed to the complainant.
23. I also considered the possibility of asking the agency to provide the complainant with access to edited copies of the disputed documents. However, given that the access application very specifically asked for documents pertaining to the third party, I am of the view that it would not be possible to edit the requested documents in such a way that they could be disclosed to the complainant without revealing personal information about third parties identified in the requested documents, including the third party the complainant identified by name in her access applications.
24. As the limits in subclauses 3(2) - 3(5) do not apply in either case, the only limit on exemption that might apply to the disputed documents is the limit on exemption in clause 3(6).
25. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of personal information about third parties would, on balance, be in the public interest. The complainant was given the opportunity to make further submissions to me following receipt of my preliminary view, but did not do so.

Applying the public interest test

26. The term 'public interest' is not defined in the FOI Act, nor is it a term that is easily defined. However, it is not merely something that may be of interest to the public; rather, it is something which is of serious concern or benefit to the public.
27. In *DPP v Smith* [1991] 1 VR 63, at 65, the Victorian Supreme 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 ... 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.”

28. I understand that the complainant has a personal interest in the disclosure of the disputed documents to her. However, the public interest is not primarily concerned with the personal interests of the particular access applicant, nor with public curiosity. Rather, the question is whether disclosure of the information would be of some benefit to the public generally, that is, whether it would be of benefit to the public for the information she seeks – being personal information about the third party – to be disclosed to any other person, and whether that public benefit is sufficient to outweigh any public interest in confidentiality being maintained.
29. Determining whether or not disclosure would, on balance, be in the public interest therefore involves identifying the public interests for and against disclosure, weighing them against each other and deciding where the balance lies.
30. The exemption in clause 3(1) is designed to protect the privacy of third parties. As I have said, I consider that there is a strong public interest in maintaining personal privacy and that that public interest may only be displaced by some other stronger and more persuasive public interest that requires the disclosure of personal information about one person to another person. The FOI Act is intended to make government, its agencies and officers more accountable, not to call to account or unnecessarily intrude upon the privacy of private individuals.
31. On the other hand, I accept that there is a public interest in people being able to exercise their rights of access under the FOI Act.
32. The complainant submits that there is also a public interest in the release of the disputed documents to her in order to allow her to assist the agency to determine whether or not the information provided by the third party in support of her applications for the First Home Owner’s Grant and residential land tax exemption is incorrect. The complainant advises that she has given the agency a statutory declaration, with annexures, in support of her contention that the third party has not occupied the house for which she received a First Home Owners’ Grant and residential exemption.
33. The complainant submits that she is unsure whether the agency is investigating the matter further. She states that if she is “... *able to view copies of the disputed documents, [she] may be able to further assist the [agency] with [her] background knowledge of [the third party’s] history.*” However, it is not clear to me why it is necessary for the complainant to have access to the disputed documents in order to bring her concerns about the possibility of a misappropriation of the First Home Owners’ Grant funds to the attention of the agency. I understand that the complainant has already done so, without having had access to the documents. It remains open to the complainant to provide to the agency any other relevant information she may have.

34. The complainant submits that the agency is accountable for its expenditure of public monies and the collection of revenue from the correct sources. She submits that it is in the public interest to make information such as that contained in the disputed documents available and open to scrutiny.
35. I accept that there is a public interest in ensuring that the agency is accountable for its role of ensuring that applications for grants for the First Home Owners' Grant are processed properly and that public monies are not made available to individuals where the circumstances do not entitle a person to such a grant. I also accept that there is a public interest in the agency properly processing and scrutinizing applications for exemptions from land tax in order to ensure that the system is not defrauded.
36. However, I am not presently persuaded that any of those public interests require the disclosure to the complainant of the personal information about the third party contained in the documents. I understand that the complainant has already, without access to that information, raised her concerns with the agency and provided it with the information she has concerning the third party's circumstances.
37. If the complainant is of the view that the agency has not properly investigated the issues she has raised, or did not make proper inquiries in relation to the exemption in the first instance, then, as I understand it, that is a matter about which she could make a complaint to the Ombudsman. The Ombudsman has the power to require an agency to produce to her documents and information for the purpose of investigating a complaint about the administrative actions or omissions of a government agency. It therefore appears to me that there is available an avenue by which the agency can be called to account for its actions which does not require the disclosure to the complainant of personal information about the third party.
38. Therefore, in balancing the competing public interests, and based on the material presently available to me, it appears to me that the strong public interest in protecting the personal privacy of the third party is not outweighed by the public interests favouring disclosure in this instance. I therefore find that the documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.
