

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

**File Ref: F2003217  
Decision Ref: D0112004**

Participants:

**David Biron**  
Complainant  
  
- and -  
  
**Department of Housing and Works**  
Respondent

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – access to edited copies – documents relating to planning appeal – letters from private individuals – clause 3(1) – whether disclosure of addresses would reveal personal information about authors of letters – whether disclosure would be in the public interest.

*Freedom of Information Act 1992 (WA)*: sections 3(1)(a), 3(1)(b), 3(2)(a), 10(1), 76(4); 102(3); Schedule 1, clauses 3(1), 3(6) and 5(1)(f).

*Local Government (Miscellaneous Provisions) Act 1960*.

## DECISION

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

D A WOOKEY  
A/INFORMATION COMMISSIONER

19 May 2004

## REASONS FOR DECISION

1. Mr Biron ('the complainant') seeks external review by the Information Commissioner of a decision of the Department of Housing and Works ('the agency') to give access to an edited copy of certain documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

## BACKGROUND

2. The owners of a property adjoining the complainant's property ('the adjoining property') built a pergola and barbecue structure, including a fireplace and sink, without prior building approval from the City of Joondalup. The structure was built on the fence line between the two properties. The complainant complained about the structure to the local Council. He claims, among other things, that it causes smoke to enter his property, which he says is a nuisance and a health hazard.
3. The City of Joondalup issued a notice under the provisions of the *Local Government (Miscellaneous Provisions) Act 1960*, requiring the owners of the adjoining property to make alterations to the structure. The owners of the adjoining property successfully appealed to the Minister for Housing and Works ('the Minister') against that notice.
4. In an application dated 26 August 2003, the complainant applied to the agency under the FOI Act for access to documents relating to the decision taken by the Minister to allow the appeal lodged by the owners of the adjoining property. On 23 September 2003, the agency decided to give the complainant access in full to 12 documents and access to edited copies of 30 documents. The agency claimed the matter deleted from those documents is exempt matter under clauses 3(1) and 5(1)(f) of Schedule 1 to the FOI Act.
5. The agency confirmed its initial decision on internal review. Thereafter the complainant made a complaint against that part of the agency's decision to give him access to the edited copies of three documents. The matter deleted from those documents to which the complainant sought access is the addresses of third parties.

## REVIEW BY THE INFORMATION COMMISSIONER

6. I obtained the disputed documents and the agency's FOI file relevant to this matter. My office consulted with the third parties. On 19 February 2004, I informed the parties, in writing, of my preliminary view of this complaint and my reasons, on the basis of the material then before me. It was my preliminary view that the addresses of the third parties are exempt under clause 3(1) of Schedule 1 to the FOI Act. The complainant subsequently confirmed that he wished to pursue his complaint in respect of that information and he provided me with submissions in relation to the clause 3(1) exemption claim.

## THE DISPUTED MATTER

7. Among the edited documents released was a briefing note from the agency to the Minister relating to the appeal. In that briefing note was a reference to “...letters from a number of adjoining property owners raising no objections to the works”. Also among the edited documents released were three letters, all in identical terms, to the Chief Executive Officer of the City of Joondalup from people described in each letter as “... an immediate neighbour ... ” of the property where the works are located. Each was released with the name, address and telephone number of its author and the names of two other third parties deleted. The complainant does not seek the names or telephone numbers and therefore the disputed matter consists only of the addresses of the authors of the three letters, all dated 24 March 2003, to the City of Joondalup.

## THE EXEMPTION CLAIMED

### Clause 3 – personal information

8. 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?***

9. The term “personal information” is defined in the FOI Act as follows:

*"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”.*
10. I have examined the disputed documents and the matter deleted from those documents. I am satisfied that, if disclosed, the disputed matter would reveal personal information, as defined in the FOI Act, about third parties. The disputed matter consists of the addresses of the individual authors of the three letters. It is my view that the identities of the signatories of the letters would be relatively simply ascertained from that information. In addition, their disclosure, in my view, would reveal that those particular individuals provided those letters, expressing the particular view that they did, to the City of Joondalup. In my view, that is personal information, as defined in the FOI Act, about those people. The disputed matter is, therefore, *prima facie*, exempt under clause 3(1).

***Limits on exemption***

11. Clause 3(1) is subject to a number of limitations. The limitations provided by sub-clauses (2) to (5), in my view, do not apply in this instance because the disputed matter, if disclosed, would not reveal personal information about the complainant or prescribed details about people who are officers of agencies or providing services for agencies and none of the third parties consents to disclosure. All the third parties object to the disclosure of their addresses.

*Clause 3(6) – the public interest*

12. Clause 3(6) provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest. The onus of persuading me that disclosure of the personal information deleted from the disputed documents would, on balance, be in the public interest lies on the complainant by virtue of s.102(3) of the FOI Act. The complainant was given the opportunity to make further submissions to me following receipt of my preliminary view.

*The complainant's submission*

13. Among a number of submissions and allegations which are not relevant in my view to the question of whether or not the addresses are exempt under cl.3(1), I understand the complainant's primary submission to be that the public interest requires disclosure of the addresses because "*... senior officers misrepresenting material facts in secret recommendations presented directly to Ministers having adverse health outcomes on West Australians clearly is a matter of public interest*". Among other things and so far as is relevant to the disputed matter, the complainant submits that the officer who prepared the report has, by describing the authors of the letters as "*adjoining property owners*", rather than "*immediate neighbours*" as they describe themselves in their letters, given "*unidentified parties ... greater legal status and consideration than [the complainant] in the appeal report placed before the minister.*"
14. The complainant submits that this, among other alleged "*deliberately prejudicial misrepresentations*" in the briefing note indicates that its author was not acting impartially, and that the complainant has been refused access to information "*... that clearly demonstrates senior state officer corruption at Ministerial level ...*". The complainant argues that the disclosure of the disputed matter "*... would provide further information relating to the extent of officer corruption in the Department of Housing and Works*"; that non-disclosure will "*... help maintain the existence of a serious nuisance, one that constitutes a serious risk to the health of young West Australians*"; and that non-disclosure of the disputed matter will "*... help maintain a culture of corruption at the very highest levels of West Australian State Government*".

*Applying the test*

15. The term "public interest" is not defined in the FOI Act, nor is it a term that is easily defined. However, it is generally accepted that the "public interest" refers to something which is of serious concern or benefit to the public. Clearly, the complainant has a personal interest in the disclosure of the disputed matter to him. However, the public interest is not primarily concerned with the personal interests of the particular access applicant. Rather, the question is whether disclosure of the matter would be of some benefit to the public generally, that is, whether it would be of benefit to the public for the information the complainant seeks – being personal information

about other people contained in records held by the agency – to be disclosed to any other person.

16. Determining whether or not disclosure would, on balance, be in the public interest involves identifying the public interest factors for and against disclosure, weighing them against each other and making a judgment as to where the balance lies in the circumstances of the particular case.
17. Clearly, the exemption in clause 3(1) is designed to protect the privacy of third parties. I consider that there is a strong public interest in maintaining personal privacy and 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. I also recognise the public interest in the agency maintaining its ability to obtain information from a range of sources in order to carry out appropriate examinations of matters which may come before the Minister on appeal.
18. Balanced against those public interests, there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act and a public interest in the accountability of agencies for their decision-making processes. In the circumstances of this matter, I also consider there to be a public interest in an individual such as the complainant being as fully informed as possible of the reasons for a particular decision that affects him.
19. However, having examined the disputed documents, I am of the opinion that, to a large extent, those latter public interests have been satisfied, as far as the agency can satisfy them in this instance, by the provision to the complainant of edited copies of the disputed documents with only personal information about third parties deleted.
20. I agree that there is a public interest in the exposure of corruption or improper conduct in government. However, I am not persuaded that that public interest requires disclosure of the personal addresses of the authors of the letters in this case. Firstly, the complainant argues that by describing as “adjoining property owners” people who have described themselves as “immediate neighbours” the agency has “... *changed their status and used it directly against* [the complainant] ...”. The complainant claims that the agency exaggerated the importance of the letters “... *by changing the locations of ALL these IDENTICAL, SAME DATED, TYPEWRITTEN letters from immediate neighbours to ADJOINING PROPERTY OWNERS*”.
21. In my opinion, there is no material difference between describing a neighbour as an immediate neighbour and describing a neighbour as an adjoining neighbour. The Concise Oxford Dictionary (8<sup>th</sup> edition) defines the word “adjoin” to mean “*be next to and join with*”. The word “immediate” is defined as meaning, among other things, “*nearest, next; not separated by others* (the immediate vicinity; the immediate future; my immediate neighbour)”. It seems to me that the terms “immediate neighbour” and “adjoining property” are generally both understood to refer to the neighbours

immediately surrounding a property and the dictionary definitions confirm my opinion in this regard.

22. In light of those definitions, it seems to me therefore that describing a neighbour or a neighbouring property as adjoining, rather than immediate, does not imply a closer vicinity as has been suggested by the complainant. The two adjectives are, in this context, in my opinion, generally interchangeable and I do not agree with the complainant's argument that changing a description from "immediate neighbour" to "adjoining property owner" effects any material change in the description of the vicinity of the neighbours.
23. The complainant also argues that using the term "property owners", rather than "neighbours" also evidences a misrepresentation of the facts and corruption on the part of the officer who prepared the report. Once again, I do not agree with the conclusions the complainant has drawn. Whether or not the authors of the letters were the owners of the property, it seems to me that a reasonable person reading the briefing note would understand it to mean that more than one immediate neighbour of the property in question had written expressing no objection to the works on the property. I do not see that that materially misrepresents the fact that three letters expressing no objection to the works on the property were received from people who described themselves as "immediate neighbours" of the property.
24. The complainant also submits that the property in question has three adjoining properties, of which his is one. He informs me that the resident of one of those properties has denied any knowledge of such a letter. Among other things, the complainant submits that "*... it would be nice to know that the adjoining neighbour – my wife's friend is telling the truth when she states that she knows nothing about this letter but the only way even that small justice could be served is by releasing those three addresses ...*". I have not taken that submission into account in making my decision as the FOI Act is designed to increase the accountability of government and its agencies, not to call to account private individuals for what they may have said or may or may not have done.
25. Finally, if the complainant believes – as he has said he does – that the Minister was given wrong or misleading advice, then as I understand it, that is a matter about which the complainant could complain to the Ombudsman. By those means the agency can be called to account for the advice given to the Minister, the accuracy of the advice tested and the public interest in the accountability of agencies and their officers satisfied. It was my preliminary view, that particular public interest does not therefore require the disclosure to the complainant of personal information about private third parties in this instance.
26. In his response to that point in my preliminary view, the complainant said that he was confused at what he understood to be my suggestion that "*... the Ombudsman is responsible for making documents available to the West Australian populace which reveal the extent of West Australian State*

*Government Corruption*". I made no such suggestion and the complainant's assertion indicates a misunderstanding of the point.

27. The point is that, if the complainant believes – as he says he does – that the letters were not from adjoining neighbours and the Minister has been given wrong advice, that is a matter about which he could complain to the Ombudsman. The Ombudsman could investigate whether or not the advice was wrong, advise the complainant accordingly and take some action if the advice were found to be wrong. In that way, the veracity of the advice could be tested without the need to give the addresses or any other documents to the complainant. As that avenue is available, I am of the view that the public interest in the accountability of agencies for advice given to Ministers in such circumstances does not require the disclosure of the disputed matter to the complainant.
28. Similarly, if the complainant believes – as he claims – that the briefing note, to which he has been given access, proves corruption on the part of its author, the agency and the council, then that is a matter he should refer to the proper authorities for investigation.
29. Therefore, after balancing the competing public interests identified above, I am not persuaded that the public interests favouring disclosure outweigh those against disclosure in this instance.

### ***Section 3 – the objects of the FOI Act***

30. Section 3 of the FOI Act provides:

#### ***“Objects and intent***

- (1) *The objects of this 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.*
- (2) *The objects of this Act are to be achieved by –*
  - (a) *creating a general right of access to State and local government documents;*
  - (b) *providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and*
  - (c) *requiring that certain documents concerning State and local government operations be made available to the public.*

- (3) *Nothing in this Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under this Act if that can properly be done or is permitted or required by law to be done”.*
31. The complainant also submits that I have ignored the objects of the FOI Act by not expressly dealing with section 3(1)(b) and section 3(2)(a). In response to my preliminary view, the complainant submitted the following:
- “I feel then that the general thrust of the Act is clear however you do not mention it all in your preliminary findings. Rather you present ‘Personal Information’ as the primary focus and purpose of your deliberations. This is not quite right as this section is primarily designed to protect the release of names, addresses of people unnecessarily in meeting the overall objectives of the Act; however even then this section is heavily qualified in order to ensure that the overall objectives of the Act are met.”*
32. As can be seen from the discussion of the relevant public interest considerations in paragraphs 15-29 above, I have taken into account the objects of the FOI Act – and, in particular, the object stated in s.3(1)(b) – when considering this matter. Further, although it is not entirely clear, the complainant seems to be arguing that s.3, and in particular s.3(2)(a), somehow overrides the exemption provisions. Clearly, that is not the case.
33. An access applicant’s right of access to documents of the agency under the FOI Act is not an unfettered right despite the complainant’s apparent view on that point. Section 10(1) of the FOI Act provides that a person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with the FOI Act. That means that the right of access is subject to, among other things, the exemption clauses in Schedule 1.
34. In this case, the exemption claimed is that provided by clause 3, which exempts from disclosure personal information about individuals. Therefore, the question in this case is whether or not that exemption applies to the disputed matter. For the reasons given in paragraphs 8-29 above, in my view it does.
35. Although an agency has a discretion under s.3(3) to disclose exempt information if it chooses to do so and is not otherwise constrained by law, I do not. Section 76(4) expressly provides that, if it is established that a document is an exempt document, I do not have the power to make a decision to the effect that access to it is to be given.
36. The FOI Act is intended to open the process of decision-making by government and its agencies to public scrutiny, and thereby promote greater

understanding, accountability and public participation in the processes of government. However, despite the complainant's views, FOI is not intended to open the private lives of its citizens to public scrutiny in circumstances where there is no demonstrable benefit. In this instance, in my view, the complainant's right of access to complete copies of the disputed documents does not override an individual's right to privacy.

37. I have noted the complainant's submission that he seeks complete copies of the disputed documents because he believes that the disputed documents contain inaccurate and misleading information; that they contain information that is untrue and that they should be disclosed to further prove the corruption occurring within government. However, the agency has released to the complainant copies of the requested documents in edited form. The only matter deleted from the disputed documents is that matter which could identify individuals other than the complainant. Accordingly, in my opinion, the agency has already placed the complainant in the position of being able to assess the contents of the documents by disclosing to him all of their contents other than the personal details of third parties.

38. In my view, the disclosure of the personal information about third parties contained in the disputed documents will not add to the complainant's ability in that regard. Further, I do not consider that the achievement of the objects of the FOI Act or the other relevant public interest factors require disclosure of the disputed matter in this instance, nor outweigh the right to privacy of each of the third parties, who are identified by name, address and other information, in the disputed documents.

### **Finding**

39. For the reasons given above, I find the disputed matter exempt under clause 3(1) of Schedule 1 to the FOI Act and the agency's decision to give the complainant access to edited copies with that matter deleted was justified.

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