

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re O'Malley and Police Force of Western Australia* [2001] WAICmr 17

COMPLAINT No: F0232001

DECISION No: D0172001

PARTIES: **Therese May O'MALLEY**

Complainant

POLICE FORCE OF WESTERN AUSTRALIA

Respondent

No. of documents in dispute: 1

Exemption clause(s): Clause 3

On 19 December 2000, Ms O'Malley ('the complainant') made an application to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to tape recordings of discussions between the complainant, her partner, and an officer of the agency, and typed transcripts of those recordings. Initially, the agency decided to release copies of the recordings to the complainant outside the FOI process, but informed her that typed transcripts had not been made and therefore, those documents did not exist.

Subsequently, the agency had a change of mind and decided to deal with the complainant's request according to the provisions of the FOI Act and refused access to the tape recordings on the ground that they are exempt under clause 3(1) of Schedule 1 to the FOI Act. On 26 February 2001, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the tape recordings from the agency, together with the agency's file maintained in respect of the complainant's access application. After considering that material, it was apparent to me that the tape recordings contained personal information about the complainant, the complainant's former partner and other third parties. Inquiries were made to determine whether this complaint could be resolved by conciliation or negotiation between the parties. Although the complainant had been present when the tape recordings were made, her former partner did not consent to the disclosure to her of personal information about him in those documents. As a result, it was not possible to resolve this complaint by conciliation.

On 11 April 2001, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the tape recordings may be exempt under clause 3(1) and that transcripts of those recordings did not exist because none were made. The complainant responded, but I am not dissuaded from my preliminary view. A summary of my reasons follows.

Clause 3 – Personal information

Clause 3(1) of Schedule 1 to the FOI Act provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The phrase "personal information" is defined in the Glossary in Schedule 2 to the FOI Act to mean: (a) information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead 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.

Having listened to the tape recordings, I am satisfied that those documents contain personal information, as defined in the FOI Act, about a number of individuals, including the complainant, the complainant's former partner and several other individuals who are specifically identified. Clearly, in my view, that information is, on its face, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

However, I accept that the tape recordings also contain some personal information about the complainant and that she was present when those documents were created. Therefore, I have considered whether any of the limits on exemption in clauses 3(2)-3(6) might apply.

Limits on exemption

I consider that the primary subject of the discussions, which are contained in the tape recordings was the complainant's former partner, who is an officer of the agency. Most of the personal information in those documents concerns or relates to him. In my view, some of that information may be prescribed information for the purpose of the limit in clause 3(3). However, in respect of that information, I do not consider that it is "merely" prescribed information. Rather, it relates to, and is interwoven with, other personal information about the complainant's former partner including the agency's alleged treatment of him and his state of health.

In my view, the only limit on exemption that may apply is the limit on exemption in clause 3(6), which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

Public interest

The exemption in clause 3(1) is designed to protect the privacy of individuals. I recognise that there is a strong public interest in maintaining personal privacy and I consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information. Balanced against that public interest, I also recognise that there is a public interest in the complainant being able to exercise her rights under the FOI Act and to be given access to documents that contain personal information about her.

I have taken into account the fact that the complainant was present when the tape recordings were made and that, in all probability, the complainant would have some knowledge of the personal information about her former partner. However, I do not consider that either of those factors is sufficient to tip the balance in favour of disclosure. It seems to me that the complainant's only knowledge about the personal information about the third parties (other than that about her former partner) would comprise whatever she could recollect from the discussions with Inspector MacLeod. Those discussions took place over 16 months ago and, whilst it is one thing to recall personal information about third parties, it is an altogether different thing to disclose personal information about third parties by granting access to the tape recordings. I do not consider that the public interest in maintaining personal privacy depends on the amount of personal information known to an applicant or on the degree to which a person's privacy might have already been breached.

The complainant raised a number of issues relating to the agency's dealings with her FOI application and also submitted that she had not been consulted about other people obtaining access to personal information about her. She also alleged that my preliminary view of her complaint was based on incorrect and untrue information. However, she did not specify which information was incorrect and untrue. As I have said, whilst I accept that the fact that the tape recordings contain personal information about the complainant must be considered a factor in favour of disclosure to her, that is not the only factor which must be weighed in the balance.

In balancing the competing interests and for the reasons given above, I have given more weight to the public interest in protecting privacy. In the circumstances of this complaint, I am not persuaded that that public interest is outweighed by any other public interest.

Notwithstanding that, I have considered whether it would be practicable for the agency to give access to the tape recordings with exempt matter deleted. However, I do not consider that it would be practicable for it to do so due to the nature of the document and the manner in which the personal information about the complainant appears in that document. I do not consider that it is possible to give the complainant access to personal information about her without also disclosing personal information about other people. In this case, the exempt matter is scattered throughout the tape recordings and the option of deleting exempt matter would not be a practicable one for the agency. It would render the tape recording meaningless.

Accordingly, I find that the tape recordings are exempt under clause 3(1) of Schedule 1 to the FOI Act and confirm the decision of the agency to refuse access to those documents.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
30 April 2001