

Y AND HOMESWEST

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

**File Ref: 97203
Decision Ref: D0181998**

Participants:

Y
Complainant

- and -

The State Housing Commission (Homeswest)
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – complainant against charges – meaning of “impecunious” – waiver of charges – onus on agency to assist the public to obtain access to documents promptly and at lowest reasonable cost.

Freedom of Information Act 1992 (WA) clauses 5(1)(b), 7, 8(2); Schedule 1; sections 4, 6, 16(1)(g), 76.

DECISION

The decision of the agency is set aside. In substitution, it is decided that the complainant is to be given access to the documents without charge.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16th July 1998

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner of a decision made by The State Housing Commission (Homeswest) ('the agency') to impose charges of \$630 for providing 'Y' ('the complainant') with access to documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act'). I have decided not to identify the complainant by his name, in order to protect his privacy, given the particularly sensitive information about his personal finances referred to below.
2. The complainant is an electrical contractor by trade. In 1997, he applied to the agency for registration with the agency as an electrical contractor with responsibility for 3 of the 12 zones available for tender. At the time of his application, the complainant was experiencing financial difficulties and had not been in business for 18 months. The complainant contends that, if his application had been successful, the zone contracts were likely to have been worth between \$80,000 and \$100,000 per annum to the complainant, and to have enabled him to trade his way out of financial difficulty and to resume his trade occupation.
3. After receiving his application for registration, the agency conducted inquiries. Those inquiries included searching records held by the Australian Securities Commission, obtaining a report from Australian Corporate Reporting Pty Ltd of legal actions by creditors against the complainant, searching the business records relating to the complainant and associated companies, and interviewing the complainant and his wife. The agency's inquiries revealed, among other things, outstanding monies allegedly owed by the complainant to his creditors totalling approximately \$64,000. In addition, there was a debt of some \$8500 owed by the complainant to the agency.
4. As a result of its inquiries, on 4 April 1997, the agency informed the complainant that his application for registration as a zone contractor with the agency was unsuccessful.
5. By letter dated 29 April 1997, solicitors for the complainant applied to the agency under the FOI Act for access to documents relating to the complainant's application for registration as a contractor, in his own capacity and as a company proprietor, and to the termination of previous contracts held by two companies owned and managed by him. Although an application fee of \$30 was lodged with the access application, it appears that the agency did not record the receipt of the application and did not, therefore, deal with the application in accordance with the provisions of the FOI Act.
6. Subsequently, an approach was made to my office by the complainant. The agency then acknowledged its error and dealt with the access application. By letter dated 15 October 1997, the agency provided the complainant's solicitors

with an estimate of the charges for dealing with the access application. The solicitors responded to that advice and requested a waiver of charges given the delay in dealing with the access application, but the agency did not waive those charges.

7. By letter dated 13 November 1997, the agency notified the complainant of its decision. The agency identified 76 documents (consisting of 293 folios) as falling within the ambit of the access application. Of those documents, the agency granted full access to 48 and access to edited copies of 11, and refused access to 17 others on the grounds that those documents were exempt under clauses 5(1)(b), 7 and 8(2) of Schedule 1 to the FOI Act. In addition, the agency informed the complainant that charges of \$980.20 were payable before access would be provided.
8. The complainant sought internal review of the agency's decision and submitted that charges should not apply because the information sought was personal information about him. However, in a notice of decision dated 12 December 1997, the internal reviewer in the agency confirmed the initial decision, in respect of both access and the charges payable. Thereafter, on 16 December 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

9. I obtained from the agency the documents to which access had been refused, in full or in part, and the agency's file maintained in respect of this matter. Initially, this complaint concerned two matters: the agency's refusal to grant the complainant access to documents and the charges imposed. After considering the material before me and discussing the claims for exemption with the complainant, he withdrew his complaint with respect to the documents claimed to be exempt.
10. Although the agency reduced the charges payable to \$735.15 and further reduced those charges to \$621, the complainant remained dissatisfied with the amount of charges and did not withdraw that part of his complaint.

CHARGES PAYABLE FOR ACCESS TO DOCUMENTS

11. Section 16 of the FOI Act deals with charges for access to documents. The subsection most relevant to this matter is s.16(1)(g). Section 16(1)(g) provides that a charge must be waived or be reduced if the applicant is impecunious.
12. The documents in question consist of the report of the interview with the complainant; the application by the complainant for registration as a contractor; a search report of business names from the Ministry of Fair Trading; two copies of the credit report by Australian Corporate Reporting Pty Ltd; various agency internal memoranda and file notes; the Zone Maintenance Contract Interview

- with the complainant by the agency; a tenancy report on the residential property occupied by the complainant; company extracts from the Australian Securities Commission and associated documents; copies of various Certificates of Title; and a letter from the complainant to the agency.
13. I have examined those documents. I consider that the copies of the certificates of Title are documents that are publicly available for purchase and therefore fall within the terms of s.6 of the FOI Act and are not accessible under the FOI Act. The provisions of the FOI Act do not apply to them and no charge may be imposed in respect of them under the FOI Act.
 14. I consider that, in the circumstances of this matter, there is ample evidence in the agency's file that the complainant was, at the material time, impecunious. The term "impecunious" is not defined in the FOI Act. The *Concise Oxford Dictionary, 2nd Edition*, defines the term as "having little or no money". Further, in *Re Larson and Office of Corrections* (Administrative Appeals Tribunal of Victoria, Howie, PM, 19 June 1990, unreported) the Tribunal held that impecunious, in the context of the FOI Act of Victoria, does not mean having no money at all or being utterly destitute, but, rather, means being poor, or in want of money, or having little money, or being unable reasonably to afford the access charges.
 15. Given the information available to the agency concerning the complainant's financial position, I consider that there was sufficient evidence for the decision-makers in the agency to find that the complainant could not reasonably afford to pay for access to the documents requested and that he was, therefore, impecunious. The agency did reduce the charges to some extent but, in my view, not sufficiently given the complainant's financial position. In my view, to impose charges of \$630.00 on an impecunious person in a matter such as this is unreasonable. Further, given the administrative error on the part of the agency and the inordinate delay in dealing with the complainant's access application, I consider that the decision-makers in the agency should have recognised that the circumstances justified a complete waiver of all charges.
 16. I am empowered by s.76 of the FOI Act to review any decision in respect of the access application and to decide any matter in relation to the access application that could, under the FOI Act, have been decided by the agency. Having reviewed the agency's decision concerning the charges to be imposed for dealing with the complainant's access application, I am of the view that the agency not only could have decided to waive the charges on the basis of the complainant being impecunious, but was required by s.16(1)(g) of the FOI Act to waive or reduce the charges.
 17. I consider that, in the circumstances of this matter, the decision-makers should have appreciated that their obligations under s.4 of the FOI Act required them to give effect to the FOI Act in a way that assists the complainant, as a member of the public, to obtain access promptly and at the lowest reasonable cost. In this case, the agency clearly ought to have waived the charges for dealing with the

access application. Therefore, in substitution, I decide that there should be no charges imposed by the agency with respect to its decision on access.