

Taweel and Planning

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

**File Ref: 95222
Decision Ref: D01896**

Participants:

Michel and Georgette Taweel
Complainants

- and -

Minister for Planning
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - request for access to documents relating to planning appeal - documents of an agency when the agency is a Minister - clause 4(2) of the Glossary in Schedule 2 - whether documents "relate to the affairs of" an agency other than the Minister.

FREEDOM OF INFORMATION - clause 3 - personal information about third parties - handwriting - public interest for and against disclosure.

Freedom of Information Act 1992 (WA) ss. 10(1), 68(1), 72(1)(b), 75(1), 102(3); Schedule 1 clause 3(1), 6(1), 8(2), 11(1); Glossary in Schedule 2 clause 1, 4(2).

Freedom of Information Regulations 1993 (WA) regulation 10, Schedule 2.

Freedom of Information Amendment Regulations 1994 (WA).

Freedom of Information Act 1982 (Cth) s. 4.

Freedom of Information Act 1992 (Qld) s. 7.

Freedom of Information Act 1982 (Vic) s. 5.

Freedom of Information Act 1989 (ACT) s. 4(1).

Freedom of Information Act 1989 (NSW) s. 6(1).

Town Planning and Development Act 1928 (WA) s. 40(3).

Town Planning and Development Act (Appeal) Regulations 1979 (WA).

Local Government Act 1960 (WA).

Interpretation Act 1984 (WA) s. 18.

Re Kobelke and Minister for Planning and Others (Information Commissioner, WA, 27 April 1994, unreported).

DECISION

The decision of the Minister is set aside. In substitution it is decided that the requested documents are documents of a Minister to which the FOI Act applies. In addition, it is decided that the matter contained in documents 6, 7 and 17 which is specified in paragraph 59 of my reasons for this decision is exempt from disclosure under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

D A WOOKEY
ACTING INFORMATION COMMISSIONER

27th March 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Minister for Planning ('the Minister') to refuse Mr and Mrs Taweel ('the complainants') access to documents requested by them under the *Freedom of Information Act 1992* ('the FOI Act').
2. The background of this complaint is as follows. An appeal was lodged with the Minister on behalf of the complainants by planning consultants engaged by them, in accordance with the provisions of the *Town Planning and Development Act 1928* ('the Town Planning Act'), against a decision of the City of Canning ('the City') to refuse an application made by the complainants for planning approval to be granted to develop a child care centre on property owned by the complainants. After the appeal had been lodged, the Minister requested a member of the Town Planning Appeals Committee ('TPAC') to investigate the matter, provide a report and make a recommendation to him in relation to the appeal. On 16 September 1995, following the investigation of the matter by the member of TPAC and the submission of a report to the Minister, the Minister advised the consultants that the appeal was dismissed.
3. On 8 October 1995, the complainants applied to the Minister for access under the FOI Act to all correspondence, reports and materials from all parties concerned in the appeal. On 19 October 1995, the Minister refused the complainants access to the requested documents on the ground that those documents are not "documents of an agency" to which the FOI Act applies. On 6 November 1996, as there is no right to internal review of a decision made by a principal officer of the agency, in this case the Minister, the complainants sought external review of the decision of the Minister by the Information Commissioner.

REVIEW BY THE INFORMATION COMMISSIONER

4. On 17 November 1995, in accordance with s.68(1) of the FOI Act, the Information Commissioner notified the Minister that this complaint had been made. Exercising her powers under s.75(1) and s.72(1)(b) of the FOI Act, the Information Commissioner sought the production of the originals of the requested documents, together with the file maintained by the agency in respect of this matter. Those documents were produced on 23 November 1995, together with a schedule listing and describing 25 documents to which the access application related. The Minister confirmed that access to the documents was refused because he considered that the documents are not "documents of an agency" as defined in clauses 4(1) or 4(2) of the Glossary in Schedule 2 to the FOI Act. In the alternative, the Minister submitted that the documents are exempt from disclosure under clauses 3(1), 6(1), 8(2), 11(1)(a) and 11(1)(b) of Schedule 1 to the FOI Act.

5. On 9 February 1996, after examining the requested documents and considering the submissions of the Minister, the Information Commissioner provided the parties with her preliminary view, and reasons for her view, that the requested documents are “documents of an agency” to which the FOI Act applies. It was the Information Commissioner's preliminary view that the documents sought by the complainants are of the kind referred to in clause 4(2)(a) of the Glossary. Further, it was the Information Commissioner's preliminary view that the documents relate to the affairs of an agency other than a Minister, that agency being the City, as the documents relate to the planning process of the City. Accordingly, the Information Commissioner was of the view that the requirements of clause 4(2)(b) of the Glossary had been met, and the documents were documents of an agency, the Minister, which are able to be the subject of an access application under the FOI Act.
6. As it was her preliminary view that the documents were documents of the Minister, the Information Commissioner considered whether the documents contained any matter which may be exempt under the provisions of Schedule 1 to the FOI Act. It was her preliminary view, following her examination of the documents, that none of the documents contain matter which is exempt under clauses 6(1), 8(2) or 11(1)(a) or 11(1)(b) as claimed. However, it was the Information Commissioner's preliminary view that certain information in the requested documents is personal information about third parties other than the complainants which is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
7. Thereafter, the complainants informed this office that they did not seek access to personal information about third parties. The Minister withdrew his claims for exemption under clauses 6(1), 8(2) and 11(1)(a) and 11(1)(b). However, the Minister maintained the claim that certain information within the disputed documents which, in the Information Commissioner's preliminary view, may not be exempt under clause 3(1) is, in his view, personal information about third parties. In addition, although the Minister accepted that the documents were of the kind referred to in clause 4(2)(a) of the Glossary in Schedule 2, the Minister maintained his claim that the documents in dispute are not documents of his agency, as the requirements of clause 4(2)(b) of the Glossary had not been satisfied.
8. Accordingly, the initial matter for my determination is the question of whether the requested documents are “documents of an agency” and hence accessible under the FOI Act. I am then required to consider whether certain matter within the disputed documents is exempt under clause 3(1) of Schedule 1 to the FOI Act. In reaching my decision, I have inspected and considered the documents in dispute in this matter and additional documentation produced by the Minister, and considered the submissions of both parties.

THE DOCUMENTS

9. The requested documents are briefly described as follows:

Document	Description
1	Appeal to Minister for Planning, including letter of transmittal dated 7 June 1995, submitted by consultants on behalf of the complainants.
2	File note dated 17 June 1995, concerning an objector to the complainants' proposal.
3	Copy letter of acknowledgment dated 16 June 1995 from office of the Minister to the consultants.
4	Copy letter from the office of the Minister to City of Canning dated 16 June 1995, seeking a response to the appeal.
5	Letter to Minister dated 8 July 1995, from third party objector.
6	Letter to Minister dated 10 July 1995, from third party objector.
7	Letter to Minister dated 8 July 1995, from third party objector.
8	Letter to Minister dated 8 July 1995, from third party objector.
9	Letter to Minister dated 18 July 1995 from City of Canning containing response to the appeal.
10	Copy letter of acknowledgment dated 20 July 1995, from office of the Minister to City of Canning.
11	Copy letter of acknowledgment dated 6 August 1995 from Minister to third party objector.
12	Copy letter from office of Minister to TPAC member dated 2 August 1995, requesting a report and recommendation concerning the appeal.
13	Copy report to City of Canning Council Meeting dated 11 April 1995 concerning development proposal of the complainants.
14	Copy map put to Council identifying origins of submissions.
15	List of Child Care Centres in the City of Canning.
16	Letter dated 16 August 1995, from Mr Sam Taweel to TPAC member.
17	Report dated 17 August 1995, from TPAC member to Minister.
18	Letter to Minister dated 10 July 1995, from third party objector.
19	File note dated 18 August 1995.

Document	Description
20	Copy letter of acknowledgment dated 10 September 1995, from Minister to third party objector.
21	Copy letter from Minister to consultants dated 16 September 1995, advising the result of the appeal.
22	Location diagram map.
23	Letter to Minister dated 17 September 1995, from third party objector.
24	Copy letter dated 8 October 1995, from Minister to third party objector advising result of appeal.
25	Copy letter dated 6 August 1995, from Minister to third party objector advising result of appeal.

DOCUMENTS OF AN AGENCY WHEN THE AGENCY IS A MINISTER

(a) The right of access

10. Section 10(1) of the FOI Act provides:

“10. (1) 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 this Act.”

Therefore, an access applicant may only gain access to documents which fall within the definition of “documents of an agency” as provided for by the FOI Act.

(b) The definition

11. Pursuant to the definition of “agency” in clause 1 of the Glossary in Schedule 2 to the FOI Act, a Minister is an agency for the purposes of the FOI Act. Clause 4(2) of the Glossary defines “document of an agency” with specific reference to the situation where the agency to which an access application is made is a Minister. Clause 4(2) provides:

“(2) Where the agency is a Minister a reference to a document of an agency is a reference to a document that -

(a) is in the possession or under the control of the Minister in the Minister’s official capacity; and

(b) relates to the affairs of another agency (not being another Minister),

and includes a document to which the Minister is entitled to access and a document in the possession or under the control of a member of the staff of the Minister as such a member, but does not include a document of an agency for which the Minister is responsible.”

12. Pursuant to clause 4(2) of the Glossary, the right of access under s.10(1) of the FOI Act, so far as is relevant to this matter, only extends to documents of a Minister when those documents are in the possession or under the control of the Minister in his or her official capacity, and those documents relate to the affairs of another agency, excluding another Minister.

(c) The Minister’s submission

13. In his response to the Information Commissioner's preliminary view, the Minister accepted that the requested documents are in his possession and held by him as Minister for Planning. That is, the Minister accepts that the documents are of the kind referred to in clause 4(2)(a) of the Glossary in Schedule 2. However, the Minister disputes the view that the documents relate to the affairs of another agency and claims that the documents relate only to his affairs, in particular, his function in determining appeals under the Town Planning Act. The Minister does not accept that the documents to which the complainants seek access can be said to relate to the affairs of the City by virtue of the fact that the documents relate to an appeal against a planning decision of the City. The submission of the Minister on that point is as follows:

“...It is my view that a narrower interpretation should be applied to the meaning of the expression “relates to the affairs of”. In the context in which that expression is found, I consider that it should be taken as a reference to the primary subject matter or topic of the document in question and, accordingly, the mere fact that reference is made in the document to the prior actions of another agency would not, of itself, render it a document that relevantly “relates to the affairs of” that agency.

In my opinion, this interpretation is preferable as it provides some substantive effect to the expression “relates to the affairs of another agency” and thus avoids rendering the words otiose and unnecessary. Given that clause 4(2)(b) imposes a requirement which is cumulative upon the requirement that a document be in the possession or under the control of a Minister in his official capacity, it is difficult to envisage what that cumulative requirement could add if mere reference to or indirect relationship with the affairs of another agency were sufficient to satisfy it. In other words, if subclause (b) is to be given the meaning which you have attributed to it, I cannot imagine any document in my possession in my official capacity which would not contain reference to or bear indirectly

upon another “agency”, given the very broad definition of that term contained within the Act. This is because essentially everything that I do in my official capacity will bear upon or have some indirect relationship to an “agency”.

Put in another way, it is my view that by introducing the expression “another agency”, Parliament should be taken to have intended that documents in the possession of a Minister and which primarily relate to the affairs of that Minister are not accessible under the Act. Otherwise, it is difficult to see what Parliament could have intended by the introduction of the expression “another agency”.

In this instance the documents were brought into existence for the sole purpose of the performance of my appellate function pursuant to Part V of the Town Planning and Development Act 1928. The documents do not relate to any function or activity remaining to be performed by the City of Canning. Applying the narrow interpretation of clause 4(2)(b) to those facts, I submit that the documents do not “relate to the affairs of” the City of Canning. Rather, the documents relate to my affairs and are not, therefore, documents of the kind referred to in clause 4(2)(b).”

(d) Interpretation

14. As it is accepted by the Minister that the documents in dispute are of the kind referred to in clause 4(2)(a) of the Glossary in Schedule 2, in order to determine whether the documents are documents of the Minister, I am required to be satisfied that the documents relate to the affairs of another agency, not being another Minister, in accordance with clause 4(2)(b) of the Glossary.
15. I have been unable to gain any assistance as to the meaning and intent of clause 4(2) of the Glossary from the Parliamentary debates on the Freedom of Information Bill, which do not consider this subclause in detail. However, I consider that it is clear that Parliament intended Ministers to be subject to the FOI Act in certain circumstances by virtue of the fact that the term “agency” in the FOI Act is defined to include a Minister. That approach is consistent with the position under FOI legislation in all other States and the Commonwealth.
16. In interpreting the terms of clause 4(2)(b) of the Glossary in Schedule 2, the principle of statutory interpretation which requires that legislation must be interpreted in a manner which gives effect to the intention of the legislation must be applied.
17. Section 18 of the *Interpretation Act 1984* provides that, in the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law is to be preferred to a construction that would not promote that purpose or object. In interpreting the meaning of clause 4(2)(b) of the Glossary to Schedule 2, it is my view that the subclause must be

given an interpretation in accordance with the objects of the FOI Act, which are stated in section 3(1) of the FOI Act. Section 3(1) provides:

“Objects and intent

3. (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.”*

18. The FOI Act provides a general right of access to documents held by State and local government agencies. On 28 November 1991, as part of his second reading speech to the Western Australia Parliament, the then Minister for Justice, the Honourable David Smith MLA, said:

"Freedom of Information legislation represents a fundamental reform of the relationship between the State and local governments and the communities they serve. It enshrines in legislation rights which are at the very heart of the democratic processes...Freedom of Information strengthens democracy, promotes open discussion of public affairs, ensures the community is kept informed of the operations of government and opens government performance to informed and rational debate."

19. The rationale behind FOI legislation in Western Australia is well stated in the following observation by the Royal Commission Into Commercial Activities of Government and Other Matters, at page 2-2 of Part II of its final report, when it said:

*"Both the democratic and the trust principles...demand that government be conducted openly. They require that the public be informed of the actions and purposes of government, not because government considers it expedient for the public to know, but because the public has a **right to know**...Openness in government is the indispensable prerequisite to accountability to the public."*

20. The Minister in this case contends that, in interpreting the terms of clause 4(2) of the Glossary, Parliament should be taken to have intended that documents in the possession of a Minister and which primarily relate to the affairs of that Minister are not to be accessible under the FOI Act. I do not accept that view. The intention of the Parliament in respect of the operation of clause 4(2) of the Glossary by the Minister is not apparent from the Hansard records of the debates which took place when the Freedom of Information Bill was before Parliament. Indeed, in my view, the interpretation which the Minister submits is to be preferred would be entirely inconsistent with the recommendations of the 1992 *Royal Commission Into Commercial Activities of Government and Other Matters* concerning open and accountable government, and with the views

regarding the accessibility of documents in the possession of a Minister as contained within the FOI legislation in other jurisdictions: see the definitions of the terms “official documents of a Minister” or “Minister’s documents”, to which there is a right of access under FOI in other jurisdictions, in s.4 of the *Freedom of Information Act 1982 (Cth)*; s.7 of the *Freedom of Information Act 1992 (Qld)*; s.5 of the *Freedom of Information Act 1982 (Vic)*; s.4(1) of the *Freedom of Information Act 1989 (ACT)*; and s.6(1) of the *Freedom of Information Act 1989 (NSW)*.

21. The requirement that a document must relate to the affairs of another agency in order for there to be a right of access under the FOI Act to a document in the possession of a Minister, in my opinion, has the effect of limiting the right of access under the FOI Act to those documents that have a connection with the activities of Government. This is, in my view, in accordance with the stated objects and intent of the FOI Act, so as to facilitate public participation in the governing of the State, and to make government bodies and officers accountable in the performance of their official functions.
22. It is my view that clause 4(2) of the Glossary in Schedule 2 to the FOI Act is intended to exclude from the operation of the FOI Act documents which relate to a Minister’s activities in his electorate when those documents do not involve the affairs of an agency; documents which involve the Minister’s activities as a member of a political party; and personal documents of a Minister. In my view, a document relating only to electoral matters, for example, would not be a document of a Minister under clause 4(2) of the Glossary. Subjecting documents of that type to a right of access under the FOI Act would not, in my view, promote the objects of the FOI Act.
23. Accordingly, I consider that clause 4(2) of the Glossary is intended to ensure that documents in the possession of a Minister which relate to the affairs of another agency, even if the documents relate primarily to the affairs of the Minister in the performance of his or her functions, are documents to which a right of access, subject to justified exemptions, is given under the FOI Act. In my view, it is not a requirement of clause 4(2) of the Glossary that a document held by a Minister relate exclusively to the affairs of some other agency in order for it to be accessible under the FOI Act. Were that the case, very few, if any, documents held by a Minister in his official capacity would be “documents of an agency” and subject to the operation of the FOI Act. That result would clearly not accord with the objects and intent of the FOI Act.
24. Therefore, the next question for my determination is whether the documents in dispute in this case can be said to relate to the affairs of an agency other than the Minister so as to be of the type referred to in clause 4(2)(b) of the Glossary. This requires an examination of the phrase “relates to the affairs of”. The phrase is not defined in the FOI Act. However, the Concise Oxford Dictionary (Eighth Edition) defines the word “relate (followed by *to*)” as meaning, *inter alia*, “have reference to; concern”. “Affair” is also defined to mean “a concern; a business; a matter to be attended to; ordinary pursuits of life; business dealings; public matters”.

25. Taking into account the context in which the phrase appears in the FOI Act, I consider that the affairs of an agency are the matters with which the agency deals in the ordinary course of its operations in order to discharge its functions. In my view, the affairs of an agency may be ascertained by reference to the legislation creating it or under which it operates, its annual reports and its mission statements and the like, which will assist in the identification of the role, function and objectives of the agency. I consider that the affairs of an agency include, but are not limited to, the business dealings of the agency, the financial matters and commercial dealings (where appropriate) with which the agency is concerned, the carrying out of its statutory functions, and matters which are relevant to decisions made by the agency.
26. Applying the ordinary meaning to the words in clause 4(2), and having regard to the objects and intent of the FOI Act, I consider that the phrase “relates to the affairs of another agency” means that documents in the possession or under the control of a Minister must be documents that can be properly characterised, in a general sense, as documents relating to the business (in the broad sense of that word) of another agency in the performance of its functions, in order for those documents to be accessible under the FOI Act.

(e) The documents

27. Some of the disputed documents were created as a direct result of the complainants pursuing their rights of appeal to the Minister. Those documents include documents provided to the Minister by or on behalf of the complainants; documents between the Minister and the City regarding the appeal, as well as documents which were created in the course of other persons interested in the appeal making submissions to the Minister. Other documents are more general in nature, and contain factual information relevant to the appeal. It is the submission of the Minister that all of the documents relate to the affairs of the Minister for Planning in the exercise of his appellate function and that they do not relate to the affairs of any other agency.

(f) The Ministerial appeal system

28. The operation of the Ministerial appeal system under the FOI Act is explained in paragraphs 35-36 and 55-57 of the Information Commissioner's decision in *Re Kobelke and Minister for Planning and Others* (27 April 1994, unreported). Briefly, the process is that a party who wishes to appeal to the Minister lodges a completed Notice of Appeal with the Minister in accordance with the provisions of the *Town Planning and Development Act (Appeal) Regulations 1979*. Those regulations also require a copy of the appeal documents to be given to the relevant authority, the decision of which is the subject of the appeal, as soon as is practicable after the appeal has been lodged.

29. On receiving an appeal, the Minister may require TPAC to consider the appeal, and report and make a recommendation on the appeal to the Minister, pursuant to section 40(3) of the Town Planning Act. I am advised that the member of TPAC to whom the appeal is allocated acts independently in the investigation of the appeal, and is not required to follow any specified procedure. The common practice in investigating such appeals prior to the preparation of a report and making a recommendation generally involves an attendance at the relevant site, a consideration of any written submissions provided with respect to the appeal, and a discussion with the party lodging the appeal as well as the authority which made the decision which is subject to review.
30. After completing the investigation, the report and the recommendation of the member of TPAC is submitted to the Minister. The Minister then makes a decision on the appeal based on the material before him, and on any other issues that he considers relevant. Each party is then advised of the decision. Once the Minister has determined the appeal, the decision of the Minister stands as the decision of the authority against which the appeal was lodged.

(g) Do the documents relate to the affairs of TPAC?

31. In her decision in *Re Kobelke* the Information Commissioner found that TPAC was a separate agency for the purposes of the FOI Act. However, although I agree that was the case at that time, in my view it is no longer so. Clause 2(4) of the Glossary in Schedule 2 to the FOI Act states that the regulations may declare that a specified officer or body is not to be regarded as a separate agency, but is to be regarded as part of a specified agency. Regulation 10 of the *Freedom of Information Regulations 1993* ('the FOI Regulations'), together with Schedule 2 to the FOI Regulations, has the effect that, for the purposes of the FOI Act, TPAC is not to be regarded as a separate agency, but is to be regarded as part of the agency which is the Minister for Planning.
32. There are similarities between some of the documents in issue in *Re Kobelke* and those that are in dispute in this instance, as the documents to which access was sought in *Re Kobelke* included a report prepared by a member of TPAC for the purpose of assisting the Minister in the determination of an appeal lodged with him pursuant to the provisions of the Town Planning Act. However, the decision in *Re Kobelke* preceded the enactment of the *Freedom of Information Amendment Regulations 1994* which added regulation 10 and Schedule 2 to the FOI Regulations, and therefore the effect of those provisions with respect to documents in the possession of the Minister relating to the affairs of TPAC was not considered in that decision.
33. I accept that the documents in dispute cannot be said to relate to the affairs of TPAC, so as to be within the terms of clause 4(2)(b) of the Glossary by virtue of that, as TPAC is not an agency separate from the Minister for the purposes of the FOI Act, for the reasons discussed in paragraph 31 above. Therefore, I turn to the question of whether the documents can be said to relate to the affairs of any other agency so as to fall within the definition of clause 4(2)(b).

(h) Do the documents relate to the affairs of the City of Canning?

34. Paragraph (b) of the definition of “agency” in clause 1 of the Glossary in Schedule 2 to the FOI Act provides that a public body or office is an agency for the purposes of the FOI Act. “Public body or office” is defined in clause 1 of the Glossary to include “a municipality or regional council established under the *Local Government Act 1960*”. The City is a municipality established under the *Local Government Act 1960* and, therefore, the City is an agency within the terms of the FOI Act.
35. I have examined the Information Statement published by the City under Part 5 of the FOI Act in order to determine the business of that agency and to shed some light on its affairs. In addition to the Council, which is the governing body, the organisation consists of a Chief Executive Officer (the Town Clerk who is responsible for the City Management Division) and 4 other divisions including the Planning and Development Division. The Planning and Development Division provides planning services, development services and patrol and security services. Planning services include the control of land development in accordance with Government regulations and City Zoning schemes. Development services include ensuring that all buildings comply with regulations and specifications and all matters relating to public health. Taking into account the contents of the agency’s Information Statement and the statutory requirements of the *Local Government Act 1960*, I am satisfied that the affairs of the City include receiving, considering and dealing with proposals for developments of the type sought by the complainants.
36. The documents in dispute in this matter are documents received or created by the Minister in the performance of his appellate functions under the Town Planning Act. However, a decision made by the Minister involving an appeal against a planning decision of a local authority in the exercise of his appellate function has an effect on the local authority, as the decision being reviewed by the Minister is the decision initially made by the local authority of the relevant by-laws and regulations. The decision of the local authority may be substituted by the decision of the Minister. When the decision of the Minister is substituted for that of the local authority, the local authority is then required to put the decision of the Minister into effect in the performance of its planning function.

(i) Finding

37. Accordingly, I am satisfied that the planning process can properly be said to be an “affair” of the City. Further, I am satisfied that documents in the possession of the Minister as a result of dealing with an appeal against a planning decision of the City can be said to be documents which “relate to the affairs of” that local authority. The fact that, as is apparent from the documents, TPAC considers the

City to be the respondent to the appeal, whether or not that is in fact so, in my opinion, supports that view. In any event, as the result of the appeal to the Minister clearly impacts upon the plans and business of the City, I am satisfied that the disputed documents relate to the affairs of the City, and are of the type referred to in clause 4(2)(b) of the Glossary.

THE EXEMPTION

(a) The claims for exemption

38. In light of my decision that the disputed documents are documents of an agency, the Minister, so as to be accessible under the FOI Act, I am now required to consider any claims of the Minister that the documents contain matter which is exempt in accordance with the exemptions provided in Schedule 1 to the FOI Act.
39. In the course of the external review of this complaint, the Minister withdrew his claims for exemption under clauses 6(1), 8(2) and 11(1) of Schedule 1 to the FOI Act. However, the Minister maintains his claim for exemption for certain matter contained in the documents on the basis that it is personal information about third parties and is exempt under clause 3(1) of Schedule 1. The complainants have advised that they do not wish to seek access to the matter contained in the documents which is personal information about third parties.
40. Ordinarily, those circumstances would not require that I consider the claim for exemption under clause 3(1), as it is not a matter of dispute between the parties. However, as the Minister maintains his claim for exemption under clause 3(1) for some matter which he was informed, in the Information Commissioner's preliminary view, was not personal information and was not exempt, I consider it necessary that I deal with that claim. I shall not consider the matter which the parties were informed, in the Information Commissioner's preliminary view, was exempt under clause 3(1), as the complainants have effectively withdrawn their complaint with respect to that matter. I deal only with the matter which, in the Information Commissioner's preliminary view, was not exempt under clause 3(1) but for which the Minister maintains his claim.

(c) The claims of the Minister

41. In his response to the Information Commissioner's preliminary view, the Minister claimed that disclosure of documents 6, 7, 8, 18 and 23, which are handwritten letters of objection sent to the Minister in the course of his dealing with the appeal of the complainants, may enable the identity of the author of each letter to be identified. The Minister submits that the handwriting of a person is personal information about that person, as disclosure of a document in the handwriting of the author may serve to identify that author. The Minister has offered to release to the complainants typewritten copies of those documents, transcribed from the

handwritten documents, with certain other personal information deleted, if disclosure of the documents is required.

42. The Minister also maintains his claim that certain matter within documents 7 and 17, which, in the Information Commissioner's preliminary view, was not considered to be personal information about third parties, is exempt under clause 3(1). Further, the Minister sought clarification of certain matter in document 6 which the Information Commissioner considered to be personal information.

(d) Clause 3

43. Clause 3, so far as is relevant, states that:

“Exemption

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

Limits on exemption

(2)...

(3)...

(4)...

(5)...

(6) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”

44. In the Glossary in Schedule 2 to 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.”

45. The Information Commissioner has previously expressed the view that she considers that the exemption in clause 3(1) is designed to protect the privacy of third parties about whom personal information may be contained in documents held by government agencies. That exemption is a recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens, and that information of that kind should not generally be accessible by other persons without good cause. I agree with that view.

46. With respect to the claims of the Minister in relation to the handwriting of the objectors within the disputed documents, it is my view that, if the identity of the person in whose hand a document is written could reasonably be expected to be ascertained upon disclosure of the document, then that handwritten document can be said to contain personal information about the author of that document, and that document is *prima facie* exempt from disclosure under clause 3(1).
47. I consider that the people who may lodge an objection with the Minister in relation to an appeal against a decision of a local authority can in most cases be expected to be confined, to a large degree, to people who are resident in the immediate vicinity of the land to which the appeal relates, or those who would be clearly affected by the development for which approval is being sought. Therefore, the class of people who may be the objectors to this appeal by the complainants is, in my view, limited. In those circumstances, I consider that the handwriting in the documents is personal information about the author of each letter, because, if the handwriting were to be disclosed, the identity of each objector concerned may be able to be ascertained. Accordingly, I find that the handwriting in documents 6, 7, 8, 18 and 23 is *prima facie* exempt matter under clause 3(1).
48. However, the operation of the exemption in clause 3(1) is limited, *inter alia*, by the “public interest test” in clause 3(6). 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 section 102(3) of the FOI Act, the onus is on the complainants to establish that the balance of the public interest lies in favour of disclosure of personal information about third parties.
49. In their response to the Information Commissioner's preliminary view, the complainants advised that they had been advised by staff of the Minister's office that the Minister's decision in this appeal was influenced by letters sent in by objectors and by the report of the TPAC member. The complainants expressed concern that this indicated bias in the decision of the Minister, and that the decision was possibly based on incorrect and misleading information.
50. The Information Commissioner has expressed the view in a number of her decisions that the protection of individual privacy under the FOI Act is an important public interest, which can only be outweighed by a strong public interest in favour of disclosure. Once again, I agree with that view. However, in my view, it is relevant in balancing the public interest in this instance that, although the handwriting in which a document is written may be personal information about the author of a document, the text of that document may relate to the livelihood of the complainants.
51. I recognise that there is a public interest in a person being informed of the objections made against any planning application made by him or her, and being given the opportunity to respond to the issues raised by the objector. I also recognize a public interest in people being fully informed of the basis on which decisions directly affecting their interests have been made by Government. More broadly, I consider that there is a public interest in an access applicant being able

to access documents containing information relating to him or her which are held by a State or local government agency.

52. In this case, there is no evidence before me that the Minister informed the complainants of the nature of the objections made to him in relation to the appeal of the complainants, or that the complainants were provide with a full and detailed summary of the reasons for the decision of the Minister to refuse their appeal against the decision of the City, including a summary of the objections made by the objectors. In addition, although they are referred to briefly in the TPAC member's report, the specific objections raised in each letter of objection are not detailed in the report, such that disclosure of that document might have satisfied the public interests identified above and obviated any need for disclosure of the letters themselves.
53. In balancing the competing public interests, I consider that disclosure of the personal information, being the handwriting of the third parties who are the authors of documents 6, 7, 8, 18 and 23, which is entwined with the substance of the objection to the appeal made by each third party, would be in the public interest, in order that the complainants may be fully informed of the objections and the concerns of the objectors given to the Minister regarding the development proposed by the complainants, and the material on which the Minister's decision was made.
54. Accordingly, it is my view that, subject to the editing from the text of documents 6, 7, 8, 18 and 23 the matter, other than handwriting, which I consider is personal information, and which is described in paragraph 59 below, documents 6, 7, 8, 18 and 23 are not exempt from disclosure under clause 3(1) of Schedule 1 to the FOI Act. However, the offer of the Minister to release to the complainants typewritten copies of documents 6, 7, 8, 18 and 23 overcomes his concerns regarding the disclosure of personal information about the author of each letter by the disclosure of the handwriting of that person, and, although I cannot require it, I strongly suggest that the complainants accept access in that manner.
55. I add that I do not consider that the public interest requires the disclosure of the identity of the source of this information in this instance, as well as the information itself. In my view, this is adequately addressed by editing from documents 6, 7, 8, 18 and 23 the text within each document which reveals personal information about the author of that document, other than handwriting, and which does not describe the nature or the basis of the objection. In my view, this is information which includes the names, addresses and signatures of people who lodged objections with the Minister, as well as other information the disclosure of which would identify them, such as details about their residences. I consider that this matter is *prima facie* exempt from disclosure under clause 3(1) of Schedule 1.
56. The matter within the disputed documents which I consider to be of this type has either been discussed in the Information Commissioner's preliminary view and accepted as such by both parties, or, in the case of documents 6, 7 and 17, has

been the subject of additional submissions from the Minister and is dealt with in paragraphs 57-59 below.

57. Document 7 is a letter of objection sent to the Minister by a third party. The Minister claims that the whole of paragraph 3 on page 3 of document 7 is exempt from disclosure under clause 3(1), rather than only the parts of that paragraph which, in the Information Commissioner's preliminary view, were considered to be *prima facie* exempt under clause 3(1). Whilst I am unable to describe the nature of that matter without breaching my duty under section 74(2) of the FOI Act, I am of the view that, other than the matter specified in paragraph 59 below, the information in paragraph 3 of page 3 of document 7 is general in nature. I am not persuaded that the disclosure of that matter, other than that described in paragraph 59, would enable the identity of the third party to be ascertained, and I find that it is not exempt.
58. Document 17 is the report from the member of TPAC to the Minister following his investigation of the appeal. The Minister claims that the whole of paragraph 3 under the heading numbered "11" on page 2 of the document, and the matter in paragraph 3 under the heading numbered "11" on page 6, is exempt under clause 3(1), rather than just the portions of that matter described in the Information Commissioner's preliminary view. That matter is a discussion by the TPAC member of the effect of the development proposed by the complainants on various properties in the surrounding area. In my view, disclosure of that information, other than that specified in paragraph 59 below, would not reveal any information about an individual, the disclosure of which would enable the identity of that person to be ascertained, and is not therefore exempt.

Conclusion

59. In relation to the paragraphs within the disputed documents for which the Minister maintains his claim for exemption pursuant to clause 3(1) of Schedule 1 to the FOI Act, I find that the following is personal information about third parties and is exempt under clause 3(1):

Document 6: lines 8-9 on page 2;

Document 7: line 4, words 1-6 of line 5, words 4-7 of line 6 and words 1-2 of line 7 of paragraph 3 on page 3;

Document 17: the last word on line 1, line 2, words 1 and 6-8 of line 3, word 3 of line 5, word 6 of line 6, and the last sentence of paragraph 3 under the paragraph numbered "11" on page 2; the last word on line 1, line 2, words 1 and 6-8 of line 3, word 3 of line 5, word 1 of line 13, line 15, words 1-10 of line 16, and the last word of line 18 of paragraph 3 under the paragraph numbered "11" on page 6.

60. Therefore, as it is my view that the documents are documents of an agency for the purposes of the FOI Act, that agency being the Minister, and - subject to the deletion of personal information about third parties as described in the Information Commissioner's preliminary view and in paragraph 59 above - the documents are not exempt, the complainants are entitled to be given access to copies of those documents as requested.

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