

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Beckett and CITY OF WANNEROO* [2002] WAICmr 19

COMPLAINT No: F2002066

DECISION No: D0192002

PARTIES: Roger Stephen BECKETT

Complainant

CITY OF WANNEROO

Respondent

No. of documents in dispute: 1

Exemption clause(s): Clause 5(1)(e)

For some time, Mr Beckett, ('the complainant') has complained to his local authority, the City of Wanneroo ('the agency') about an alleged nuisance, a barking dog, in his neighbourhood. The agency conducted inquiries into those complaints and attempted to resolve them, without success. In a further effort to determine whether there was any substance to the complainant's complaints, the agency commissioned a report from an animal behavioural expert.

In January 2002, the complainant made an application to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for access to various documents relating to this dispute, including the report prepared by the animal behavioural expert. The agency refused the complainant access to one document and informed him that it had previously given him an explanation about the others. Subsequently, the complainant complained to my office about the manner in which his access application had been handled by the agency. Following discussions, the agency conducted an internal review of its decision and refused the complainant access to all of the requested documents on the ground that they were exempt under clause 5(1)(e) of Schedule 1 to the FOI Act. On 10 April 2002, the complainant lodged a complaint with me seeking external review of the agency's decision.

Review by the Information Commissioner

When I accepted this complaint, there were eight disputed documents. I obtained the documents from the agency and my office made inquiries into this complaint, including consulting with various third parties. None of those third parties has sought to be joined as a party to these proceedings. The complainant was given a copy of a schedule listing and describing each disputed document. During the external review process, the agency released one of the disputed documents to the complainant.

On 14 May 2002, after considering the material before me, I informed the parties, in writing, of my preliminary view of this complaint, including my reasons. It was my preliminary view that three of the disputed documents were not covered by the terms of the complainant's access application. I also considered that one document, claimed to be exempt under clause 5(1)(e), may not be exempt under that clause. However, it was also my view that some information in the disputed documents may be exempt under clauses 3(1) and 5(1)(b), but that it was practicable for the agency to delete that information and to give the complainant access to edited copies of those documents.

Following that, the complainant withdrew his complaint in respect of three documents not covered by the terms of his access application and the matter, which I considered may be exempt. The agency gave him access to edited copies of three documents. The agency maintained its claim that one document, listed as Document 1 on the schedule, is exempt under clause 5(1)(e). However, the agency made no further submissions to me in support of its claim for exemption. As a result, I am not dissuaded from my preliminary view. A summary of my reasons follows.

Clause 5(1)(e)

Clause 5(1)(e) provides that matter is exempt matter if its disclosure could reasonably be expected to endanger the life or physical safety of any person. The meaning of the phrase "*could reasonably be expected to*" requires a judgment to be made as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the stated consequences to follow from disclosure of the document: *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 108 ALR 163.

The submissions

The agency submitted that, as Document 1 contains findings inconsistent with the complainant's allegations about the barking dog, the agency considered that there was the potential for the complainant to confront the author of Document 1 if it were to be disclosed. The agency claimed that it was aware of allegations that the complainant has mentioned the possibility of physical violence.

Two of the third parties consulted by my office, expressed concerns at the prospect of the complainant obtaining access to the disputed document. However, those concerns appear to me to be related more to an expectation that the complainant would make abusive telephone calls rather than to an apprehension of physical violence. One third party expressed concern for that person's physical safety should Document 1 be released.

The complainant submitted that the agency's allegations of threatening physical violence were totally unfounded and were being used to deny him access to Document 1.

Findings

I understand that the neighbourhood dispute involving the barking dog has been ongoing for two years. Clearly, the complainant is aware of the identity of the author of the disputed document and I understand that one of the agency's Rangers informed the complainant of the substance of the disputed document. Notwithstanding the length of this dispute and the fact that the complainant is generally aware of the findings in the disputed document, no objective material has been put before me by the agency or by any other person to establish that there has been any physical confrontation between the complainant and any other person, which would suggest a propensity for violence on the part of the complainant.

The material before me indicates that the complainant has sought, by all legal means, to pursue his complaint about the alleged barking dog, including making complaints to the agency, the Premier, his local Member of Parliament and the State Ombudsman. I accept that the complainant has been single-minded in the pursuit of his rights, as he sees them, with respect to this matter. However, I do not consider that such single-mindedness necessarily constitutes real and substantial grounds for expecting that the life or physical safety of any person might be endangered if Document 1 were to be disclosed to the complainant. Further, in the context of this matter, the perception of harassment of third parties by the complainant is not, in my view, a result, which could reasonably be expected to follow from disclosure of the document.

In my opinion, the obstacles encountered by the complainant in the pursuit of his grievance go some way towards explaining his apparent frustration and it would not be unreasonable to conclude that the withholding of information may be equally likely to exacerbate the dispute.

Conclusion

Objectively, on the information before me, I do not consider that the disclosure of the disputed document could reasonably be expected to endanger the life or physical safety of any person. Accordingly, I find that Document 1 is not exempt under clause 5(1)(e) of Schedule 1 to the FOI Act and I set aside the agency's decision. However, I have previously indicated to the parties that certain matter in Document 1 is exempt under clauses 3(1) and 5(1)(b) of Schedule 1 to the FOI Act. The complainant no longer seeks access to that information, which should be deleted from the document before access is given to it.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
30 May 2002