

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

**File Ref: F2003075  
Decision Ref: D0202003**

Participants:

**West Australian Newspapers Ltd**  
Complainant  
  
- and -  
  
**Department of Sport and Recreation**  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – request for access to documents about proposal to redevelop the WACA ground and a proposal to establish a centre of excellence for cricket in Western Australia – access given to edited copies of requested documents – clause 3(1) – personal information about third parties – application of limits on exemption in clauses 3(3) and 3(6) – clause 4(1) – trade secrets – whether disputed matter is trade secret – clause 4(3) – commercial, financial and business information about private third party consultant – whether disclosure could reasonably be expected to have an adverse effect on the commercial or business affairs of third party – whether disclosure would, on balance be in the public interest – onus on access applicant

*Freedom of Information Act 1992 (WA)* Schedule 1, clauses 3(1), 3(3), 3(6) 4(1) and 4(3)

## DECISION

The decision of the agency is varied. I find:

- The matter deleted from Documents (i), (ii) and (v) is exempt under clause 3(1);
- Save for the name and title in the first line of paragraph 1 and the same name in the first line of paragraph 4 of Document (iii), the matter deleted from Document (iii) is exempt under clause 3(1); and
- The matter deleted from Document (iv) is exempt under clauses 3(1) and 4(3).

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

21 July 2003

## REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Department of Sport and Recreation ('the agency') to give access to edited copies of certain documents requested by West Australian Newspapers Ltd ('the complainant') under the *Freedom of Information Act 1992* ('the FOI Act').
2. In February 2003, the complainant made an application to the agency for access under the FOI Act to documents described as correspondence, reports, memos and briefing notes regarding requests from or on behalf of the WA Cricket Association to fund, support or contribute to the redevelopment of the WACA Ground and documents regarding a joint submission to the Australian Cricket Board to host, fund, research or contribute to a centre of excellence for cricket to be based in Western Australia.
3. The agency gave access to one document in full; access to edited copies of thirty six documents; and refused access to twelve others. The agency claimed exemption under clauses 3(1) and 4(1) for the matter which had been withheld. The complainant subsequently lodged a complaint with me seeking external review of the agency's decision that the deleted information was exempt.

## REVIEW BY THE INFORMATION COMMISSIONER

4. I obtained the disputed documents from the agency and my officers held discussions with the parties to determine whether this complaint could be resolved by conciliation. In the course of those discussions, both parties made concessions until seven documents remained in dispute.
5. I made an assessment of the seven documents and the agency's claims for exemption for the matter deleted from those documents. I informed the parties in writing of my view, which was that some of the deleted information was personal information about third parties, which may be exempt matter under clause 3(1), and other deleted information may be exempt under clause 4(3), but not under clause 4(1). However, I did not consider that some of the information deleted from several of the requested documents was exempt under clause 3(1).
6. Following that, some additional documents were released to the complainant in a less edited form and, at the conclusion of the review process, five documents remain in dispute between the parties. Each of the five disputed documents has been released to the complainant in edited form. The question for my determination is whether the matter remaining in dispute between the parties, that is, the deleted matter, is exempt and, if so, why it is exempt.

## THE DISPUTED DOCUMENTS

7. The disputed documents are as follows:

- (i) Email message dated 29 November 2002 from the agency to a third party, with attachment (Document D on the agency's schedule);
- (ii) Letter dated 27 November 2002, from the agency to the Minister for Sport and Recreation (Document H on agency's schedule);
- (iii) Email message dated 18 November 2002 from the agency to other officers of the agency and to a third party (Document L on the agency's schedule);
- (iv) Third party letter dated 26 November 2002 (Document X on the agency's schedule); and
- (v) Email message dated 23 December 2002 from the agency to a third party (Document B1 on agency's schedule).

## **THE EXEMPTIONS**

### **(a) Clause 3 – Personal information**

8. Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information (as defined in the FOI Act) about an individual (whether living or dead). Clause 3(1) is subject to the limits on exemption in clauses 3(2)-3(6). In the circumstances of this complaint, I consider that the limits on exemption in clauses 3(3) and 3(6) apply.

### **Consideration**

9. I have examined the disputed documents. I am satisfied that some, but not all of the matter deleted from the disputed documents is personal information about third parties, which is, on its face, exempt matter under clause 3(1). I do not consider that the mere mention of a person's name in documents held by government agencies is necessarily information "about" that person. If the name, in conjunction with other information in a document, discloses something personal and private, then it may qualify for exemption under clause 3(1). In those circumstances, sometimes only the name need be deleted to protect privacy.
10. However, if the context in which a name appears does not disclose something private and personal about that person, then I do not consider that the name alone is personal information or that it should, necessarily, be deleted. In those circumstances, it is arguable that disclosure would not reveal personal information "about" an identifiable individual as required by clause 3(1).
11. In this complaint, some of the information deleted by the agency consists of the names of third parties and other identifying information. Taking into account the context in which that kind of information appears in the disputed documents, I consider that it is personal information as defined in the FOI Act. In my view, the disclosure of that kind of information would reveal personal information about those individuals, such as the extent of their involvement in on-going discussions about the redevelopment of the WACA or the proposed cricket centre of excellence. I consider that that information is exempt matter under clause 3(1).

12. In Document (iii), the agency deleted a name from the first line of paragraph 1 and from the first line of paragraph 4. That person is the Chief Executive Officer of another agency. The names of officers of agencies, to which the FOI Act applies, do not qualify for exemption under clause 3(1), because of the limit on exemption in clause 3(3). Accordingly, I find that the name and title in line one of the first paragraph, and the name in line one of the fourth paragraph of Document (iii), are not exempt under clause 3(1).

**Limit on exemption – clause 3(6)**

13. 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 exemption in clause 3(1) protects the privacy of third parties. Clearly, there is a public interest in protecting privacy.
14. The reason given by the agency for deleting personal information from the disputed documents is that it was done at the request of third parties. It can be inferred from that decision that the agency considers that the public interest in protecting privacy outweighs any other public interests, which might favour the disclosure of personal information. However, the agency did not identify, nor apparently weigh and consider, any other competing public interests.
15. In favour of access, I recognize a public interest in the accountability of the agency for the decisions it makes. I also consider that there is a public interest in applicants being able to exercise their rights of access under the FOI Act. In the circumstances of this complaint, I consider that the public interests that favour disclosure have been satisfied, to a large extent, by the disclosure of the documents released to the complainant, whether in edited form or in full.
16. I do not consider that the public interest requires the disclosure of personal information about third parties. To the extent that the disputed documents contain personal information about identifiable individuals, I am satisfied that the privacy of those individuals ought to be protected. Accordingly, I have given more weight to the public interest in protecting privacy and I find the matter deleted from Documents (i), (ii), and (v), and the personal information deleted from Document (iv), exempt under clause 3(1). In respect of Document (iii), I also find the deleted matter exempt under clause 3(1), save for the matter described in paragraph 12 above, which is not exempt because of the limit on exemption in clause 3(3).

**(b) Clause 4(3) - Commercial or business information**

17. The agency initially claimed that some matter deleted from Document (iv) is exempt under Clause 4(1). Clause 4(1) protects the trade secrets of a person (including an incorporated body). In my view, there is nothing in that document, which would persuade me that any of the deleted information constitutes a trade secret and no submissions from the agency have been made to me in support of that claim. Accordingly, I do not consider that any of the deleted matter is exempt under clause 4(1).

18. However, having examined the matter deleted from Document (iv), I consider that matter to be information of a kind that is exempt under clause 4(3). Clause 4(3) provides that matter is exempt matter if its disclosure would reveal information about the business, professional, commercial or financial affairs of a person, the disclosure of which could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of information of that kind to the Government or to an agency.
19. Document (iv) is a copy of private correspondence between two private third parties, the WACA and a firm of consultants and it concerns a private business agreement between those parties. The information deleted from paragraphs 2, 3 and 4 of that document consists of details about the agreed consultancy fee and the arrangements for its payment. Accordingly, I am satisfied that Document (iv) contains information of the kind described in clause 4(3)(a).
20. In my opinion, the disclosure of such precise details about the fees agreed between a private consultant and its private client, and the manner in which the parties agreed for the fees to be paid, is financial information that runs to the heart of the business and financial affairs of that firm of consultants. If that kind of information is disclosed under the FOI Act, then it is taken to be disclosed to the world at large, including the third party's competitors in the consultancy industry, not just to the complainant. In such circumstances, I consider that the disclosure of the financial information deleted from paragraphs 2, 3 and 4 could reasonably be expected to have an adverse effect on the business and commercial affairs of the firm of consultants, because its competitors would have an insight into its business arrangements, its fee structures and its commercial arrangements with one of its clients.
21. However, clause 4(3) is subject to a public interest test, which provides that matter is not exempt under clause 4(3) if its disclosure would, on balance, be in the public interest. The complainant made brief submissions to me about the public interest factors weighing in favour of disclosure, including the public interest in the accountability of State government agencies for decisions they make and the public interest in the complainant's right of access to documents, under the FOI Act.
22. In my view, there is a public interest in the accountability of State government agencies and in the complainant being able to exercise its rights of access under the FOI Act. However, given that the agency has already given access to all of the requested documents, either in full or with minor editing, I consider those public interests are satisfied. Against that, I consider the business dealings of private bodies or persons should not be adversely affected by the operation of the FOI Act. Accordingly, in this instance, I have given more weight to the public interest in protecting the confidentiality of the business information of the third parties. I am not persuaded that disclosure of that kind of information would, on balance, be in the public interest. Accordingly, I find the matter deleted from paragraphs 2, 3 and 4 of Document (iv) exempt under clause 4(3).

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