

## BROWN AND HOMESWEST

### OFFICE OF THE INFORMATION COMMISSIONER (WA)

#### Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

**COMPLAINT No:** F0971998

**DECISION No:** D0211998

**PARTIES:** **Russell Maurice BROWN**

Complainant

**THE STATE HOUSING COMMISSION OF  
WESTERN AUSTRALIA**

Respondent

**No. of documents in dispute:** 2

**Exemption clause(s):** Clause 3

Mr Brown ('the complainant') is an employee of The State Housing Commission of Western Australia (Homeswest) ('the agency'). In April 1998, his Regional Manager informed him that the agency had received a letter of complaint in which it was alleged that he had engaged in conduct that was inappropriate for a public servant. The Regional Manager discussed with the complainant, in general terms, the matters of complaint but did not inform him of the specific nature of the allegations against him. No further action was taken by the agency in respect of the matters of complaint.

By letter dated 17 April 1998, the complainant lodged an application with the agency seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of the letter of complaint and to the agency's response. The agency refused access to the letter of complaint and claimed that it was exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency's initial decision was confirmed following internal review. On 23 June 1998, 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 letter of complaint and the agency's response which, in my view, fell within the scope of the complainant's access application. Meetings were held with the complainant and the agency in an effort to resolve this matter by conciliation. As a result of those discussions, the agency released a copy of the letter of response dated 9 April 1998 to the complainant in edited form with exempt matter deleted. In addition, the agency agreed to prepare a statement setting out the specific allegations against the complainant and detailing the action taken by the agency in respect of those issues.

On 5 August 1998, after considering the material before me and the matter remaining in issue, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the letter of complainant and the matter deleted from the letter of response might be exempt under clause 3(1) of Schedule 1 to the FOI Act. I received no further submissions from the complainant and I have not been dissuaded from my preliminary view. A summary of my reasons follows.

### THE DISPUTED DOCUMENTS

Document 1 is a letter dated 29 March 1998 to the Regional Manager of the agency in Albany from a third party. Document 2 is a letter dated 9 April 1998 to the third party from the agency. Document 2 has been released to the complainant in edited form.

#### **The exemption – Clause 3 (Personal information)**

Clause 3, so far as is relevant provides:

### ***“3. Personal information***

#### ***Exemption***

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

#### **Limits on exemption**

...

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

In the Glossary to the FOI Act, “personal information” is defined to mean:

*“personal information” means 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;”*

I have examined Document 1 and the matter deleted from Document 2. In my view, most of the information in Document 1 and all the matter deleted from Document 2 is personal information, as defined in the FOI Act, about a third party and is, on the face of it, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

Document 1 contains some personal information about the complainant. However, I do not consider that it is practicable to provide the complainant with an edited copy of Document 1 in accordance with s.24 of the FOI Act as to do so would require the deletion of most of the text of the document.

Therefore, I have considered whether any of the limits on exemption in clause 3(2) – (5) apply in this case. In my view, the only limit on exemption that may apply is the limit in clause 3(6). Section 102(3) of the FOI Act provides that the onus of establishing that the disclosure of exempt matter would, on balance, be in the public interest, is upon the complainant as the access applicant.

#### **Public interest**

The protection of an individual’s right to privacy is a public interest which is recognised and enshrined in the FOI Act by clause 3(1). I recognise that there is a strong public interest in ensuring the maintenance of personal privacy, which will only be displaced by a very strong competing public interest that requires the disclosure of personal information.

Balanced against those public interests, there is a public interest in persons such as the complainant being able to exercise their right of access under the FOI Act. I also recognise that there is a public interest in people being provided with documents containing information about them, which are held by government agencies.

In the circumstances of this matter, I recognise a public interest in the agency being able to obtain information from individuals to assist it to evaluate the performance of its officers. Balanced against that public interest I also consider that there is a public interest in those officers being fully informed of the nature of complaints made against them and being given an opportunity to respond to allegations.

I understand that, when Document 1 was received by the agency, the complainant was not informed of the specific allegations against him. However, after the intervention of my office, the agency provided the complainant with a statement setting out the issues of complaint and specifying the action which the agency had taken in response to that complaint. In my view, the action taken by the agency in that respect satisfies the latter public interest.

#### **Conclusion**

Therefore, in balancing the competing public interests, for the reasons given the parties, which I have summarised herein, I am not persuaded that there is any other public interest that outweighs the public interest in protecting

personal privacy. Accordingly, I find that Document 1 and the matter deleted from Document 2 are exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to that matter.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
24 August 1998