

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

**File Ref: F2003110
Decision Ref: D0222003**

Participants:

West Australian Newspapers Ltd
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – decision to give access to edited document – clause 4(3) – whether information about business, professional, commercial or financial affairs – whether disclosure could reasonably be expected to adversely affect the business affairs of third parties – clause 4(7) – whether disclosure would, on balance, be in the public interest.

Freedom of Information Act 1992 (WA) section 102(3); Schedule 1, clauses 4(3) and 4(7)

DECISION

The decision of the agency is confirmed. The disputed matter is exempt under clause 4(3) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

7 August 2003

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner, which arises from a decision made by the Police Force of Western Australia ('the agency') to give West Australian Newspapers Ltd ('the complainant') access to an edited copy of a document requested by it under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 3 April 2003, the complainant made an application to the agency for access to a document compiled by the agency for the then Office of Racing, Gaming and Liquor ('the Office'), which outlined violent incidents occurring around pubs and nightclubs. The agency gave the complainant access to a copy of one document ('the disputed document') from which information had been deleted on the ground that it was exempt matter under clause 4(3) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with me and sought access to the deleted information.

THE DISPUTED MATTER

3. The disputed matter is the names of licensed premises set out in five pages of statistical tables attached to a letter, dated December 2002, from the agency to the Office. The tables record the number of assaults, disturbances and other anti-social behaviour related to specific licensed premises in police districts and regions throughout Western Australia, for the period January-October 2002. I understand that the data was derived from incidents reported to the police and from incidents recorded on closed circuit television security systems installed on the various licensed premises.
4. The statistical tables, as edited by the agency, disclose the number and type of anti-social incidents that occurred, for example, in the City of Perth, its suburbs and the State's major towns and cities, but do not disclose which incident or incidents relate to specific licensed premises. Page two of the disputed document contains a note which states that the reported incidents are mapped to within 50 metres of the address of licensed premises. The note also contains the following warning:

"This information has been compiled using the address reported as being the location of the incident. As a result, this information is inaccurate, and should be used for indicative purposes only.

These figures should not be accepted as being definitive, due to inaccuracies inherent in the reporting of offence locations, as well as the difficulty associated in positively linking an incident to the immediate vicinity of specific licensed premises.

The high density of licensed premises in Northbridge and other locations alongside high volume pedestrian routes result in problematic interpretation of the below information."

REVIEW BY THE INFORMATION COMMISSIONER

5. I obtained the disputed document and examined it. The Office provided me with information relating to that document, its purpose and the use to which it had been put. I also obtained written submissions from the complainant in support of its claim that disclosure of an unedited copy of the disputed document would, on balance, be in the public interest.
6. After considering all of that material, I made an assessment of this complaint and of the claim that the disputed matter was exempt. On 28 July 2003, I informed the parties in writing that I considered the disputed matter may be exempt under clause 4(3) of Schedule 1 to the FOI Act and gave my reasons.
7. Following that, I received further written submissions in which the complainant submits that the public interest favours the disclosure of the disputed matter.

THE EXEMPTION

8. Clause 4, so far as is relevant, provides:

“(3) *Matter is exempt matter if its disclosure -*

(a) would reveal information (other than trade secrets or information referred to in sub-clause (2)) about the business, professional, commercial or financial affairs of a person; and

(b) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

...

Limits on exemption

(7) Matter is not exempt matter under subclause (3) if its disclosure would, on balance, be in the public interest.”

9. In my view, the exemption in clause 4(3) recognises that the business of government is frequently mixed with that of the private sector and that the business dealings of private persons (or organizations), should not be adversely affected by disclosures made under the FOI Act, except where the public interest requires such disclosures to occur.

The agency's submissions

10. The agency claims that the disputed matter is exempt under clause 4(3) because the disclosure of the names of the licensed premises would adversely affect the professional, commercial or financial affairs of the owners or operators of those businesses ('the third parties'). The agency claims that the publication of

adverse information relating to those third parties would cause substantial harm to their business interests.

The complainant's submission

11. The complainant made a number of submissions directed to show that the criteria to establish a *prima facie* claim for exemption based on clause 4(3) did not exist. The complainant submits that:
 - (i) the disputed matter does not come within the requirements of paragraph (a) of clause 4(3) because that information is not “about” the “business or commercial affairs” of the owners or operators of the licensed premises. Rather it is “about” public safety, possible breaches of the criminal law and the allocation of police resources at, and in the vicinity of, licensed premises. The complainant submits that the disputed matter would reveal nothing about the business or commercial affairs of the third parties and that the exemption should not be construed to provide blanket protection to commercial entities from adverse public comment;
 - (ii) information that is inaccurate cannot be “about” or “regarding” the business, professional, commercial or financial affairs of an affected third party;
 - (iii) information about business, professional, commercial or financial affairs requires a direct relationship or nexus between the information and the state or conduct of the commercial entity involved and implies that such information must have some kind of commercial sensitivity, which competitors could use to gain an unfair advantage;
 - (iv) information that relates to incidents occurring up to 50 metres from licensed premises cannot be characterized as information “about” the business affairs of the owners or operators of those premises;
 - (v) there is nothing to support the agency's assertion that disclosure will have substantial adverse effects on the third parties or that those businesses would be less competitive if the disputed matter were to be disclosed since the complainant is not a commercial competitor; and
 - (vi) the agency did not consider the effects of disclosure on each third party, but considered the combined effects of disclosure.

CONSIDERATION

12. I accept that the disputed document is about public safety and security issues, in a general sense. However, for the purpose of clause 4(3)(a), the relevant test is whether the requirements of paragraph (a) are satisfied. Those requirements are satisfied if disclosure of the disputed matter would reveal a particular kind of information, namely, information about the business, professional, commercial or financial affairs of a person (or organization).

13. *The Australian Concise Oxford Dictionary of Current English* (3rd edition, 1997) defines “about” to mean, amongst other things: “...on the subject of; in connection with...relating to...”. In my view, the disputed matter (whether accurate or inaccurate), read in the context of the document, is “about” the various licensed premises listed in the document. That information links the reported anti-social incidents, which occurred within 50 metres of licensed premises, to specific licensed premises. In my view, the disputed matter is in connection with, or relates to, the security of those premises and the sale of alcohol from those premises, as well as general public safety and related issues. I am satisfied that that information is “about” the business affairs of the third parties, whether it is inaccurate or not.
14. Further, I do not accept that the disputed matter needs to be commercially sensitive for the purposes of paragraph (a) of clause 4(3), although that may be necessary for the purposes of paragraph (b). In my view, the requirements of clause 4(3)(a) have been satisfied in this instance.

Clause 4(3)(b)

15. I accept that the complainant is not in competition with the third parties. However, disclosure of documents under the FOI Act is disclosure to the world at large, including the business competitors of the third parties. Paragraph (b) of clause 4(3) only requires that the anticipated adverse effect on business or commercial affairs resulting from disclosure be one that could reasonably be expected.
16. In my opinion, the anticipated adverse effect of disclosure is that prospective patrons might avoid visiting particular licensed premises linked to reported assaults, disturbances or unruly behaviour. If that occurred, patrons are more likely to visit other premises that have not been linked to such behaviours and there would be a decrease in revenue to the premises identified in the disputed document. Further, with respect to the complainant’s submission at point (vi), I am of the view that, in the context of the disputed document, the disclosure of the name of any one of the licensed premises could reasonably be expected to have an adverse effect on the business affairs of one or more of the third parties.
17. In the present case, I am satisfied that the disclosure of the disputed matter could reasonably be expected to have an adverse effect on the business affairs of the third parties. Accordingly, I consider that there is a *prima facie* claim for exemption under clause 4(3) for the disputed matter.

Public Interest

18. Once a *prima facie* claim for exemption exists, the onus shifts to the complainant to satisfy me that disclosure would, on balance, be in the public interest, pursuant to s.102(3) of the FOI Act. The complainant submits that disclosure would be in the public interest for four reasons.
19. Firstly, because the Director of Liquor Licensing will no doubt be influenced by the information in the police report when deciding whether a hotel should be

allowed to extend its trading hours. Secondly, the Government is reviewing the process by which liquor licences are issued (which may result in more pubs and nightclubs opening) and disclosure will enable an independent analysis of the public policy behind that process, particularly in relation to the issue of how many police resources are tied up with alcohol-related incidents at such venues. Thirdly, the agency appears to base its opposition to the issue of more liquor licences, at least in part, on the kind of information contained in the disputed document and the complainant should be able to question the legitimacy of the information in the disputed document in the interests of accountability. Fourthly, there is a public interest in the disclosure of information, collected at public expense, concerning public safety and law enforcement, so that the public can make informed decisions about safety issues.

20. In respect of the first point, I consider that the claim is speculative. The Director of Liquor Licensing informs me that he had requested the information to assist his understanding of the operation of a new security surveillance policy and to understand the impact of that policy, if any, on incidents occurring around late night venues. He informed me that it was clear from the disputed document that there were anomalies and the data was inaccurate and incomplete. He advised me that he would not wish to rely on the information. The disputed document was, in effect, the first step in an intelligence gathering exercise by his office, which will now go back to the drawing-board. Accordingly, I reject the complainant's assertion.
21. In respect of the second point, I accept that there is a public interest in the scrutiny of the public policy process. However, it is unclear to me how disclosure of the disputed matter could assist in an independent analysis of the process by which liquor licenses are issued. In any event, there is nothing in the material before me which indicates that the disputed document will play any part in a review of that process.
22. In respect of the third point, I recognise that there is a public interest in the accountability of agencies for decision-making. However, in the circumstances of this complaint, I do not consider that that public interest necessarily requires the disclosure of business information about third parties. Moreover, I consider that the public interest is satisfied in part by the disclosure of an edited copy of the disputed document to the complainant. It is unclear to me what the complainant means by the "legitimacy" of the disputed document. It seems to me that the agency has clearly recognised that the disputed document is inaccurate and should not be accepted as definitive.
23. The fourth point relates to public safety and I accept that there is a public interest in matters concerning public safety and law enforcement. I also recognise, in favour of access, that there is a public interest in applicants being able to exercise their rights of access under the FOI Act and in the openness and accountability of government agencies. In my view, those public interests are satisfied, to some extent, by the disclosure of an edited copy of the disputed document.

24. Weighing against disclosure, I recognize a public interest in the disclosure and publication of accurate information, particularly where it concerns third parties. In this instance, the document clearly contains inaccurate information about the business affairs of third parties. I do not consider that there is any public interest in the disclosure of such information, in circumstances where disclosure could reasonably be expected to have an adverse effect on the business affairs of those third parties. For those reasons, I have given more weight to the public interest against disclosure. Accordingly, I find the disputed matter exempt under clause 4(3).
