

GASPAR AND SGIC

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

**File Ref: 94146
Decision Ref: D02395**

Participants:

Sharron Gaspar
Complainant

- and -

State Government Insurance Commission
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents related to investigation of complaint to agency - clause 3(1) - personal information about third parties - public interest factors for and against disclosure - limitations in clause 3 - public interest.

Freedom of Information Act 1992 (WA) ss.13(1)(b); 30; 66(1)(d); 68(1); 72(1); 75(1); 102(3);
Schedule 1 clauses 3(1), 3(6); Glossary in Schedule 2.

Freedom of Information Regulations 1993 (WA) regulation 8

State Government Insurance Commission Act 1986 (WA) s.42(1).

Re Veale and Town of Bassendean (Information Commissioner, WA, 25 March 1994, unreported).

Re Read and Public Service Commission (Information Commissioner, WA, 16 February 1994, unreported).

DECISION

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

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

21 July 1995

REASONS FOR DECISION

BACKGROUND

1. This is a complaint for external review by the Information Commissioner arising out of a decision of the State Government Insurance Commission ('the agency') to refuse Mrs Gaspar ('the complainant') access to certain matter contained in documents to which access was sought under the *Freedom of Information Act 1992* ('the FOI Act').
2. By letter dated 30 August 1994, lodged with the agency, the complainant sought access to "...[c]opies of all notes, reports, medical reports, recommendations and any other documents in the possession of the S. G. I. C. concerning and pertaining to the claim for injuries by me. "
3. In that letter the complainant stated that it was her belief that the agency had received a complaint from a third person, whose name and address she provided to the agency. The complainant further stated that it was her belief that the third person had alleged that the complainant and her daughter had defrauded the Motor Vehicle Insurance Trust ('the MVIT'), as it then was, of an amount of \$15,000 and that the complainant's husband was a party to that alleged fraud, in that he was aware of it and encouraged it. The complainant informed the agency that it was her intention and that of her daughter to issue writs of defamation in the Supreme Court of Western Australia.
4. On 19 September 1994, the agency responded to the complainant's request. In that letter Mr R Locke, the FOI Co-ordinator of the agency, informed the complainant that the Acting Manager, Motor Vehicle Personal Injury Division, Mr R Creswick, had decided on that same day to allow her access to her claim file and requested that she attend at the agency's offices to peruse the file in order to identify the documents to which she required access.
5. The complainant attended the offices of the agency on 23 September 1994. At that meeting the complainant informed the agency that she required access to copies of two documents, being documents prepared by officers of the agency in relation to the information received from the third person. However, following that meeting Mr Locke wrote to the complainant on 26 November 1994, confirming that access would be given to copies of the two documents identified by the complainant as being those that she required, with exempt matter deleted from those copies. Mr Locke provided the complainant with copies of the two documents from which the third person's name and telephone number had been deleted.
6. On 23 November 1994, the complainant wrote to the agency seeking an internal review of the decision to grant her access to edited copies of the documents. On 25 November 1994, the agency contacted the third person concerned to obtain

that person's views on the release of unedited copies of those documents to the complainant. The third person objected strongly to the disclosure of the name and telephone number to the complainant.

7. On 29 November 1994, Mr Locke wrote to the complainant and advised her that Mr V Evans, Managing Director of the agency, had decided her application for internal review on 28 November 1994. Mr Evans confirmed the original decision to provide access to copies of the two documents with exempt matter deleted.
8. On 15 December 1994, the complainant wrote to the Information Commissioner seeking to lodge a complaint against the agency's decision. However, the complaint did not comply with s.66 of the FOI Act because the complainant had not provided a copy of the decision complained of, as required by s.66(1)(d) and regulation 8 of the *Freedom of Information Regulations 1993*. The complainant subsequently supplied the required documents and the complaint was accepted by the Information Commissioner on 6 January 1995.

REVIEW BY THE INFORMATION COMMISSIONER

9. On 10 January 1995, in accordance with my statutory obligation under s.68(1) of the FOI Act, I advised the agency that this complaint had been received and accepted. The agency was also informed that, having considered the complaint and the agency's notice of decision to the complainant, I required, pursuant to my authority under ss.75(1) and 72(1)(b) of the FOI Act, the agency to produce to me the originals of the documents the subject of the complaint, together with the agency's FOI file.
10. As neither of the letters from Mr Locke to the complainant, which purported to be the notices of decision required to be provided to the complainant pursuant to s.13(1)(b) of the FOI Act, complied with the requirements of s.30 of the FOI Act, they did not provide sufficient particulars for me to deal with the complaint. Accordingly, I also required the agency to provide me with additional information to justify its claims that the matter deleted from the documents was exempt matter. The originals of the documents were produced to me on 11 January 1995, together with the additional information required.
11. Having examined the documents and considered the additional information provided by the agency, I wrote to the complainant on 20 February 1995, and informed her that it was my preliminary view that the agency's decision to grant her access to edited copies only of the documents appeared to be justified and that the matter deleted from the documents was, in my preliminary view, exempt under clause 3(1) of Schedule 1 to the FOI Act.
12. The complainant was provided with a copy of the additional information received from the agency and informed that in several of my recent decisions I had found that there is a strong public interest in the protection of personal privacy, which would only be displaced by a very strong public interest favouring disclosure.

13. The complainant was invited, in light of my preliminary view, to reconsider her complaint with a view to withdrawing it. The complainant was informed that, alternatively, if she wished to pursue the complaint, the onus of persuading me that disclosure would, on balance, be in the public interest rested upon her. The complainant was invited to provide any evidence and make submissions in support of her claims in this regard.
14. Although she indicated verbally in telephone conversations with a member of this office that she would do so, the complainant has not made any submissions to me after being informed of my preliminary view. Prior to my delivering this decision, the complainant was offered three opportunities to make submissions to me in response to the agency's claims, but has not done so.
15. On 30 March 1995, both the agency and the third person were required, in accordance with the provision of s.72(1)(a) of the FOI Act, to give certain additional information to the Information Commissioner. The agency provided the additional information required in writing on 7 April 1995. On that date the third person also provided written information and attended at my office and made oral submissions to one of my officers. On 31 May 1995, the complainant and her husband met with one of my officers and provided additional information. On 6 June 1995, Mr Jim Milligan, Manager, Special Investigations Division ('SID') of the agency, attended at my office and provided information and made submissions on behalf of the agency.
16. During the review process, Mr Milligan located a third document that came within the ambit of the complainant's access application. On 11 July 1995, the agency provided a copy of that document, with certain matter deleted from it, to the complainant. The agency claims that the matter deleted from the third document is also exempt under clause 3(1) of Schedule 1 to the FOI Act.

DISPUTED DOCUMENTS

17. Access has been granted to edited copies of the three documents in dispute. Those documents are described as:
 - Document 1: File note, dated 21 June 1993, created by Claims Reporting Supervisor;
 - Document 2: Memorandum, dated 11 January 1994, by B C Stace, Investigator; and
 - Document 3: Confidential Fraud Report, dated 11 January 1994, by B C Stace, Investigator.

THE EXEMPTION

18. The agency claims that matter deleted from Documents 1, 2 and 3 is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Clause 3(1) 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

(2) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.

(3)...

(4)...

(5) Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.

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

19. 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."

20. I have examined each of the disputed documents and I am satisfied that the deleted matter is personal information about the third person. The personal information consists of the third person's name and telephone number. Although the mere mention of a person's name and telephone number in a document may not, ordinarily, be considered to be personal information of the type that clause 3(1) seeks to protect, taking into account the context in which that information appears in the disputed documents, that information, in my view, is, *prima facie*, exempt matter under clause 3(1) of schedule 1 to the FOI Act.

21. Clause 3 is subject to a number of limitations. The limitations provided by sub-clauses (2), (4) and (5), in my view, do not apply in this instance because the information deleted from the documents does not concern persons who are employees in State or local government agencies. However, clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The onus of persuading me that disclosure of the personal information deleted from the disputed documents would, on balance, be in the public interest lies on the complainant by virtue of s.102(3) of the FOI Act. Although the complainant was provided with the opportunity to make further submissions on this point following receipt of my preliminary view, none was made.

The complainant's application

22. In her letter of 15 December 1994, the complainant claimed to know the identity of the third person and claimed that the identity should be disclosed for that reason. The complainant subsequently informed my office that her belief is based on the fact that she was told by two of her friends that the third person had allegedly made it quite well known that a complaint had been made to the agency. The complainant wishes to obtain the complete documents in order to confirm that belief and to take the appropriate action against the third person.
23. I make no comment one way or another as to whether the beliefs of the complainant are correct. However, in order to clarify this aspect of the complainant's claims, during the review process the complainant and her husband met with one of my officers. At that meeting, the complainant confirmed that she had not spoken directly to the person she believes made the allegations to the agency. In my view, the complainant's beliefs in this regard appear to be based on hearsay evidence relayed through a number of persons.

The public interest

24. I recognise that there is a public interest in persons being informed of the substance of allegations made against them to government agencies. Aspects of that public interest include being given the opportunity to answer those allegations and being informed of the outcome of the investigation of any such matters. In this instance, that public interest has largely been satisfied by disclosure of edited copies of the documents, which reveal the substance of the allegations made, the action taken by the agency, and that the agency decided to take no further action as there was no evidence to substantiate the allegations.
25. The complainant claims to have been defamed and seeks access to the edited parts of the documents in order that she may seek a remedy. In previous decisions I have recognized a public interest in citizens being able to exercise their rights at law where the facts establish a cause of action: see my decisions in *Re Veale and Town of Bassendean* (25 March 1994, unreported) at paragraph 38; *Re*

Read and Public Service Commission (16 February 1994, unreported) at paragraph 85).

26. However, I also recognize that there is a public interest in maintaining the ability of the agency to investigate possible fraudulent insurance claims, the costs of which claims must be borne by the community. I am informed by Mr Milligan that, in carrying out its investigative function, all SID staff, particularly investigators, are required to adhere to the secrecy provision in s.42(1) of the *State Government Insurance Commission Act 1986*. The agency informed me that the majority of its intelligence information is obtained from unsolicited telephone informants and the agency advertises a special telephone reporting number to facilitate this process. I am informed that brief notes of all telephone calls received, including information about the date and time of the call, the name of the officer receiving the call and the identity of the informant, where possible, are recorded as a matter of practice. The agency informed me that 10% of callers give their identity or contact details, as many are afraid of reprisals and wish to remain anonymous.
27. Mr Milligan explained that, where a telephone informant chooses to remain anonymous, it is more difficult for the agency to progress the matter. Often after making some initial inquiries, it is necessary - or would be helpful- to refer once again to the informant to check details or to clarify matters or seek additional information. It was his view that, if the agency were no longer able to give an assurance of confidentiality, less callers would give their names and contact details and it would, therefore, be more difficult for the agency to follow up and properly investigate reports of fraud offences. Mr Milligan estimated that, if the agency could not assure confidentiality, up to 90% of telephone reports of alleged fraud would be lost to the agency.
28. In my view, the information provided by Mr Milligan goes some way towards establishing that disclosure of the personal information, including the name and telephone number of the third party in the disputed documents, would damage the ability of the agency to obtain information about alleged insurance fraud and to its ability to investigate such fraud on behalf of the community at large. I consider that there is a public interest in maintaining the ability of the agency to perform that service.
29. Having considered and weighed the competing public interests, it is my view that the public interest in detecting, dealing with and preventing insurance fraud and the consequent cost to the community of not doing so, or not doing so effectively, outweighs the public interest in the complainant being able to have access to the disputed documents for the purpose of pursuing legal means to right an alleged civil wrong.
30. I find the matter deleted from the three disputed documents to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
