

HUMPHREY AND PUBLIC ADVOCATE

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

**File Ref: 97016
Decision Ref: D02397**

Participants:

**Catherine Valerie Humphrey
Theodore Robert Humphrey**
Complainant

- and -

Public Advocate
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - ambit of access application - clause 3(1) - personal information about access applicants - personal information about third parties - decision to give access to edited copies of documents - correspondence to and from agency from third parties - request for personal information about the applicants only - deletion of matter outside ambit of access application - limits on exemption - public interest factors for and against disclosure - public interest in maintaining personal privacy - public interest in being informed of reasons for decisions made by agencies - balance of public interest - information identifying a third party.

Freedom of Information Act 1992 (WA) ss.21, 24; Schedule 1 clause 3; Glossary
Freedom of Information Regulations 1993 (WA) Schedule 1, item 1

DECISION

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

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

18th September 1997

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Public Advocate ('the agency') to refuse Mr and Mrs Humphrey ('the complainants') access to documents requested by them under the *Freedom of Information Act* ('the FOI Act').
2. By letter dated 11 November 1996, solicitors acting for the complainants lodged an access application with the agency seeking access to documents containing personal information about them. On the same date that the application to the agency was lodged, an application in similar terms was lodged by the complainants with the Guardianship and Administration Board, a separate agency for the purposes of the FOI Act. The Guardianship and Administration Board transferred the application it had received to the agency because it did not hold any documents of the kind requested by the complainants. Thereafter, the agency dealt with both applications and treated them as one request.
3. The Acting Public Advocate made the decision on access. She decided not to deal with the complainants' access application because she considered that the documents requested by the complainants were documents previously requested by the complainants and which, as a result of that application, had been the subject of a previous decision by the Information Commissioner. As the Acting Public Advocate is the principal officer of the agency, internal review of her decision was not available. By letter dated 27 January 1997, the solicitors for the complainants lodged a complaint with the Information Commissioner seeking external review of the agency's decision to refuse to deal with the complainants' access application.

REVIEW BY THE INFORMATION COMMISSIONER

4. After receiving this complaint, I obtained the relevant files from the agency, together with the agency's FOI file maintained in respect of the access application. After examining those files, I formed the view that the documents requested by the complainants on this occasion were not the same documents that I had dealt with previously. The parties were informed accordingly.
5. From the four volumes of files provided to my office by the agency, my Investigations Officer identified 189 documents which contained personal information about the complainants and which, therefore, appeared to fall within the ambit of the complainants' access application. A schedule listing and describing each of those documents was prepared by my office and given to the parties.

6. Following discussions with my office, the agency gave an undertaking to make a decision on access in respect of each document listed on that schedule. Further negotiations between the parties were then conducted by my office. Subsequently, the complainants withdrew their complaint in respect of certain documents. In respect of the remainder, the agency decided to grant the complainants access to some, either in full or in part, and to refuse access to some on the ground that those documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.
7. After examining the material before me and considering the matter to which access had been refused, by letter dated 27 June 1997, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency's decision appeared to be justified. In particular, it was my preliminary view that 4 documents to which access had been refused (Documents numbered 102, 103, 106 and 108 on the schedule) may be exempt under clause 3(1), because they contain personal information about people other than the complainants.
8. It was also my preliminary view that the matter deleted from the 93 documents to which access had been granted and the matter in 4 other documents to which access had been refused in full (Documents numbered 47, 56, 75 and 112 on the schedule) consisted of matter that was, clearly, outside the ambit of the complainants' access application, because it does not consist of personal information about the complainants. That is, it was my preliminary view that the agency had complied with the complainants' request to be given access to personal information about them. By letter dated 3 July 1997, I was informed that the complainants did not withdraw their complaint, but no further submissions were received from them.

APPLICATIONS FOR ACCESS TO PERSONAL INFORMATION

9. Documents that contain personal information about an access applicant may also contain other information that is not personal information about that access applicant, including personal information about other people. If the application is for access to the entire document, and not only that part of the document that contains personal information about the particular access applicant, then an application fee should accompany the access application and charges may be imposed by the agency for dealing with that application.
10. That is not unreasonable, in my view, because, even if an agency decides to give an applicant access to all the personal information about him or her contained in a document, an application for access to the whole of each document containing such information requires an agency to consider each page and not only identify the personal information requested, but also consider the remainder of the matter in each page; consider whether exemption ought to be claimed for any of that matter for any reason; and, if a preliminary decision is made to give access to the balance of the matter, consult any third party who may be identified in it. The prescribed application fee for access to anything other than personal information

about the access applicant is \$30 (*Freedom of Information Regulations 1993*, Schedule 1, item 1).

11. There is no application fee prescribed for an application for access to personal information about an access applicant. Accordingly, if an application for access to documents containing personal information about an access applicant is not accompanied by an application fee, then in my view an agency is entitled to interpret that application to be a request for access to personal information about the particular access applicant that is contained in the documents only, and not to the balance of each document. If access to the whole of each document is sought, then the payment of the application fee is required.
12. Where an application is, or is reasonably interpreted to be, for access to personal information about an access applicant only, then I consider that an agency may deal with that application by identifying the personal information about the access applicant which is contained in the document and, where possible, providing an edited copy of the document with all but the personal information about the access applicant deleted. That is because the access applicant has not made a valid application for access to anything other than personal information about himself or herself because no application fee has been paid.

THE AMBIT OF THE COMPLAINANTS' ACCESS APPLICATION

13. In this instance, the complainants requested access to documents containing personal information about them and referred to particular kinds of personal information sought. The agency dealt with the complainants' access application as an application for access to personal information about them only. In my view, the agency was entitled to do so because no application fee was paid and the terms of the access application made it clear that the complainants sought, in particular, personal information about themselves.
14. I have examined the 93 documents, edited copies of which the agency provided to the complainants, and Documents 47, 56, 75 and 112, to which access has been refused. The agency claims that all of the matter in those 4 documents and the matter deleted from the 93 edited documents is outside the ambit of the complainants' access application because that matter does not comprise personal information about them. Having inspected Documents 47, 56, 75 and 112, and the matter deleted from the 93 edited documents, I am satisfied that none of that matter is personal information, as defined in the FOI Act, about the complainants. I am satisfied, therefore, that that matter is outside the scope of the complainants' access application.
15. Accordingly, as that matter does not comprise personal information about the complainants and the complainants have made a valid application for only personal information about themselves, I consider that matter not to be in dispute between the parties and I do not propose further to deal with it in this decision. I consider the only issue remaining in dispute between the parties is the agency's

decision to refuse access to 4 documents ('the disputed documents') on the ground that they are exempt under clause 3(1) of schedule 1 to the FOI Act.

THE DISPUTED DOCUMENTS

16. Exemption under clause 3(1) of Schedule 1 to the FOI Act is claimed for the 4 documents remaining in dispute. They are described as follows:

- Document 102 - letter dated 10 October 1995 from a third party to the agency;
- Document 103 - undated letter from a third party to the agency;
- Document 106 - letter dated 16 October 1995 from the agency to a third party; and
- Document 108 - letter dated 18 October 1995 from the agency to a third party.

THE EXEMPTION

17. Clause 3 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) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -

(a) the person;

(b) the person's position or functions as an officer; or

(c) things done by the person in the course of performing functions as an officer.

(4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*

(a) *the person;*

(b) *the contract; or*

(c) *things done by the person in performing services under the contract.*

(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.”*

18. In the Glossary in 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”.*

19. As I have said on a number of previous occasions, I consider the exemption in clause 3(1) is designed to protect the privacy of persons about whom personal information may be contained in documents held by State and local government agencies. The definition of “personal information” in the Glossary makes it clear that any information or opinion about a person from which that person can be identified is, *prima facie*, exempt matter under clause 3(1).

20. I have examined the disputed documents. In my view, there is matter in each of those documents that is, *prima facie*, exempt matter under clause 3(1), because it consists of personal information about people other than the complainants (‘the third parties’).

21. The disputed documents also contain some personal information about the complainants. However, I consider that the personal information about the complainants is so interwoven with personal information concerning the third parties that it would not be possible to provide the complainants with access to personal information about them without also disclosing personal information about the third parties. Accordingly, giving access to edited copies of the

disputed documents in accordance with s.24 of the FOI Act, is not an option in this case. Therefore, it remains for me to consider whether any of the limits on the exemption applies, such that the personal information about the third parties is not exempt and may be disclosed.

22. Clearly, the limit provided by clause 3(2) does not apply because the deleted information would not, if disclosed, reveal personal information about the complainants only; it would also reveal personal information about other people. The limits provided by clauses 3(3) and 3(4) do not apply because the deleted matter would not reveal prescribed details about public officers or people described in subclause (4). The limit in clause 3(5) does not apply because there is no evidence before me that any of the third parties consent to the disclosure of personal information about him or her to the complainants. The limit in clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. That limit remains to be considered.

Public Interest

23. I recognise that there is a strong public interest in the maintenance of personal privacy. In my view, that public interest will only be outweighed by some stronger countervailing public interest which requires the disclosure of personal and private information concerning third parties. I also recognise a public interest in agencies, such as the agency, maintaining the ability to obtain all the information they require to make decisions that affect the lives of individuals and families, in order that those decisions may be made on the basis of a thorough understanding of the particular situation. I also consider there to be a public interest in people being able to exercise their right of access under the FOI Act, and a public interest in ensuring the accountability of agencies, including the agency, that makes such decisions.
24. I also consider there to be a public interest in people being informed of personal information about them held by government agencies. In particular, I recognise a public interest in people being informed of allegations that may have been made about them, being given an opportunity to respond to any such allegations and being informed of any action being taken by an agency in respect of them and the outcome of such action. In my view, those public interests have been addressed to some extent in this instance by the documents and edited copies of documents made available to the complainants by the agency, and taking into account that the complainants are able to attend review hearings of the Guardianship and Administration Board and to respond to evidence heard by that Board.
25. Section 21 of the FOI Act also requires that I consider the fact that the disputed documents contain personal information about the complainants as a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed. I have taken that into account. However, there is only a small amount of personal information about the complainants in the disputed documents. I consider all of the disputed documents are more properly characterised as documents relating to the third

parties than as documents relating to the complainants. That is, I consider that they contain more personal information about third parties than personal information about the complainants.

26. The complainants have not provided any material that persuades me that the public interest in them being able to exercise their right of access under the FOI Act should prevail over the public interest in protecting the personal privacy of the third parties in this instance. Therefore, having balanced the competing public interests, I consider the public interest in protecting the personal privacy of the third parties outweighs any other interest on this occasion and that it would not, on balance, be in the public interest to disclose the disputed documents. Accordingly, I find the disputed documents exempt under clause 3(1) of Schedule 1 to the FOI Act.
