

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re: Thomson and Department of Agriculture* [2002] WAICmr 26**

**COMPLAINT No:** F2002079

**DECISION No:** D0262002

**PARTIES:** **Barry Stephen THOMSON**

Complainant

**DEPARTMENT OF AGRICULTURE**

Respondent

**No. of documents in dispute:** 9

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

In December 2001, the agency advertised two vacant positions of Veterinary Officer (P20010148 and P20010217 refer). The complainant applied for both vacancies, but was unsuccessful. On 26 February 2002, the complainant made an application to the agency under the FOI Act for access to copies of the applications submitted by the other candidates for the vacant positions and indicated that he was prepared to accept access to the documents with personal information deleted.

Although there was some initial delay in dealing with the application, on 10 April 2002, the agency decided to refuse the complainant access to the requested documents on the ground that those documents are exempt under clause 3 of Schedule 1 to the FOI Act. Following an internal review, the initial decision was confirmed and the internal reviewer decided that it was not practicable to give the complainant access to edited copies of the requested documents. On 30 April 2002, the complainant lodged a complaint with me seeking external review of the agency's decision.

**Review by the Information Commissioner**

I obtained the disputed documents from the agency. My Legal Officer made inquiries into this complaint on my behalf to determine whether it could be resolved by conciliation between the parties. Following my examination of the disputed documents, my officer met with the complainant and informed him that it was my preliminary view that the disputed documents may be exempt. However, the complainant did not withdraw his complaint and made further submissions to me in support of his claim that edited copies of the disputed documents were not exempt.

On 26 June 2002, after considering the material before me, I informed the parties, in writing, of my preliminary view of this complaint, including my reasons. It was my preliminary view that the disputed documents may be exempt under clause 3(1) and that it was not practicable to give the complainant access to edited copies of those documents. I did not receive any further written submissions from the complainant, although he suggested that my interpretation of the scope of clause 3(1) involved a question of law, which ought to be referred to the Supreme Court. However, I do not consider that the circumstances of this complaint raise any questions of law and I am not dissuaded from my preliminary view. A summary of my reasons follows.

**The disputed documents**

The disputed documents consist of 9 job applications submitted by third parties for the two vacant positions of Veterinary Officer.

**Clause 3 - Personal information**

Clause 3(1) of Schedule 1 to the FOI Act provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The phrase "personal information" is defined in the Glossary in Schedule 2 to the FOI Act and 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 whose identity is apparent or can reasonably be ascertained from the information or opinion or who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.

Having examined the disputed documents, I am satisfied that each of them contains personal information, as defined in the FOI Act, about the respective applicant. The information includes names and addresses, telephone numbers, work history, present employment, resumes and claims against the selection criteria. Therefore, I am satisfied that each of the disputed documents contains matter that is, on its face, exempt matter under clause 3(1).

Clause 3(1) is subject to the limit on exemptions in clauses 3(2)-3(6). In the circumstances of this complaint, the only limit, which might apply, is the limit on exemption in clause 3(6), which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

### **The complainant's submission**

The complainant submits that most of the information contained in the disputed documents is not personal information as defined in the FOI Act. The complainant informs me that, if he researched the matter, he would be able to identify all of the applicants within a week, even without access to edited copies of the disputed documents. The complainant submits that "disclosure" in clause 3, means disclosure to the world at large and that the test therefore, is not whether an access applicant can determine the identity of the person whose personal information appears in the disputed documents, but whether the public at large is able to do so. The complainant also submits that if s.24 (a), (b) and (c) of s.24 are established, the agency must give access to edited copies of the documents. The complainant claims that the access applicant decides whether the degree of editing done by an agency is reasonable or not, and the applicant retains the right under the FOI Act to seek redress if the deletion of material is particularly savage.

### **Consideration**

The complainant appears to me to be suggesting that only names and addresses need to be deleted from the disputed documents and that the balance of the information would not be personal information about any identifiable individual. However, I do not accept that claim. Having examined the disputed documents, I consider that they each contain more personal information than just names and addresses. Each job application contains a significant amount of personal information about the particular applicant.

In my view, the question of whether or not disclosure of the disputed documents would reveal personal information about third parties is a question of fact, not of law. As I have examined those documents, I am satisfied that it would. Although I have considered the complainant's submissions, I do not consider that the issues he raises are relevant to the question of whether the limit on exemption in clause 3(6) applies.

I recognise that there is a strong public interest in the maintenance of personal privacy. I also recognise that there is a public interest in ensuring the agency's selection processes are fair and equitable. There is no information before me, which suggests that the agency departed from established principles in the filling of the two vacant positions and I accept that there are other avenues of complaint available to the complainant if he wishes to pursue any such grievance. Accordingly, in balancing the competing interests, I have given more weight to the public interest in protecting the privacy of the other applicants.

I do not accept the complainant's claim that an agency must comply with s.24. In my view, the obligation to provide an applicant with access to edited copies of requested documents only arises if it is practicable for an agency to delete exempt matter. The Supreme Court has made it clear that, if the degree of editing is so substantial as to render the remainder of a document misleading or unintelligible, or if the balance of a document does not make sense and cannot be understood in context, then it will not be 'practicable' for an agency to give access in that form and that s.24 should not be used to provide access to documents that have been so substantially edited as to make them misleading or unintelligible: see the comments of Scott J in *Police Force of Western Australia v Winterton* (unreported; Supreme Court of Western Australia; Library No. 960227; 27 November 1997), at p.16.

In this instance, I do not consider that it is practicable, in the sense referred to by Scott J, to delete personal information about the third parties from the disputed documents. In my view, the degree of editing required to delete exempt matter would be so substantial that the balance of the documents would make little or no sense and, accordingly, the agency is not obliged to give the complainant access to edited copies of the disputed documents. Accordingly, I find the disputed documents exempt under clause 3(1) and confirm the agency's decision to refuse access.

**B. KEIGHLEY-GERARDY**  
INFORMATION COMMISSIONER

15 July 2002

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