

**JONES AND LOCAL GOVT**

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

**File Ref: 97137, 97145  
Decision Ref: D02697**

Participants:

**David Gordon Jones**  
Complainant

- and -

**Department of Local Government**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal to amend personal information under Part 3 in accordance with access application - local government inquiry report - request to delete information - requirements of s.48(3) - certification by Information Commissioner - whether prejudice or disadvantage to complainant outweighs public interest in maintaining record - attachment of notation.

*Freedom of Information Act 1992 (WA)* ss. 45, 48(1), 48(2)(a), 48(3), 50(1)

*Local Government Act 1960 s.158*

*Royal Commissions Act 1968*

## DECISION

The decisions of the agency not to amend information in accordance with the access applications are confirmed.

D A WOOKEY  
A/INFORMATION COMMISSIONER

30 September 1997

## REASONS FOR DECISION

### BACKGROUND

1. These complaints arise out of two decisions made by the Department of Local Government ('the agency') not to amend information in its records in accordance with two applications for amendment made by Mr Jones ('the complainant') under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 4 July 1997 and 25 July 1997, the complainant lodged two separate applications for amendment of personal information with the agency. In his application dated 4 July 1997, the complainant sought the deletion of information contained on pages 20 and 21 of a 1989 report of Mr Bernard M O'Sullivan JP on his inquiry into a local government matter between the Town of Mosman Park and a third party ('the Report'). At the time of the matters inquired into by Mr O'Sullivan, the complainant had been the Mayor of Mosman Park. In his application dated 25 July 1997, the complainant sought the deletion of other matter contained on page 3 of the Report.
3. In respect of one of the applications, the agency decided not to delete the matter referred to by the complainant because the decision-maker was not satisfied that the information was inaccurate, incomplete, out of date or misleading. In respect of the other, the agency refused to delete the information complained of on the basis that to do so would effectively amount to changing the findings of the inquirer and the decision-maker stated that he did not consider that he or any other person had the capacity to do that under the FOI Act. The decisions of the agency were confirmed following internal review.
4. On 29 July 1997 and on 12 August 1997, the complainant lodged two complaints with the Information Commissioner seeking external review of both decisions of the agency. As both complaints concern the same document and similar issues, it is convenient to deal with both complaints together.

### REVIEW BY THE INFORMATION COMMISSIONER

5. The Information Commissioner obtained a copy of the Report and I have considered the Report and the material provided by both parties. On 25 August 1997, the Information Commissioner informed the parties in writing of her preliminary view of these complaints, including her reasons. Based on the material before her, the Information Commissioner was not persuaded that the information referred to by the complainant was inaccurate, incomplete, out of date or misleading. Therefore, it was her preliminary view that the decision of the agency not to amend the Report by deleting that information was correct. However, following discussions, the agency agreed to attach a notation to the Report prepared by the complainant disputing the accuracy of the information complained of in the Report. The complainant indicated that he would accept the

agency's offer to attach a note to the Report, but he did not withdraw his complaints.

## THE REPORT

6. Section 158(5)(a) of the *Local Government Act 1960* ('the Local Government Act'), which Act has since been repealed and replaced, provided that, where a council proposed to terminate the services of a person holding any of the offices specified in sub-section (4) - which included the office of clerk - it was required to either order an inquiry under that section or suspend him.
7. Section 158 further provided, *inter alia*, that where an inquiry was ordered a person appointed by the Governor was required to hold the inquiry and to make a report in writing on the matters inquired into. The original of the report was required to be sent by the inquirer to the council and copies of the report at the same time sent to the Minister and the officer in respect of whom the inquiry was made. The report was required to be read as soon as practicable in open council and the decision of the council was not to be given until after the reading of the report. The person holding the inquiry was given the powers conferred by the *Royal Commissions Act 1968* on a Royal Commission or the Chairman thereof.
8. Mr O'Sullivan was appointed for the purpose of conducting an inquiry under section 158(5)(a) of the Local Government Act in respect of the then Town Clerk of the Town of Mosman Park. The parties to the inquiry were the Town of Mosman Park, who was the complainant in that matter and the then Town Clerk, who was the respondent. The complainant in the matter before me gave evidence to the inquiry as a witness. On the first page of his Report, Mr O'Sullivan stated the purpose of the inquiry as follows:

*"Through the Inquiry the Complainant seeks a declaration that the resolution of the Council made on September 13, 1988, to terminate the services of the Town Clerk should be sustained and that the decision from the Inquiry should direct that the Complainant is justified in making an order of termination."*

9. Mr O'Sullivan conducted the inquiry by way of directing conferences between the parties, holding hearings and inspecting documentary evidence. The Town of Mosman Park was represented in the hearings by legal counsel and the Town Clerk by an industrial officer of the Municipal Officers' Association. As a result of his inquiry, Mr O'Sullivan made findings on the basis of the evidence before him. His consideration of the evidence and his findings are contained in the Report. The Report is dated March 1989 and so is now more than 8 years old. I understand that Mr O'Sullivan is now deceased.

## **THE DISPUTED INFORMATION**

10. The information which the complainant seeks to have deleted from the Report deals with certain findings (which also refer to the material upon which those findings were based) made by Mr O'Sullivan, being the material on pages 20 and 21 of the Report, and a brief reference to the actions of the complainant in respect of a certain letter given to him as Mayor of the Town of Mosman Park in 1987 for forwarding to the then Town Clerk, being the material on page 3 of the Report.

## **AMENDMENT OF PERSONAL INFORMATION**

11. Part 3 of the FOI Act deals with the amendment of personal information. Section 45 gives an individual a right to apply for amendment of personal information contained in a document of an agency if the information is inaccurate, incomplete, out of date or misleading. An application for amendment must contain details of the information that is believed to be incomplete, inaccurate, out of date or misleading, and reasons for that belief. An applicant must also state the form in which he or she wishes the amendment to be made. If an agency decides not to amend the information in accordance with an application for amendment, it must provide the applicant with reasons for that decision. When that occurs, an applicant may request the agency to make a notation or attachment to the information. Further, a request for an attachment may be made even though the initial decision has not been reviewed internally. An agency must comply with the request for a notation or attachment to be made unless the notation or attachment is defamatory or unnecessarily voluminous.
12. If an agency decides to amend its records, s.48(1) provides that it may do so by alteration, striking out or deletion, inserting information or inserting a note in relation to the information. However, s.48(3) provides that an agency is not to amend information in a way that obliterates or removes the information, or results in the destruction of a document containing the information, unless the Information Commissioner certifies in writing that it is impracticable to retain the information or that, in the opinion of the Information Commissioner, the prejudice or disadvantage that the continued existence of the information would cause to the person outweighs the public interest in maintaining a complete record of information.
13. A complaint may be made to the Information Commissioner against a decision not to amend information in accordance with an application under Part 3 of the FOI Act. A complaint may also be made against the decision of an agency not to comply with a request for a notation or attachment to be made to the information. In this instance, the complaints concern the decisions of the agency not to amend information by its deletion. The issue for determination is whether those decisions were justified.

## **DELETION OF THE DISPUTED MATTER**

14. It is not my function to review Mr O'Sullivan's inquiry or his findings. To venture even a short distance along that path would, in my view, be inappropriate. I understand that both the complainant and the former Town Clerk are in the process of preparing cases for submission to the Governor in respect of issues concerning the termination of the employment of the former Town Clerk. That would appear to me to be the appropriate forum in which to raise any dispute with the findings contained in the Report.
15. I consider there to be a very high public interest in maintaining the complete record of a report made as a result of a formal statutory inquiry. Such a report is the official record of the inquiries made and the results of those inquiries. It contains the findings of the inquirer on the basis of the evidence that was before him. In this instance, it is also the record of the information provided to the council for consideration before making its decision in respect of the Town Clerk. To now delete parts of it would be to alter the historical record of the course of events that took place, the inquirer's conclusions and the matters taken into account by the inquirer in reaching his conclusions and the material that was before the council in order to assist it to make its decision.
16. In my opinion, it would require an extraordinary prejudice or disadvantage to the person seeking amendment of such a document to persuade me that the public interest in maintaining the document intact was outweighed and that, therefore, part of the document should be destroyed or obliterated. No such prejudice or disadvantage has been demonstrated to me by the complainant. The complainant has merely made the claim that the inclusion of the information was designed to harm his good will and reputation. No evidence was provided to establish that, or that the complainant's reputation and good will had been adversely affected.
17. Accordingly, on that basis, I consider that the agency's decisions not to amend the Report by deleting the passages the subject of these complaints were justified.

## **NOTATION OR ATTACHMENT DISPUTING ACCURACY**

18. Further, if I were to agree with the complainant's claims that the relevant passages in the Report were inaccurate or misleading, I would consider that the most appropriate method of amending a document of this nature, and in particular the document in this instance, would be by way of inserting a note in the document in accordance with section 48(1)(d) of the FOI Act, outlining the complainant's concerns and specifically giving details of the matters in relation to which the information is considered to be inaccurate or misleading, in accordance with section 48(2)(a).
19. The agency has agreed to attach a notation to the Report in accordance with section 50(1) of the FOI Act. Section 50(1) of the FOI Act provides that if the agency is not prepared to amend personal information in accordance with an application, the person may request the agency to make a notation or attachment to the information giving details of the matters in relation to which the person

claims the information is inaccurate, incomplete, out of date or misleading. As the agency has agreed to an attachment in respect of the passages of concern to the complainant, and in my view this is an appropriate action, it appears to me that the matter is in that way properly resolved.

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