

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

**File Ref: F2001061
Decision Ref: D0282001**

Participants:

Elizabeth Kaye Melville
Complainant

- and -

Heritage Council of Western Australia
First Respondent

- and -

“M”
Second Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to information provided to Heritage Council of Western Australia – clause 3(1) – edited access to requested documents – whether edited documents contain personal information – whether disclosure of edited documents could reasonably be expected to disclose personal information – public interest.

Freedom of Information Act 1992 (WA) ss. 24; 74(2); Schedule 1, clause 3; Glossary, Schedule 2

Heritage of Western Australia Act 1990 s.9(1)

Police Force of Western Australia & Winterton (Supreme Court of Western Australia, 27 November 1997, unreported, Library No. 970646)

DECISION

The decision of the agency is varied. In substitution it is decided that edited copies of the disputed documents are not exempt.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

21 August 2001

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Heritage Council of Western Australia ('the agency') to refuse Ms Melville ('the complainant') access to documents requested by her under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is the owner of property situated at 1171 Hay Street, West Perth. The property was listed for sale by auction but, prior to the sale, the agency received a letter from a third party, which purported to be a referral under s.9 of the *Heritage of Western Australia Act 1990* ('the Heritage Act'). Section 9(1) of that Act allows a person to refer in writing to the agency any act, matter or thing which gives rise to concern as to the conservation of a registered place or any other place which is or may be of cultural heritage significance.
3. On 2 April 2001, the complainant made an application to the agency, under the FOI Act, for access to documents containing the name of the person who had made the referral ('the third party'). The agency identified one document and refused access to that document on the ground that it is exempt under clause 3 of Schedule 1 to the FOI Act. The agency's decision was confirmed following an internal review.
4. On 23 May 2001, the complainant made a complaint to the Information Commissioner, seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. I obtained the disputed document from the agency. Preliminary inquiries were made with the agency and some additional documents were identified that fell within the scope of the complainant's access application. Subsequently, the agency granted the complainant access to those documents.
6. The third party was consulted and, at the request of the third party, was joined as a party to these proceedings. Attempts were made to resolve this complaint by conciliation between the parties but those attempts were not successful.
7. On 23 July 2001, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint. There are two disputed documents. It was my preliminary view that the disputed documents contain matter that is exempt under clause 3(1) of Schedule 1 to the FOI Act. Notwithstanding that, and subject to the agreement of the complainant, I considered that it would be practicable under s.24 of the FOI Act for the agency to delete the exempt matter from the disputed documents and to provide the complainant with access to edited copies of the two documents. I invited the parties to reconsider their respective positions in light of my preliminary view.
8. The agency accepted my preliminary view. The complainant also accepted my preliminary view and advised me that she would accept access to edited copies of the two disputed documents with personal information, including the name,

address, telephone number and facsimile number of the third party, deleted. However, the complainant expressed concerns about her inability under the FOI process to obtain access to the information that she had originally requested, being the name of the person who made the referral to the agency.

9. The third party did not accept my preliminary view and responded to me with a submission, in writing, objecting to the disclosure of edited copies of the disputed documents. The third party maintains that disclosure of the disputed documents, even after editing in the manner proposed, would reveal personal information about the third party and that the disputed documents are, therefore, exempt under clause 3(1).
10. Following that, a further attempt was made to conciliate this complaint. The third party subsequently agreed to the disclosure of an edited copy of a letter dated 26 February 2001 from the agency to the third party. In addition, a fresh referral form, retyped by the agency, but containing the identical information as originally provided in writing to the agency by the third party, was provided to the complainant. Although the complainant accepted those documents, which are not the disputed documents but new documents created by the agency, she did not withdraw her complaint and maintained her request for access to edited copies of the disputed documents.

THE DISPUTED DOCUMENTS

11. The disputed documents are a letter dated 31 October 2000 from the third party to the agency and a Heritage Referral form, also dated 31 October 2000. The third party claims that those documents are exempt under clause 3(1).

THE EXEMPTION

12. Clause 3, so far as is relevant, 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)...
- (3)...
- (4)...
- (5)...

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

13. In the Glossary in Schedule 2 to the FOI Act, the phrase “**personal information**” is defined as meaning “...*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.”*
14. Clearly, the purpose of the exemption in clause 3 is to protect the privacy of individuals. The Parliament of Western Australia recognised the fact that government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause.

The third party’s submission

15. The third party submits that disclosure of the disputed documents, regardless of whether those documents are edited or not, would reveal personal information about the third party. It is the submission of the third party that the identity of the third party would be apparent to, or could reasonably be ascertained by, the complainant from the form and contents of the disputed documents and, therefore, the disputed documents are exempt under clause 3. However, the third party did not explain to me how the identity of the third party would be apparent or could reasonably be ascertained from edited copies of the disputed documents, by the complainant or by any other person.

The complainant’s submission

16. The complainant made a strong submission in support of disclosure of the disputed documents. The complainant claims that the value of her property has been significantly affected by the involvement of the agency, following receipt of the third party’s letter of referral. The complainant submits that people who make referrals to the agency under s.9 of the Heritage Act should be held accountable for the financial hardship they place on others. The complainant also expressed concern that inaccurate information might have been given to the agency, or that the information given might not relate to her property at all, and she questioned the motives of the third party in making the referral in the first place.

The agency’s submission

17. The agency informed me that it was its usual practice to keep confidential the identity of persons making a referral to it under s.9 of the Heritage Act and that the standard referral document contains the notation “Referring information will be kept confidential”. The agency submits that further applications for access to personal information contained in referral documents may become the norm rather than the exception and that its practice is not to disclose such information without the consent of the person to whom that information relates.

Consideration

18. I have examined the disputed documents. I accept that, in an unedited form, those documents contain some personal information as defined in the FOI Act about the third party. The personal information, which is, on its face, exempt matter under clause 3(1), consists of the third party's signature, name, address, telephone number and facsimile number. Ordinarily, I do not consider that the mere mention of a person's name in a document is enough to constitute a disclosure of personal information about that person (my emphasis). However, the context in which a person's name appears in a document may, in some circumstances, make the information "personal information" as defined in the FOI Act and hence exempt matter under clause 3(1).
19. When the FOI Act was enacted in 1993, it was intended that it be complemented by privacy legislation to regulate the collection, use, security and disclosure of personal information by public sector agencies. However, privacy legislation has not yet been enacted in Western Australia. In those circumstances, when a complainant seeks access to a document of an agency containing personal information about another person, I consider that there is a strong public interest in protecting privacy.
20. In order to protect privacy, and as a safeguard against the inadvertent disclosure of personal information under the FOI Act, Division 3 of Part 2 of the FOI Act requires agencies to consult with third parties, when considering requests for access to documents containing personal information about third parties. Most State and local government agencies will routinely delete identifying information such as a name, address, telephone number, facsimile number, a signature and personal pronouns which may indicate the gender of a particular person, in accordance with s.24 of the FOI Act and release documents to an applicant in an edited form. I endorse that practice because it conforms to the spirit and intent of the FOI Act.
21. Sometimes it may be necessary for an agency to also delete some additional information in order to "de-identify" individuals concerned. That is also an acceptable practice providing the deletions are not so extensive as to render the balance of the document meaningless: see *Police Force of Western Australia v Winterton* (Supreme Court of Western Australia, 27 November 1997, unreported, Library No. 970646). The question of whether deleting information under s.24 of the FOI Act is practicable requires a judgment to be made by a decision-maker, taking into account the contents of the document in which the information appears.
22. The granting of access to documents with personal information deleted assists to make agencies accountable and to make the democratic processes of government open and transparent. One of the aims of the FOI Act is to enable the public to participate in those democratic processes. In my view, that goal can only be achieved if information is routinely made available to members of the public in order to encourage public debate about such issues as our cultural heritage. Clearly, there is a public interest in the agency being able to receive information about property, which may be of cultural significance to the community.

However, I do not consider that it is necessarily in the public interest for such referrals to be made to the agency in absolute confidence. It seems to me that if a citizen is concerned enough about the cultural significance of a particular property to contact the agency with a view to the agency taking action in the interests of the public, then I consider that the information provided to the agency about the property concerned ought to be routinely available to the public.

23. In this matter, the complainant no longer seeks access to the personal information about the third party and has withdrawn her request for access to the third party's name, address, signature, telephone number and facsimile number. Therefore, the only question for my consideration is whether, after the deletion of those personal details, the balance of the disputed documents contain any other information that would, if disclosed, reveal personal information about the third party, as claimed by the third party. In my opinion, they would not.
24. The disputed documents contain information about the heritage value of the complainant's property and another property located in Hay Street. However, once the details of the third party's name, address, signature, telephone number and facsimile number are deleted from the disputed documents, they do not contain any personal information about the third party. Nothing in the disputed documents, or in any other material that has been provided to me by the third party, persuades me that disclosure of edited copies of the disputed documents would reveal either the identity of the third party or information from which the third party's identity could reasonably be ascertained by the complainant or by any other person. Accordingly, I find that the disputed documents, edited to delete the details of the third party's name, address, signature, telephone number and facsimile number, are not exempt under clause 3 of Schedule 1 to the FOI Act.
25. Finally, since the information that would identify the third party is claimed to be exempt matter, I have identified the third party in this decision as "M" to comply with my obligation under s.74(2) not to include exempt matter in a decision on a complaint or in reasons for the decision.
