

**WARD AND POLICE**

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

**File Ref: 97115  
Decision Ref: D02897**

Participants:

**Cloreen May Ward**  
Complainant  
  
- and -  
  
**Police Force of Western Australia**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - documents relating to investigations - reports, letters, file notes - access to edited copies - clause 3 - personal information about third parties - section 26 - whether requested documents exist or should exist but cannot be found.

*Freedom of Information Act 1992 (WA)* Sections 21, 26 and 102(3); Schedule 1 clause 3; Glossary.

## DECISION

The decision of the agency to refuse access:

- (a) to the matter deleted from the disputed documents on the ground that it is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*; and
- (b) to the additional requested documents on the ground that they either do not exist or cannot be found,

is confirmed.

D A WOOKEY  
A/INFORMATION COMMISSIONER

17th October 1997

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review arising out of a decision of the Police Force of Western Australia, known as the Police Service ('the agency'), to refuse Mrs Ward ('the complainant') access to documents requested by her under the *Freedom of Information Act 1992* ('the FOI Act').
2. In a letter dated 1 April 1997, the complainant lodged an access application with the agency seeking access under the FOI Act to documents relating to the police investigation in 1988 into the death of her son. The complainant also sought access to certain other documents containing personal information about herself.
3. The agency granted the complainant full access to certain documents relating to the death of her son and access to edited copies of others. The agency informed the complainant that the matter deleted from the documents was exempt matter under clause 3(1) of Schedule 1 to the FOI Act. By letter dated 13 May 1997, the agency informed the complainant that it had also located certain other documents containing personal information about her. The agency granted the complainant full access to some of those documents and access to edited copies of others. The agency informed the complainant that the matter deleted from those documents was also exempt matter under clause 3(1).
4. By letter dated 5 June 1997, the complainant sought internal review of the agency's decision. The agency treated that request as a request for internal review of only that part of its decision which concerned the documents relating to the death of the complainant's son. By letter dated 20 June 1997, the internal reviewer confirmed the agency's initial decision to refuse access to certain matter on the ground that it is exempt under clause 3(1). On 2 July 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

### REVIEW BY THE INFORMATION COMMISSIONER

5. As it was not clear from the complainant's application to this office, an Investigations Officer from this office met with the complainant to clarify the ambit of the complaint. As a result, the complainant confirmed that she is dissatisfied with the agency's decision to refuse access to the matter deleted from the documents in respect of which access to edited copies has been granted, and she is also of the view that additional documents should exist with respect to both aspects of her access application, but that those documents have not been identified by the agency.
6. The agency produced to the Information Commissioner the disputed documents, together with the file maintained by the agency in respect of the access

application. In addition, inquiries were made on behalf of the Information Commissioner with various sections of the agency, including Inglewood Police Station, the Coronial Inquiry Section of the agency and the Crash Records Section of the agency.

7. After considering the information obtained as a result of those inquiries, and after examining the disputed documents and the material provided by the complainant, on 9 September 1997, the Information Commissioner informed the parties in writing of her preliminary view of this complaint, and her reasons for that view. It was the Information Commissioner's preliminary view that the matter to which access had been refused may be exempt matter under clause 3(1) of Schedule 1 to the FOI Act. It was also her preliminary view that the agency had taken all reasonable steps to find the additional documents the complainant claimed should exist but those documents either did not exist or could not be found. In the circumstances, the Information Commissioner did not require the agency to conduct any further searches for those documents.
8. The complainant was given the opportunity to withdraw her complaint, in light of the Information Commissioner's preliminary view. She did not withdraw, nor did she provide any further submissions or evidence for consideration.

## **THE DISPUTED DOCUMENTS**

9. Although in its notice of decision to the complainant the agency referred to 2 documents, in fact 74 documents were produced to the Information Commissioner by the agency. This office prepared a schedule listing and describing each separate document and recording the agency's decision with respect to each of those documents. A copy of that schedule was given to the parties. Of those 74 documents, the complainant has been given access to full copies of 41, and access to edited copies of 33. Those 33 documents are the documents in dispute. They consist of routine administrative forms, reports from officers of the agency, statements from third parties, letters to the agency, file notes, memoranda, and diary and Occurrence Book entries.

## **THE EXEMPTION**

10. Clause 3 of Schedule 1 to the FOI Act 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.”*

11. 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”.*

12. Clearly, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals 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, on the face of it, exempt matter under clause 3(1).

13. I have examined the matter deleted from the disputed documents. That matter consists of names, addresses and other information that would identify third parties. In my view, that matter is “personal information” as defined in the FOI Act and, unless any of the limits in sub clauses (2)-(6) of clause 3 applies, it is exempt matter and the agency is entitled not to disclose it. From my examination of the disputed documents, I am of the view that none of the limits provided by clause 3(2)-3(4) - the provisions of which are set out in paragraph 10 above - applies.
14. The complainant submits that she is aware of the identities of the third parties. However, the complainant has not provided any evidence establishing that the individuals concerned consent to the disclosure of personal information about them that may be contained in the documents. Therefore, without confirming or denying that any of the people named by the complainant is a third party, I do not consider that the limit on exemption provided by clause 3(5) applies. The only limit on exemption which requires consideration is the limit in clause 3(6) which provides that matter is not exempt matter if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3), the complainant bears the onus of persuading me that the disclosure of the personal information about third parties which has been deleted from the documents would, on balance, be in the public interest. Nothing was received from the complainant on this point.

### **Public interest**

15. I recognise that there is a strong public interest in maintaining personal privacy and that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance. I also recognise a public interest in the agency being able to obtain assistance from members of the public in the form of information and statements that assist it to carry out its investigative functions.
16. Balanced against those, there is a public interest in persons being able to exercise their rights of access under the FOI Act. In particular, I consider there to be a public interest in persons being informed of information about them which is held by government agencies. That particular public interest is recognised in s.21 of the FOI Act which requires that the fact that a requested document contains personal information about the access applicant be considered as a factor in favour of disclosure when considering where the balance of the public interest lies. In circumstances such as those of this matter, I also consider there to be a public interest in close relatives being informed as fully as possible about the circumstances of the death of a family member.
17. However, to a large extent, those latter public interests have been satisfied in this instance by the documents and information to which access has been granted, and

they do not require the disclosure of the personal information about other people which is contained in the documents. Therefore, in balancing those competing public interests, and in the absence of any material from the complainant which would persuade me otherwise, I consider that the public interest in maintaining the personal privacy of third parties outweighs any other public interest in disclosure. Accordingly, I find that the matter deleted from the disputed documents is exempt on this occasion under clause 3(1) of Schedule 1 to the FOI Act.

## **REFUSAL OF ACCESS - SECTION 26 OF THE FOI ACT**

18. Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate the documents sought by an access applicant. That section provides:

*“26. (1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if -*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency is satisfied that the document -*

*(i) is in the agency's possession but cannot be found; or*

*(ii) does not exist.*

*(2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document.”*

19. The complainant complains about the lack of documentation in the agency concerning restraining orders allegedly taken out by her and against her in or about 1985; about statements she claims to have provided to police officers which have not been identified by the agency; and about a lack of documents concerning the notification of family members of the death of her son and the disposal of his clothing.
20. It is my understanding that, in response to the complainant's access application, officers of the agency searched its computerised database using the complainant's name, and other names by which the complainant is known, as a prompt. I am informed that the agency also searched its records at Chief Office Records, the central records repository of the agency; the Crime Support Section; the Internal Investigations Branch, the section responsible for investigating complaints against police officers; and the Coronial Inquiry Section. Those searches did not locate any documents relating to the complainant or her son other than those listed on the schedule prepared by this office. Inquiries were also made of the

police officer involved in the investigation of the death of the complainant's son. The agency also conducted some additional searches following the complaint to this office.

(a) *Documents concerning the complainant*

21. It is my understanding that applications for restraining orders are made to a court and that restraining orders that are granted by a court are valid for 12 months only. I am informed that, when a restraining order is issued, the court notifies the Warrant Bureau of the agency. Details of the order and the parties affected by it are then recorded in the police database. If a complaint alleging a breach of a restraining order is made to the police, the restraint order list in the central names inquiry system is checked.
22. In response to that part of the complainant's access application, the agency searched the restraint order list in its central names inquiry system and located a record concerning the complainant. An edited copy of that document, with personal information about third parties deleted, was provided to the complainant. I am not persuaded that any further documents concerning the issuing of restraining orders in relation to the complainant exist or should exist in the agency. It appears to me that any other documents relating to an application for, and the granting of, a restraining order are likely to be held by the court concerned and not the agency.
23. I am informed that, prior to 1986, complaints about alleged breaches of restraining orders were made to individual police stations and manually recorded in Occurrence Books at those stations. To locate records relating to any such complaints would involve locating and manually searching the Occurrence Books of the relevant station or stations for the particular period, in this case all of 1984 and 1985. The complainant has provided nothing to indicate which police station, if any, might have received a complaint by or concerning the complainant. In those circumstances, I do not consider that it is practicable for the agency to conduct further searches of its records for that kind of document. I am of the view that the agency has taken all the steps that are reasonable to locate documents relating to the restraining orders.
24. The complainant also claims that she provided statements to a police officer at Inglewood Police Station in relation to a traffic accident in 1985. Inquiries conducted by my office at Inglewood Police Station have not resulted in any statements from the complainant being located. I am informed by the agency that station records at Inglewood Police Station do not go back as far as 1985. I am further informed that, if a statement had been taken from the complainant at the time of the traffic accident, it would most likely have been attached to the court brief and filed at the Crash Records Section of the agency. It is my understanding that the complainant has been provided with a copy of the court brief relating to the traffic accident in which she was involved, but no statements from her are attached to that brief. Inquiries at that section disclosed the existence of some records dating back to 1985, but a search of those records by the agency failed to

locate any such statement. Taking all of that material into account, I am not satisfied that any of those documents exists or should exist in the agency.

(b) *Documents concerning the complainant's son*

25. The complainant alleges that the agency should hold documents concerning the notification of family members of the death of her son and the disposal of his clothing. The Coronial Inquiry Section of the agency conducted the investigation into the death of the complainant's son. The agency submits that it has given the complainant access to all of its documents concerning that investigation with only personal information about third parties deleted. From my examination of the documents already given to the complainant relating to the agency's investigation of her son's death, it appears to me that at least one document already provided to the complainant contains information concerning the notification of death.
26. That document (numbered 38 on the schedule provided to the complainant by this office) reveals that the body of the complainant's son was identified by a close family friend who requested permission to notify the family. That permission was given on condition that the friend contact the agency and confirm notification had been effected immediately it had been done. The friend notified the complainant's daughter and contacted the agency confirming that the complainant's daughter had been notified. The document reveals that it is the usual practice of the agency that, once an immediate member of the deceased person's family has been notified, any further notification is left to the family. Inquiries with the officer who prepared that document have ascertained that the information contained in it is his recollection of events as told to him by the relevant investigating officer as a result of inquiries on previous occasions when the agency has had to respond to previous enquiries by the complainant concerning the matter.
27. I am not persuaded that any documents concerning the disposal of the complainant's son's clothing exist in the agency. The agency informs me that the clothing and all the possessions on the deceased person are removed and receipted at the mortuary. The clothing of a deceased person is not always returned to the next-of-kin with the other property. It may be destroyed if it has become soiled upon the death of the person, or it may be retained for evidence if necessary.
28. It appears, from the document numbered 73 on the schedule (an edited copy of which the agency has given to the complainant) that a receipt for the property of the complainant's son was issued by the agency and that his property was collected from the agency on 16 July 1988. Inquiries by my office with the Coronial Inquiry Section indicate that property receipts would have been issued in accordance with agency policy at that time. That policy involved maintaining a loose-leaf, manual filing system of property receipts. However, I am informed by the present Officer in Charge of the Coronial Inquiry Section that existing records only go back to the year 1993.

29. It is my understanding that the Coronial Inquiry Section of the agency relocated to new premises in 1994. The present Officer in Charge of that section expressed his opinion that records dating back to 1988 were probably destroyed during the relocation process. I accept that the agency no longer possesses such records for 1988. Accordingly, I am satisfied that the agency's copy of the receipt issued for the property of the complainant's son cannot be found and am of the view that it no longer exists.
30. I am informed by the agency that when police officers are investigating a sudden death, statements will not always be taken from the immediate family of the deceased. In the circumstances of the death of the complainant's son, 4 statements were taken from persons who could attest to the behaviour and demeanour of the deceased just prior to his death and other such matters. As the deceased was not living with the complainant at the time of his death, the agency informs me that it would have been unnecessary to take a statement from the complainant.
31. However, I am informed that a police officer may have spoken to the complainant in order to obtain the necessary information to complete a "Report of Death" for submission to the State Coroner. Therefore, it is my view that the "statement" which the complainant believes she made to the police officer may have been information for that report. A copy of that document has been given to the complainant by the agency. In any event, there is no evidence before me which suggests that any additional statements were taken from the complainant. Accordingly, I am not satisfied that there are reasonable grounds for believing such documents exist or should exist in the agency.
32. Taking all of that information into account, I am satisfied that the agency has taken all reasonable steps to locate the requested documents. Accordingly, I do not require the agency to conduct any further searches for those documents.

## CONCLUSION

33. Therefore, I am not satisfied that, in all the circumstances, additional documents exist, or should exist, in the agency. For the reasons given, I find that the decision of the agency to refuse access to those documents on the ground that it has taken all reasonable steps to locate them, but they either do not exist or cannot be found, was justified.

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