

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

**File Ref: F0211999
Decision Ref: D0301999**

Participants:

Stephen Raymond Box
Complainant

- and -

Department for Family & Children's Services
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – access to edited copies – documents relating to assistance given by agency to complainant's former wife – internal file notes, memoranda and correspondence – clause 3(1) – disclosure of personal information about complainant would also disclose personal information about third parties – public interest factors for and against disclosure.

Freedom of Information Act 1992 (WA) ss. 26, 102(3); Schedule 1 clauses 3(1), (6); Schedule 2, Glossary.

DECISION

The decision of the agency is confirmed as follows:

1. Documents 1, 2, 6 and 10 and the matter deleted from Documents 3, 5, 7, 8, 9, 13 and 14 are exempt under clause 3 of Schedule 1 to the *Freedom of Information Act 1992*; and
2. The agency has taken all reasonable steps to locate further documents but they either cannot be found or do not exist.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

30 September 1999

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Department for Family and Children's Services ('the agency') to refuse Mr Box ('the complainant') access to documents of the agency requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. In 1981, the complainant's former wife was provided with financial assistance by the agency, formerly known as the Department for Community Welfare, to leave the State with the children of that marriage. Since that time, the complainant has sought justification from the agency for its decision to provide his former wife with that financial assistance.
3. The present matter arises from an access application made to the agency in September 1998. In that application, the complainant sought access, under the FOI Act, to various documents relating to the agency's dealing with his former wife in the early 1980's. On 11 November 1998, having clarified the terms of the complainant's request, the agency granted the complainant access in full to three documents and access in part to 11 documents, and refused access to one document on the ground that it was exempt under clauses 3 and 7.
4. The complainant had specifically sought access to a document being a document he claims was signed by the agency and the complainant in about 1981 as a result of a report from the State Ombudsman. The agency informed the complainant that that document either did not exist or could not be found. The agency's initial decision was confirmed following internal review. On 11 February 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. I obtained the disputed documents from the agency and instructed my Investigations Officer to make further inquiries to determine whether this complaint could be resolved by conciliation between the parties. The agency determined that a decision on access to all documents in its possession would be provided to the complainant. As a result, a large number of additional documents were released to the complainant. However, it appears that the complainant remains dissatisfied with the level of access granted by the agency. He maintains his view that additional documents should exist and that he should be granted access in full to the disputed documents. As a result, further conciliation of this matter is not an option.

6. After considering the material before me, on 23 August 1999, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that 14 documents were in dispute and that the agency's decision to refuse access to all or parts of 13 of those documents appeared to be justified. In addition, it was my preliminary view that one document may not be exempt and, finally, that the agency's decision under section 26 may also be justified.
7. In light of my preliminary view that one document may not be exempt, the agency released that document in full to the complainant. On 16 September 1999, the complainant provided verbal submissions in response to my preliminary view to the then Acting Information Commissioner. As a result, the complainant withdrew from 2 of the disputed documents, leaving 11 documents in dispute.

THE DISPUTED DOCUMENTS

8. Of the documents identified by the agency, and for which exemption has been claimed in full or in part, Documents 1, 2, 3, 5, 6, 7, 8, 9, 10, 13 and 14 remain in dispute. The disputed documents are described in the schedule attached to these reasons for decision.

THE EXEMPTION

9. All of Documents 1, 2, 6 and 10 and the matter deleted from Documents 3, 5, 7, 8, 9, 13 and 14 are claimed by the agency to be exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3 provides as follows:

“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."*

10. The term "personal information" is defined in the Glossary in the FOI Act 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".*

11. I have examined the contents of Documents 1, 2, 6 and 10. In my view, all of those documents contain a considerable amount of personal information about people other than the complainant. Although there is a minimal amount of personal information about the complainant contained in the documents, it is my view that the documents could not practicably be edited so as to disclose only that personal information about the complainant contained in them. In my view, the small amount of personal information about the complainant contained in those documents could not be disclosed without also disclosing personal information about other people. That personal information about other people is *prima facie* exempt under clause 3(1).

12. I have also examined the matter deleted from Documents 3, 5, 7, 8, 9, 13 and 14. That matter is clearly personal information, as defined in the FOI Act, about

people other than the complainant. The complainant has been given edited copies of those documents – and, in the case of Document 5, a typed version of the original which is handwritten – with personal information about third parties deleted. I find that the matter deleted from those documents is *prima facie* exempt under clause 3(1).

13. The exemption provided by clause 3(1) is subject to a number of limits, which are reproduced in paragraph 9 above. Having examined the documents and in the absence of any evidence to the contrary, it appears to me that the limit in clause 3(6) is the only limit that may be relevant in this matter. Clause 3(6) provides that matter is not exempt if its disclosure would, on balance, be in the public interest. By virtue of s.102(3) the onus is on the complainant to establish that disclosure would, on balance, be in the public interest.

The complainant's submissions

14. The complainant made verbal submissions outlining the background to the matter and argued, essentially, that disclosure of the matter claimed to be exempt is in the public interest because there is a public interest in the accountability of the agency for its actions and, in particular, the exercise of its powers. The complainant submits that the actions of the agency should be open to public scrutiny.
15. The complainant feels a strong sense of grievance against the actions taken by the agency in its dealings with his family and argues that he should be given full disclosure of all the documents in order that he may be fully apprised of all the information concerning the actions taken so that he may take appropriate steps to take the matter further and bring the agency to account. The complainant submits that it is in the public interest, not only that the agency be brought to account for the manner in which it dealt with his family, but also in order that the agency does not deal with any other family in a similar manner in the future.
16. Finally, the complainant submits that there is a public interest in disclosure so that any misleading personal information contained in the documents can be corrected. He argues that that cannot be done unless access to the documents is given.

Public interest

17. As I have stated in a number of my previous formal decisions, I consider there to be a very strong public interest in the protection of personal privacy. That public interest is recognised in the FOI Act by the clause 3 exemption itself. I am of the view that the public interest in the personal privacy of individuals requires a particularly strong countervailing public interest to override it.
18. I accept the complainant's submission that there is a public interest in the accountability of government agencies and, in particular, I recognise the public interest in the accountability of government agencies such as the agency which have the power to directly intervene in families. Related to that, I also recognise

a public interest in people who feel aggrieved by the actions of such an agency being enabled to take whatever steps are available to them to have those actions reviewed, and I accept the complainant's submission that there is a public interest in people who find themselves in the position in which the complainant finds himself being as fully apprised as possible of what has taken place in order that such steps may be pursued if appropriate.

19. I also recognise the public interest in people being able to exercise their right of access under the FOI Act and in being informed of information about them which is held by government agencies and, in particular, allegations that have been made about them to government agencies. I also recognise a public interest in people being informed of what, if any, action has been taken in respect of information about them which has been provided to a government agency.
20. However, in this instance, I am of the view that all of those aspects of the public interest have been satisfied to a very large extent by the disclosure of documents already made to the complainant by the agency. Having examined the documents, it is my view that the agency has, indeed, disclosed a considerable amount of matter in the documents which have already been disclosed for which it could have claimed exemption, but it has chosen not to do so. In my opinion, there is little in the matter which has not been disclosed to the complainant that has not already been disclosed to him in some other form in the documents already released. It is my view that disclosure of the matter remaining in dispute would add little to the complainant's knowledge of what actions were taken by the agency in respect of his family and what information about him is held by the agency or to his ability to take his grievance further.
21. I agree with the complainant's submission concerning the amendment of personal information to the extent that I recognise a public interest in the maintenance of accurate records by agencies and in ensuring that personal information contained in government records is not inaccurate, incomplete, out of date or misleading. That public interest is reflected in the provisions of Part 3 of the FOI Act which allow for the amendment of such information.
22. However, as I have said, in this instance there is very little personal information about the complainant contained in the matter that has not been disclosed to him. Furthermore, in my view, the complainant has already been informed of the substance of the personal information about him contained in the documents through those documents already given to him. In my view, the complainant has already been sufficiently informed of the nature of the information about him contained in the agency's files to enable him to exercise his right to apply to have it amended if he considers it to be inaccurate, incomplete, out of date or misleading. The exercise of that right would require the complainant to make an application for amendment under Part 3 of the FOI Act.
23. Therefore, in my view, in this instance, I am of the view that it has not been established that disclosure of the matter remaining in dispute would, on balance, be in the public interest and I find that Documents 1, 2, 6 and 10 and the matter

deleted from Documents 3, 5, 7, 8, 9, 13 and 14 are exempt under clause 3 of Schedule 1 to the FOI Act.

DOCUMENTS THAT CANNOT BE FOUND

24. The agency claims that folio 371 of volume 2 of the agency's "client file" relating to the complainant's family and folios 125 to 143 to the Consumer Advocate file cannot be located. Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate 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".

25. I have discussed, in a number of my formal decisions, the application of s.26. If a complainant raises the issue of the existence of documents that cannot be found, in my view, there are two questions that must be answered. The first question is whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. If that question is answered in the affirmative, the next question, in my view, is whether the agency has taken all reasonable steps to find the documents.

Is it reasonable to expect that the documents exist?

26. Based on the inquiries conducted by my Investigations Officer, including an inspection of the agency's files, I am satisfied that folio 371 exists or should exist, and should be filed in sequence on volume 2 of the agency's client file. The agency does not dispute the existence of folio 371. However, the material before me gives no indication of the nature or contents of folio 371. On the same basis, I am also satisfied that folios 125 to 143 exist or should exist and should be filed in sequence on the Consumer Advocate file. The agency does

not dispute the existence of folios 125 to 143. My inquiries have not been able to establish whether or not any of those folios are, or include the agreement described in paragraph 4 above, which the complainant claims to exist.

Has the agency taken all reasonable steps to locate the documents?

27. As I have said in dealing with previous complaints, I do not consider that it is my function to physically search for requested documents on behalf of the complainant. Provided that I am satisfied that the documents exist or should exist, I take the view that it is my responsibility to inquire into the adequacy of the searches conducted by the agency in a particular instance, and to require further searches if necessary.

28. In this instance, the agency informs me that the following searches were made for the missing documents:

- each of the three volumes of client files relating to the complainant was searched to determine whether any documents had been misfiled;
- telephone inquiries were made with the repository and a search was made of the relevant repository boxes in that location;
- the agency's files relating to the complainant's previous access application were searched;
- a search was made of the box in which files were transported from the repository after their retrieval; and
- discussions were held with senior staff in the Records section to determine whether any of the missing documents had been located at the time of the complainant's previous access application.

29. In relation to folio 371, the following specific searches were made:

- all of the complainant's client files were searched;
- a search was conducted in the Legal Section of the agency; and
- contact was made with the office of the State Ombudsman.

None of those searches resulted in the missing document being located.

30. Inquiries were made with the State Ombudsman's office, both by the agency and subsequently by my office, in respect of the agreement the complainant claims to have signed. However, that office was not able to locate any document of the kind described nor any other document evidencing its existence.

31. Although I may require an agency to conduct further searches, based on the material before me, and in the absence of any further submissions or information from the complainant in respect of this point, I have not required the agency to do so. I consider that the agency has taken all reasonable steps to locate those documents, but that those documents cannot be found. The agency has, in my view, searched in all the places where the documents could reasonably be expected to be found if held by the agency and has made inquiries with the relevant officers. In addition, inquiries have been made with an external agency.
32. Accordingly, I find that the agency has taken all reasonable steps to find the documents but that they cannot be located, and that its decision to refuse access on that basis was justified.

Disputed document schedule

Document No.	Folio No.	File Volume	Description
1	51-52	1	Undated letter from a third party.
2	74	1	File note dated 6 April 1981.
3	149-151	1	Letter dated 3 August 1981 from the agency to the Parliamentary Commissioner for Administrative Investigations.
5	233-234	1	Handwritten letter dated 26 August 1981 from a third party to the then Premier.
6	235-237	1	Letter dated 22 September 1981 from Attorney General to Under Secretary Premier's Department.
7	238	1	Memorandum dated 28 September 1981 from Under Secretary, Premier's Department to Minister for Community Welfare.
8	240-241	1	Memorandum dated 13 October 1981 from the agency to Minister for Community Welfare.
9	247	1	Memorandum dated 14 October 1981 from Minister for Community Welfare to Under Secretary, Premier's Department.
10	257-259	1	Letter dated 29 October 1981 from Deputy Premier to a third party.
13	104	3	File note dated 23 January 1992.
14	11	Consumer Advocate	File note dated 23 January 1992 (copy of Document 13).