

BRANDTNER AND BAYSWATER

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

**File Ref: 95115
Decision Ref: D03095**

Participants:

Alois Willy and Tjie Lian Brandtner
Complainants

- and -

City of Bayswater
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents related to investigation of complaint to agency - clause 3(1) - personal information about third parties - public interest factors for and against disclosure - requirements to establish exemption under clause 3(1) - limitations in clause 3 - public interest.

Freedom of Information Act 1992 (WA) ss. 13(1)(b); 30; 66(2); 68(1); 75(1); 72(1)(b); 102(3); Schedule 1 clauses 3, 5(1)(c); Glossary in Schedule 2.

DECISION

The decision of the agency is confirmed. The matter deleted from the documents is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

5th September 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the City of Bayswater ('the agency') to provide Mr and Mrs Brandtner ('the complainants') with access to copies of documents requested under the *Freedom of Information Act 1992* ('the FOI Act') from which exempt matter had been deleted.
2. On 27 March 1995, the complainants applied to the agency for access to copies of documents being letters of complaint to the agency concerning certain activities alleged to have occurred on business premises owned by the complainants and leased by them to another party. The complainants sought access, in particular, to the name and address of the person lodging complainants about them with the agency.
3. The agency refused access on 29 March 1995 on the ground that the information requested is exempt under clause 5(1)(c) of Schedule 1 to the FOI Act. On 3 April 1995, the complainant sought internal review of that decision. On 20 April 1995, Mr M J Carosella, City Manager and Town Clerk in the agency, confirmed the earlier decision and, without identifying or describing the number of documents within the ambit of the access application, decided that the requested documents are exempt under clause 5(1)(c) of Schedule 1 to the FOI Act.
4. On 20 June 1995, the complainants applied to the Information Commissioner for external review. It initially appeared to me upon receipt of the application for external review that that application had been lodged after the statutory period of 60 days had expired. Accordingly, I sought further information from the complainants pursuant to s.66(2) of the FOI Act. The additional information supplied to me by the complainants satisfied me that the application had been lodged within the statutory period.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 10 July 1995, in accordance with my statutory obligation under s.68(1) of the FOI Act, I notified the agency that I had accepted this complaint for review. Pursuant to my authority under ss75(1) and 72(1)(b), I sought the production to me of the documents in dispute, together with the file maintained by the agency in respect of this access application. As the letters to the complainants dated 29 March and 20 April 1995, which purported to be the notices required under s.13(1)(b) of the FOI Act, did not comply with the requirements of s.30 of that Act, I also required the agency to provide further reasons to justify its claims that the documents are exempt under clause 5(1)(c) of Schedule 1 to the FOI Act.

- The requested documents and the additional information I required the agency to furnish were provided to my office on 12 July 1995.
6. On 19 July 1995, one of my investigations officers met with officers of the agency to discuss this complaint. As a result of that meeting, the agency agreed to provide the complainants with copies of four documents from which matter claimed to be exempt under clause 3(1) of Schedule 1 to the FOI Act had been deleted. Copies of those documents were subsequently provided to the complainants.
 7. On 25 July 1995, having examined the remaining matter in the documents in dispute and considered the submissions of the parties, I provided the complainants with my preliminary view of the agency's claim for exemption, and my reasons for that view. It was my preliminary view that the information deleted from the copies of documents released to the complainants was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
 8. The complainants responded to the preliminary view and provided a further submission for my consideration. It is the submission of the complainants that the documents released by the agency to them in an edited form are insufficient for their purposes since the complainants contend that the complaints are false and they intend to pursue legal redress against the persons responsible.

THE DISPUTED DOCUMENTS

9. There are four documents in dispute between the parties. Those documents are described as follows:

No	Date	Description	Exemption
1	6/10/94	Fact Sheet No 2337 containing particulars of complaint	Clause 3(1)
2	6/10/94	Fact Sheet No 2338 containing particulars of complaint	Clause 3(1)
3	17/11/94	Letter from agency to person making complaint (A)	Clause 3(1)
4	17/11/94	Letter from agency to person making complaint (B)	Clause 3(1)

10. Exemption is claimed under clause 3(1) for parts of Documents 1, 2, 3 and 4 only, being those parts that identify the source of the complaints received by the agency.

THE EXEMPTION

11. Clause 3(1) 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)...

(3)...

(4)...

(5)...

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

12. In the Glossary in the FOI Act, "**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."*

13. I have previously expressed the view that the purpose of the exemption in clause 3 is to protect the privacy of individuals. I reiterate that view. I consider that the exemption in clause 3 is a recognition by Parliament of the fact that all 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.

14. Some of the matters that have come before me as complaints concern access applicants seeking access to information that would identify individuals who have lodged complaints to government agencies about those access applicants. Although, in some instances, the mere mention of a person's name may be "personal information" about that person, there usually must be more information than a name in order to establish the exemption under clause 3. Parts (a) and (b) of the definition quoted in paragraph 12 above suggest that disclosure of the document must reveal something more about an individual than his or her name in order to attract the exemption. For example, a document consisting of a list of

names would be unlikely to be exempt under clause 3. However, a document containing a list of names that also discloses something personal and private about the people mentioned in that list because of the context in which the names appear in that document, may well attract the exemption.

15. When an agency decides that a document contains personal information and that document is the subject of an access application under the FOI Act by some other person, it may provide access to that document with personal information deleted. If the third party's identity can be ascertained from the personal information about him or her contained in the document, an agency has the option of deleting all of the personal information including the relevant name of the person to whom the information relates if such a name appears. Depending on the type of document concerned, that option may be unsatisfactory from an applicant's viewpoint if all that is disclosed is a blank piece of paper.
16. Alternatively, if the identity of the person to whom the information relates is not able to be ascertained from that information itself, an agency may decide to delete the name only and provide access to the document and the remaining information. In this instance, the agency has chosen this latter option. I consider providing access to a document with only the name deleted, wherever that option is possible, to be in accordance with the objects and intent of the FOI Act and one way of ensuring the maximum possible access to information held by government.
17. I have examined the matter deleted from the disputed documents. That information consists of names, addresses and other comments about persons other than the complainants which, in the context in which it appears is, in my view, clearly personal information about those persons. However, the exemption provided by clause 3 is subject to a number of limitations. The only one that I consider to be relevant in this instance is that provided by 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 onus of persuading me that the disclosure of that kind of information would, on balance, be in the public interest, lies on the complainants under s.102(3) of the FOI Act.

The public interest

18. In the submission dated 31 July 1995, the complainants said, *inter alia*:

"We do believe that IT IS in the public interest that a public body (such as the City of Bayswater) funded by ratepayers moneys should not take sides and/or give preferences, IT IS in the public interest that a public body should provide these requested documents since they were satisfied that no breaches occurred, IT IS in the public interest that these documents are released to identify the person(s) which deliberately fabricated and provided false accusations for the purpose of inflicting financial loss to us and our tenant. IT IS further in the public interest, that once a complaint is withdrawn, because the basis of it was found to be false, the accused

(us) should not be further disadvantaged by not providing the requested documents."

19. In this instance, I recognise as I have done on previous occasions, a public interest in agencies being able to receive and act upon complaints about breaches or alleged breaches of local government by-laws and in maintaining the confidentiality of the identity of those complainants and hence their privacy. I also recognise a public interest in persons finding themselves in the position of the complainants being informed of the nature of allegations against them, being given the opportunity to respond to the allegations and being informed of the conclusions reached by the agency and the action, if any, that was recommended or proposed to be taken to dispose of the complaint. In my view, there is also a public interest in any applicant being able to access personal information about him or her that is held by government. However, in my view, this latter public interest has already been satisfied by the release of copies of the disputed documents with third party personal information deleted.
20. I consider the facts of this matter to be simple. The agency received complaints about litter emanating from premises owned and let by the complainants. Those complaints were investigated by an officer of the agency who inspected the premises. The disputed documents contain a notation to the effect that the source of the litter was confirmed by that officer to be the complainants' tenant.
21. On 15 November 1994, the agency informed the complainants of the nature of the complaints received and of the requirement under the City of Bayswater Town Planning Scheme No 21 for specific approval to operate a toy manufacturing business in an area zoned for "Showroom/Warehouse". The agency further informed the complainants that an application for planning approval was necessary, in order for that business to continue operating and, in the absence of such approval, the business must cease to operate.
22. On 27 January 1995, the complainants spoke with the agency and were advised that the land was in fact zoned for light industrial purposes and, therefore, the business of the tenant had approval to operate from the site. This advice was confirmed by letter dated 27 March 1995, from the agency to the complainants, in which the agency agreed that the zoning regulations had not been breached.
23. On that basis, I am satisfied that the public interest in the complainants being informed of the nature of the allegations against them, and of the action proposed to be taken by the agency, has also been satisfied. I am also of the view that the complainants have been given an opportunity to respond to the complaints and to respond to the concerns of the agency regarding the planning requirements for the land.
24. Therefore, in this instance, I consider the public interest in maintaining the privacy of the third parties is not outweighed by any other factors that require the disclosure of the matter deleted from the disputed documents. I find that matter to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.