

WARNES AND GERALDTON PORT

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 96070

DECISION No:D03096

PARTIES: Terrence Ian Warnes

Complainant

Geraldton Port Authority

Respondent

No. of documents in dispute: 1

Exemption clause(s) : 3(1)

On 15 January 1996, Mr Warnes ('the complainant') applied to the Geraldton Port Authority ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of a letter sent to the agency on 24 March 1995 containing information about him. On 26 February 1996, the principal officer of the agency decided to refuse the complainant access to the requested document on the ground that it was exempt under clause 3(1) of Schedule 1 to the FOI Act. On 23 April 1996, the complainant applied to the Information Commissioner for external review of the agency's decision.

I obtained a copy of the document from the agency. I was informed by the agency that it had provided the complainant with a typed version of the disputed document prior to him seeking access under the FOI Act. However, the complainant sought access to the original hand-written letter. I examined the disputed document and, on 8 May 1996, I informed the parties of my preliminary view, including my reasons and the findings on material questions of fact underlying those reasons, referring to the material on which those findings were based. It was my preliminary view that the document contains matter which may enable an individual to be identified as the author of the document, namely, the hand-writing. It was my preliminary view that the document is, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. Accordingly, the onus under s.102(3) of the FOI Act, of persuading me that disclosure would, on balance, be in the public interest was borne by the complainant. Although he was provided with the opportunity of making a written submission in response to my preliminary view, no such submission was received.

Accordingly, my view remains that the document is exempt under clause 3(1), for the reasons already given to the parties. Those reasons are summarised as follows.

The Disputed Document

The disputed document is a hand-written, undated, anonymous letter which bears a date stamp indicating that it was received by the General Manager of the agency on 23 March 1995. The letter contains observations and opinions about the complainant and his work history with the agency.

The Exemption - clause 3 (Personal information)

Clause 3, so far as is relevant, provides:

"Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

...

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

In the Glossary in Schedule 2 to 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.”*

From my examination of the disputed document, I am satisfied that the handwriting comprises information about an individual, namely the author of the document, from which the individual can be identified. I have reached that conclusion from a consideration of other material in the letter which, in my view, when considered in conjunction with the hand writing, would enable the identity of the author to be ascertained. In my view, the disputed document is, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. Under s.102(3) of the FOI Act, the onus is on the complainant to persuade me that disclosure of the document would, on balance, be in the public interest.

However, I note that the disputed document contains personal information about the complainant. Pursuant to s.21 of the FOI Act, the agency was required to take into account the fact that the disputed document contains personal information about the complainant and to consider that as a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed.

The Public Interest

I recognise that there is a public interest in a person being informed of the nature of any allegations made against him or her to an agency and being given the opportunity to respond to those allegations. This may be particularly so where the agency is the person’s employer. I also recognise that there is a public interest in persons being able to obtain access to documents containing personal information about them. Balanced against those public interests, I consider that there is a strong public interest in maintaining the privacy of individuals who have dealings with government agencies.

In this instance, I consider that the public interest in the complainant being informed of allegations made against him has been satisfied by the provision to him of a typed copy of the disputed document. In weighing the remaining public interests, I consider the right to privacy outweighs the complainant’s right of access. Accordingly, I confirm the decision of the agency and find that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

28th May 1996