

NAPIER AND DONNYBROOK/BALINGUP

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: 96077

DECISION No: D03196

PARTIES: **Graham Robert Napier**

Complainant

Shire of Donnybrook/Balingup

Respondent

No. of documents in dispute: 1

Exemption clause(s) : 3(1)

By letter dated 24 April 1996, Mr Napier ('the complainant') applied to the Shire of Donnybrook/Balingup ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to a 1990 employment application submitted to the agency by a former Health/Building Surveyor, and documents of the agency showing certain information relating to the application for employment. On 1 May 1996, Mr John Attwood, the Shire Clerk and principal officer of the agency provided answers to a number of questions asked by the complainant in respect of the matter, but refused the complainant access to the requested document and refunded the application fee that had been paid in respect of that access application. On 6 May 1996, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse access to the requested document.

The agency produced to me a copy of the document submitted by the former Health/Building Surveyor to the agency in 1990, and certain other documents relating to the complaint. On 20 May 1996, I provided the parties with my preliminary view of this complaint on the material then before me and the reasons for that view, including my findings on material questions of fact underlying those reasons, referring to the material on which those findings were based.

Having examined the disputed document, it was my preliminary view that the document is, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. Although the complainant made a further written submission, he provided nothing to dissuade me from my preliminary view that the document is exempt under clause 3(1). My reasons for that view are summarised as follows.

The Disputed Document

The disputed document consists of a letter to the agency dated 5 October 1990 and an attachment of 6 pages containing the resume of the former Health/Building Surveyor.

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

...

(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.*

(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."*

Having examined the disputed document, I am satisfied that if it were disclosed it would reveal a considerable amount of "personal information" about the former Health/Building Surveyor of the agency, being information other than his name, his qualifications, or the position or positions he may have held at one or more agencies. In my view none of the information in the document is matter that comprises prescribed details for the purposes of clause 3(3).

The Public Interest

I recognise that there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act. There is also a public interest in the protection of the privacy of persons about whom personal information is contained in documents held by State and local government agencies.

In balancing those competing interests, I note that, although the agency was not required to do so under the FOI Act, it provided the complainant with some of the information he had requested, including the period of employment of the former Health/Building Surveyor, the position he held and the date the advertisement of the vacancy appeared in *The West Australian* newspaper. The only information which has not been disclosed comprises the personal and private details concerning the third party's work history, qualifications, experience and skills.

In his submission to me dated 22 May 1995, the complainant indicated that he was prepared to accept access to an edited copy of the disputed document. He is particularly interested in gaining access to information that would disclose the reasons for the former Health/Building Surveyor leaving the position he held prior to commencing employment in the agency. However, the complainant did not identify any public interest factors favouring disclosure of such information, if it were contained in the document. The complainant has not persuaded me that disclosure of the document would, on balance, be in the public interest and has not, therefore, discharged the onus he bears under s.102(3) of the FOI Act.

In this instance, I consider that the public interest in protecting personal privacy outweighs the public interest in the complainant being able to have access to the disputed document. 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

May 1996