

GOODMAN AND FAIR TRADING

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: 97172

DECISION No: D03197

PARTIES: Marie GOODMAN

Complainant

Ministry of Fair Trading

Agency

No. of documents in dispute: 1

Exemption clause(s) : Clause 3(1)

By letter dated 21 July 1997, Ms Goodman ('the complainant') lodged an access application with the Ministry of Fair Trading ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents held by the agency concerning her business, "Marie Goodman Personnel". In particular, the complainant sought access to details of the persons who the complainant alleges made complaints against her since 1992.

The scope of the request was subsequently clarified and reduced by agreement between the parties to include only that part of the agency's documents which would (a) identify the officer of the agency whom the complainant alleges disclosed her age to a third person in connection with the complainant's application for licence as an Employment Agent and (b) identify the person who made a complaint to the agency about the complainant's use of a certain logo, and a statement made, on stationary in connection with her business activities.

The agency determined that it did not hold any documents containing information about the disclosure of her age by any person. Accordingly, the agency refused access under s.26 of the FOI Act on the ground that the documents did not exist or could not be found. In respect of the second part of her access application, the agency refused access to a certain document on the ground that the matter in that document which was within the scope of the complainant's access application was exempt matter under clause 3(1) of Schedule 1 of the FOI Act.

The agency's decision was confirmed on internal review. By letter dated 1 October 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decisions.

Review by the Information Commissioner

After receiving this complaint, my office made inquiries with the complainant and the agency about the two matters raised by the complainant, and sought an explanation of the searches conducted by the agency. Those inquiries established that, in addition to dealing with the complainant's access application, following a complaint to the Minister for Fair Trading by the complainant, the agency had conducted an internal inquiry into the allegations made by the complainant and the Minister had informed the complainant in writing of the result of those inquiries.

I also examined the file maintained by the agency in respect of this application and examined the matter to which access had been refused. After considering all of the material before me, I formed a preliminary view of this complaint and informed the parties in writing of that view including my reasons. It was my preliminary view that the matter to which access had been refused was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. It was also my view that no other documents within the ambit of the complainant's access application exist, or should exist, in the agency. It was my view that the searches conducted by the agency had been, in all the circumstances, reasonable, and I did not require further searches to be conducted.

Although the complainant did not accept my preliminary view and the reasons, she did not provide any further material for my consideration. Consequently, I have not been dissuaded from my preliminary view. The parties have

been fully informed of the reasons why I consider that personal information about a third party is exempt matter that should not be disclosed. Further, the complainant has been fully informed about the extent of the searches conducted by the agency and the result of those searches. As those are the only two issues, which require a formal determination, a summary of the reasons given to the complainant in respect of her complaint follows.

Sufficiency of search

Section 26(1) of the FOI Act provides that an agency may give an access applicant written notice that it is not possible to give access to a document if all reasonable steps have been taken to find it but it either cannot be found or does not exist. Pursuant to s.26(2), the Information Commissioner may require an agency to conduct further searches for documents. However, in my view, before a request to conduct further searches is made of an agency, there must be some material to suggest that additional documents exist, or should exist.

In respect of the first part of the complainant's access application, officers of the agency searched the documents contained in the relevant "Licence file" pertaining to the complainant's business but no documents containing information of the requisite kind could be located. I am informed by the agency that that file is the only file that would contain the information requested, if it exists. The agency also identified, located and searched 3 additional files, without success. I am satisfied that the agency has taken all reasonable steps to locate the requested document, and that no such document can be found.

Further, I consider it unlikely that a document would exist that would contain information recording a disclosure of the complainant's age and the identity of any person responsible for such disclosure. No material has been provided to me by the complainant that would suggest otherwise.

Therefore, based on the material before me, I find that no document containing the information sought by the complainant exists. Accordingly, for the reasons given to the complainant and summarised above, I confirm the decision of the agency to refuse access on the ground that the document either does not exist or cannot be found.

Clause 3 – Personal Information

The agency also claims that the matter to which access is refused is exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3(1) provides that matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead). In the Glossary to the FOI Act, "personal information" is defined to mean, among other things, information about an individual whose identity is apparent or can reasonably be ascertained from the information.

The matter to which access is refused consists of a name, telephone number and other identifying characteristics from which the identity of a third party can be ascertained, and its disclosure would reveal personal information about that person. In my view, that matter is, *prima facie*, exempt matter under clause 3(1).

The exemption in clause 3 is limited by the "public interest test" contained in subclause 3(6) which provides that matter is not exempt under clause 3(1) 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 disclosure of such information would, on balance, be in the public interest.

The complainant informs me that she is seeking access to the name of the person who is alleged to have made false allegations against her and her business. The complainant claims that someone is leaking personal information about her and her business and she wishes to have access to that name so that she can make a formal complaint about the person responsible.

I consider there to be a very strong public interest in preserving personal privacy. Although I recognise that there is a public interest in a person being informed of the substance of allegations made against him or her, and in being given an opportunity to respond to such allegations, in this instance I do not consider that that public interest requires the disclosure of the document. The complainant has been fully informed of the complaints made about her business activities and she has been given the opportunity to respond to those allegations. Therefore, in the circumstances of this matter, I am not persuaded that any public interest requires the disclosure of personal information about a third

party. The complainant certainly has not identified any such interest, which would be a factor in the balancing process. Accordingly, for the reasons given to the complainant which I have summarised above, I confirm the decision of the agency to refuse access to that matter on the ground that it is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
19 November 1997