

F AND POLICE

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

**File Ref: 95144
Decision Ref: D03395**

Participants:

F
Complainants

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - access to edited copies - missing person report - notes of interview - clause 3(1) - personal information about third parties - public interest factors for and against disclosure of personal information - ambit of access application.

Freedom of Information Act 1992 (WA) ss.68(1), 72(1)(b), 75(1), 102(3); Schedule 1 clause 3, Schedule 2 Glossary clause 1.

DECISION

The decision of the agency is varied. The matter deleted from Document 1 is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, and the matter deleted from Document 2 is outside the ambit of the complainants' access application.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

14th 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 Police Force of Western Australia ('the agency') to give access to edited copies of documents requested under the *Freedom of Information Act 1992* ('the FOI Act'). In this decision I will not identify the two complainants by name in order to protect the identity of a child connected with the access application.
2. By letter dated 16 March 1995, the complainants sought access to "...copies of any files, documents or letters" held by the agency relating to either one of them. Following receipt of that request, the agency sought further information in order to identify the documents requested by the complainants. It appears that no reply to that letter was received by the agency. A further letter dated 28 April 1995, was sent by the agency to the complainants informing them that the agency intended to treat the access application as being withdrawn as the complainants had not identified the particular documents requested.
3. By letter dated 3 May 1995, the complainants provided the additional information required by the agency to enable it to identify the requested documents. Thereafter, the agency proceeded to deal with the access application and, on 20 June 1995, Chief Inspector Rae notified the complainants that the agency had located three documents relevant to their access application. The Chief Inspector granted the complainants access in full to one document and access to edited copies of two others from which exempt matter had been deleted. The agency claims that the matter deleted from the two documents is exempt under clause 3(1) of Schedule 1 to the FOI Act.
4. On 2 July 1995, the complainants sought internal review of the decision of Chief Inspector Rae. That review was conducted by Acting Commander Hawkes who decided, on 17 July 1995, to vary the initial decision. Additional information was released to the complainants but access to certain other matter was refused on the ground that that matter is exempt under clause 3(1). On 27 July 1995, the complainants applied to the Information Commissioner for external review.

REVIEW BY THE INFORMATION COMMISSIONER

5. Together with the complaint I was provided with an authority, signed by the complainants, which - although not entirely clear in its terms - I have accepted as authorising me to deal with the complainants' daughter in respect of this complaint. The complainants' daughter has, accordingly, acted as the complainants' agent in this matter. She is not, however, a party to the complaint.

6. On 7 August 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. In accordance with my authority under s.75(1) and s.72(1)(b), I sought the production to me of the originals of the documents in dispute together with the file maintained by the agency in respect of this matter. Those documents were produced to me on 9 August 1995.
7. On 23 August 1995, having examined the documents in dispute and other documents provided by the parties, and having considered the reasons of the agency and the submissions of the complainants, I provided the complainants with my preliminary view. It was my preliminary view that the matter deleted from the documents was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. In response to that preliminary view and in order to persuade me that disclosure would, on balance, be in the public interest, a solicitor acting for the complainants' daughter provided a submission expressed to be on the daughter's behalf. The daughter and another person together, also provided an additional submission.
8. It is not entirely clear that those submissions were on the complainants' behalf. However, as there is evidence before me that the complainants' daughter is authorised to act on their behalf in this matter, I have accepted those submissions as material provided on behalf of the complainants for my consideration, pursuant to the onus placed upon the complainants by s.102(3) of the FOI Act.

THE DISPUTED DOCUMENTS

9. There are two documents in dispute in this matter. The complainants have been provided with edited copies of both documents which are described as follows:

Document	Date	Description
1	2/1/95	Extract from Station Occurrence Book at Dunsborough Police Station.
2	9/1/95	Notes of interview between one of the complainants and police, and notes of interview between the complainants' daughter and police.

10. The documents in dispute relate to an incident involving a child who had apparently run away from a Children's Home. Document 1 records the notification of the incident to the Dunsborough Police Station and the request for police assistance to find the child. Document 2 is described by the agency as "notes of interview" and appears to consist of notes of an interview with one of

the complainants, as well as notes of an interview conducted with the complainants' daughter, on the same occasion and at the same place.

THE EXEMPTIONS

11. The matter deleted from Documents 1 and 2 is claimed by the agency to be exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, so far as is relevant, 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. Further, 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. In my view, parts (a) and (b) of the definition of "personal information" 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 merely 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. Ordinarily, I would not consider that the mere routine recording of a person's name in a government document, in circumstances where it would be reasonable to expect such information to appear, to be sufficient to attract the exemption.
15. However, it is usually, but not always, the case that a name appears in a document in the context of other information about that person. When an agency decides that a document contains personal information and that document is the subject of an access application, it may provide access to that document with personal information about a third party deleted. If the third party's identity can be ascertained from the personal information about him or her contained in the document, an agency may delete so much of the personal information that may enable the identity of the person to whom that information relates to be ascertained. Sometimes that may require deletion of all the information about that person which is contained in the document, 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, as I have said previously, 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. If the identity of the person cannot be ascertained from the information that remains, then it is no longer personal information as defined in the FOI Act. In this instance, the agency has chosen the 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. The matter deleted from Document 1 consists of the name and place of employment of the person who requested assistance from the Dunsborough Police station to locate the missing child. In my view, that information is, *prima facie*, exempt matter under clause 3(1). Following my examination of the matter within Document 1 claimed to be exempt, I am also satisfied that none of the limitations to clause 3(1), other than clause 3(6), is relevant to that matter in the circumstances of this case.
 18. Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. I recognise that there is a strong public interest in the protection of personal privacy, and only a very strong public interest favouring disclosure will displace that interest. The onus of persuading me that the disclosure of personal information about third parties would, on balance, be in the public interest, lies on the complainants by virtue of s.102(3) of the FOI Act.

19. In the submission made by the solicitor for the complainants' daughter, it was argued that "*[i]n the case of misrepresentations from informants, or allegations which are partly true and partly misrepresentation, it is in my submission most certainly in the public interest that such informants are identified...By the act of protecting its informants in all cases, the agency is encouraging, and by that act promoting, the whole practice of dishonesty and misrepresentation...While we live in a society in which the public should be able to inform legitimately, we also live in a society in which untruthful or vengeful informations should be actively discouraged, and the individuals who give such informations should not have the protection of the law...In my submission, section 3 of the Act should be of paramount importance in this case, in that if the names of government employees are being edited by the agency then those names should be disclosed.*"
20. Although, as I have said, it is not apparent, from the information before me, that the submission from the solicitor, expressed to be on behalf of the complainants' daughter, is submitted on behalf of the complainants, for the reasons I have given in paragraph 8 above, I have accepted the submission as material which is provided on behalf of the complainants pursuant to the onus on them under s.102(3).
21. FOI legislation is not concerned with the truth or otherwise of the contents of documents. In this instance, the question for my determination is whether, weighed against the public interest in protecting personal privacy, there is any countervailing public interest that is sufficient to tip the balance in favour of disclosure of information that is, *prima facie*, exempt matter under clause 3(1). The complainants have not persuaded me that there is such an interest. The matter deleted from Document 1 is personal information about a third party who was not an officer of an agency at the time of the report. That person merely notified the agency that a child was missing, and provided the address of the child's grandparents, the complainants, and asked police to attend at that address to ascertain whether the child was there. There is no suggestion that the information provided to the agency by the third party is in any way a misrepresentation of the facts. Further, the deleted matter contains no allegations, true or otherwise, against the complainants.
22. In my view, the public interest in a complainant being able to access information about him or her held by government agencies has been satisfied by the release of the substance of the third party's advice to the agency. I am not persuaded that there is any public interest that requires the disclosure of the name and place of employment of the third party. I find the matter deleted from Document 1 to be exempt under clause 3(1) of Schedule 1 to the FOI Act.
23. In relation to Document 2, matter has been deleted from folios 4 and 5 of that document. The matter deleted from folio 4; the fifth, sixth and seventh words in line 6 on folio 5, and the matter deleted from lines 8 and 9 of folio 5, is, *prima facie*, exempt matter under clause 3(1). However, that matter appears in the part of Document 2 that contains the notes of interview with the complainants' daughter. None of those notes refer to either of the complainants. In my view,

the notes of the interview with the complainants' daughter are outside the ambit of the complainants' access application. Therefore, the matter deleted from those folios is outside the ambit of that application as well and I find accordingly.

24. Even if the matter deleted from Document 2 were within the ambit of the access application, I consider that information to be exempt under clause 3(1) for the reasons given in paragraph 21 above. In particular, the matter deleted in lines eight and nine of Folio 5 of Document 2 contains personal information about the child and another third party. There is no material before me to persuade me that disclosure would, on balance, be in the public interest so that the child's right to privacy or the right to privacy of the other third party, should not be maintained.
