

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Lancaster and Ministry of Justice* [1999] WAICmr 39

COMPLAINT No: F1541999

DECISION No: D0391999

PARTIES: Philip Alan Mark LANCASTER

Complainant

MINISTRY OF JUSTICE

Respondent

No. of documents in dispute: 1

Exemption clause(s): Clause 3(1)

Mr Lancaster ('the complainant') is a convicted prisoner serving his sentence at Albany Regional Prison. On 31 May 1999, he made an application to the Ministry of Justice ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to his prison files. The agency treated his application as a request for access to personal information. He was given access to edited copies of those documents, except 2, which the agency claims are exempt under clause 5(1)(e) of Schedule 1 to the FOI Act.

The complainant sought internal review of the agency's decision and identified two other documents to which he sought access. He described those documents as incident reports written in December 1998 by two prison officers at Casuarina Prison in Perth. The agency's initial decision was confirmed following internal review. In addition, the agency informed the complainant that searches were conducted for the two incident reports he described, but those documents could not be found. On 31 August 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the two disputed documents from the agency. Inquiries were made with the agency to determine whether this complaint could be resolved by conciliation. In the course of those discussions, the agency withdrew its claims for exemption for one of the disputed documents and released a copy of it to the complainant. Inquiries were also made with prison officers about the two incident reports described by the complainant. Those inquiries were not successful and the prison officers nominated by the complainant as having completed the incident reports informed my office that those reports did not exist.

On 26 October 1999, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the one document remaining in dispute may not be exempt under clause 5(1)(e), as claimed by the agency. However, it was also my preliminary view that that document contained a considerable amount of personal information about persons other than the complainant, which may be exempt under clause 3(1) of Schedule 1 to the FOI Act. I also described, in detail, the inquiries made and searches undertaken to locate the incident reports. On the basis of those inquiries it was my preliminary view that those documents do not exist.

No response has been received from the complainant and I am not dissuaded from my preliminary view that the disputed document is exempt under clause 3(1) and that the incident reports do not exist. A summary of my reasons follows.

The exemption – Clause 3 (Personal information)

The disputed document is an incident report dated 8 December 1998. Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The definition of "personal information" in the Glossary to the FOI Act makes it clear that any information or opinion about a person from which that person can be identified is, on its face, exempt under clause 3(1).

I have examined the disputed document. In my view, it contains some personal information about the complainant. However, it also contains considerably more personal information about third parties. The exemption in clause 3(1) is subject to the limits on exemption in clauses 3(2)-3(6). However, in the circumstances of this complaint, the only limit

that might apply is the limit on exemption in 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.

Public interest

I consider that the public interest in the protection of personal privacy is very strong and may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information about a third party. The complainant submits that he has been denied natural justice, because he is unable to reply to any allegations made against him as he has no knowledge of the contents of the disputed document. The complainant submits that the disputed document should be released to him to allow him to defend his name and he has also expressed concern that the contents of disputed document may be held against him in some way.

I have examined the disputed document and considered other documents released to the complainant. I recognise that there is a public interest in persons being given access to personal information about them, and, in particular, being informed of allegations made against them and given an opportunity to respond to any allegations. However, in this case, the personal information about the complainant in the document is inextricably interwoven with the personal information about a third party. In my view, it is not practicable to give the complainant access to the personal information about him without disclosing personal information about another person.

I also recognise a public interest in prison authorities maintaining an ability to obtain information about possible breaches of the law or prison discipline to ensure the proper management of a prison. Given that there is no evidence before me that any disciplinary or other action has been taken against the complainant, or is likely to be taken against him in respect of an incident reported almost 12 months ago, I consider that that public interest, together with the public interest in the protection of personal privacy of third parties, to outweigh any public interest in disclosure in this instance. Accordingly, I find that the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act.

In any event, I consider that the document may also be exempt under clause 5(1)(b) and (c) as it seems to me that its disclosure could reasonably be expected to reveal the investigation of a possible contravention of the law and to enable the identity of a confidential source of information, in relation to the administration of the law, to be discovered.

Refusal of access – Section 26

Where an agency is unable to give access to a requested document, either because it cannot be found or does not exist, the agency may refuse access pursuant to s.26 of the FOI Act. In dealing with a complaint against a decision of an agency to refuse access under s.26, I consider that there are two questions that must be answered. Firstly, are there reasonable grounds to believe the requested document exists or should exist? In circumstances where the first question is answered in the affirmative, the second question is whether the searches conducted by the agency has taken all reasonable steps to locate the requested document.

The inquiries conducted by my office to locate the incident reports described by the complainant included checking his prison file and interviewing the two prison officers nominated by the complainant as being the authors of the two incident reports. One prison officer has no recollection of writing an incident report of the kind described by the complainant. The other recalls speaking to the complainant at Casuarina Prison at about the time referred to by him. However, he stated that he did not prepare an incident report. Both officers stated that it is standard prison management practice to place a copy of any incident report on the relevant prisoner's file and that details about the incident are also entered into a computerised database maintained at Casuarina Prison.

Inquiries were made with the Assistant Superintendent of Casuarina Prison. He carried out a search of the database referred to, but was unable to locate any incident reports of the kind described in by the complainant. Based on those inquiries, I am satisfied that all reasonable steps have been taken by the agency to find the incident reports. I am satisfied that there are no reasonable grounds for believing that the incident reports exist, or should exist, in the agency. Accordingly, I confirm the decision of the agency to refuse access to those documents on the ground that the documents either do not exist or cannot be found.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16 November 1999