

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Woodum Pty Ltd and Department of Environmental Protection* [1999] WAICmr 40

COMPLAINT No: F1411999

DECISION No: D0401999

PARTIES: WOODUM PTY LTD

Complainant

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Respondent

No. of documents in dispute: 50

Exemption clause(s): Clause 3(1)

On 12 January 1999, solicitors acting for Woodum Pty Ltd ('the complainant') made an application to the Department of Environmental Protection ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents held by the agency relating to a particular piece of land located at Lot 209, corner Beenyup and Bartram Roads, Banjup.

Initially, the complainant's solicitors inspected certain files held by the agency and identified those documents to which access was requested. The agency granted the complainant access to some, but not all, of those documents. The complainant sought internal review of the agency's decision. Following internal review, additional documents were released with personal information deleted. However, the agency refused access to others on the ground that those documents were exempt under clause 3(1) of Schedule 1 to the FOI Act.

On 19 August 1999, the complainants lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

Initially, a question arose concerning the scope of the complainant's access application. It was clear to me from the complainant's access application that the request was for access to documents associated with the particular piece of land. Therefore, I informed the complainant that I intended to confine my review to documents of the agency relating to that land only.

The disputed documents, initially 51 in total, were produced for my inspection. On 20 October 1999, after examining those documents and the other 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 some, but not all, of the information deleted from the disputed documents may be exempt under clause 3(1).

In response to my preliminary view that some of the deleted matter may not be exempt under clause 3(1), the agency released further copies of the disputed documents to the complainant without deleting that matter, including a full copy of one of those documents (Document 33). As a result, 50 documents remain in dispute between the parties. The complainant made no further submissions in respect of the balance of the disputed matter and did not withdraw its complaint. I am not dissuaded from my preliminary view that the matter remaining in dispute between the parties is exempt under clause 3(1). A summary of my reasons follows.

The exemption – Clause 3 (Personal information)

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

...

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

In the Glossary to the FOI Act, the term "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"*

I have examined the disputed documents and the information to which access has been denied. The disputed documents include submissions from third parties to the agency concerning the land in question, and various letters relating to the reservation of land on the Swan Coastal Plain sent to the agency from third parties and letters from the agency to third parties about that issue. The matter deleted from those documents consists of names, addresses, signatures and telephone numbers. I am satisfied that that information is personal information as defined in the FOI Act. In my view, on its face, it is exempt under clause 3(1).

Clause 3(1) is subject to the limits on exemption in clauses 3(2)-(6). Therefore, I have considered whether any of those limits applies in this case. In my view, the only limit on exemption that may apply is the limit in clause 3(6), which provides that matter is not exempt if its disclosure would, on balance, be in the public interest. Section 102(3) of the FOI Act provides that the onus of establishing that is upon the complainant as the access applicant.

Public interest

The protection of an individual's right to privacy is a public interest that is recognised and enshrined in the FOI Act by clause 3(1). I recognise that there is a strong public interest in ensuring the maintenance of personal privacy, which will only be displaced by a strong countervailing public interest that requires the disclosure of personal information.

Balanced against that public interest, there is a public interest in an applicant such as the complainant being able to exercise its right of access under the FOI Act. I also recognise that there is a public interest in people being informed about the decisions made by Government agencies and the reasons for those decisions, particularly where those people are directly affected by the decision, and in participating in informed public debate about such matters.

I consider that the latter public interests have been satisfied by the disclosure of the documents to which the complainant has already been given access, and by the disclosure of the disputed documents in edited form. In this instance, I do not consider that the factors favouring disclosure require the disclosure of personal information about third parties. In the absence of any material from the complainant to persuade me otherwise, I find that the matter remaining in dispute is exempt under clause 3(1) of Schedule 1 to the FOI Act.

I confirm the decision of the agency to refuse access to that matter.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16 November 1999