

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re Nield and Nield and Department of Environmental Protection* [1999] WAICmr 46**

**COMPLAINT No:** F1361999

**DECISION No:** D0461999

**PARTIES:** **Paul Gregory NIELD and Christine Mary NIELD**

Complainants

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Respondent

**No. of documents in dispute:** 3

**Exemption clause(s):** Clause 3(1)

In early 1999, Mr and Mrs Nield ('the complainants') were invited to attend at the office of the Department for Environmental Protection ('the agency') to inspect various documents held by the agency. Following that inspection, the agency gave the complainants copies of some of those documents. On 5 May 1999, the complainants made an application to the agency under the *Freedom of Information Act 1992* ('the FOI Act') seeking access to various documents, including those relating to themselves, their property and their business.

Access was granted to some, but not all of the documents. Further documents were released to the complainants in edited form following a request for internal review. On 18 August 1999, the complainants lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

#### **Review by the Information Commissioner**

I obtained the disputed documents from the agency. In the course of my dealing with this complaint, various issues were raised by the complainants concerning aspects of the agency's dealings with their access application. Some of those issues are administrative matters between the agency and the complainants. My office assisted the complainants by making inquiries, providing explanations and generally informing them of my role and functions under the FOI Act.

On 23 November 1999, I informed the parties in writing of my preliminary view of the scope of this complaint and the matters in dispute between them, including my reasons. It was my preliminary view that the matter in dispute may be exempt under clause 3(1) of Schedule 1 to the FOI Act. It was also my preliminary view that two particular documents described by the complainants as the "Coats' letters", did not fall within the ambit of the complainants' access application, but those documents may be also exempt under clause 3(1).

I received a further submission from the complainants. They did not dispute my preliminary view concerning the exempt status of most documents, but they did not withdraw their complaint in respect of 3 documents (Document 56 and the 2 Coats' letters). As the submission from the complainants did not raise any new matters for my consideration, I am not dissuaded from my preliminary view. A summary of my reasons follows.

#### **The disputed documents**

Document 56 is dated 13 November 1995 and is a report from one third party to another third party. The Coats' letters are letters sent from a third party to the agency. Although I do not consider that the Coats' letters fall within the ambit of the complainants' access application, I have dealt with them, in any event, as disputed documents.

#### **The exemption – Clause 3 (Personal information)**

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 the term "personal information" in the Glossary to the FOI Act makes it clear that any information about an individual from which the identity of that person could reasonably be ascertained, is, on its face, exempt under clause 3(1).

I have examined the disputed documents. Each of those documents contains personal information as defined in the FOI Act about third parties, other than the complainants. That information consists of names, addresses and other

identifying information. In the case of the Coats' letters, it includes the handwriting of the author. None of them contains any information about the complainants, their property or their business. In my view, unless any of the limits on exemption in clauses 3(2)-(6) applies, those documents are exempt.

### **Do the limits on exemption in clauses 3(2)-(6) apply?**

In the circumstances of this complaint, in my opinion, the only limits on exemption that may apply are those in clauses 3(5) and 3(6) of Schedule 1 to the FOI Act. Clause 3(5) provides that matter is not exempt matter under clause 3(1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant. Whilst the addressee of Document 56 consents to its disclosure to the complainants, and the author also consents, none of the other parties mentioned in that document have consented to the disclosure of personal information about them. Therefore, I do not consider that the limit on exemption in clause 3(5) applies.

### **Clause 3(6) - the public interest**

Clause 3(6) provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

I recognise that there is a very strong public interest in protecting personal privacy, and that public interest is reflected in the exemption in clause 3(1). I also consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information.

I recognise that there is a public interest in the complainants being able to exercise their rights of access under the FOI Act. In particular, I recognise that there is a strong public interest in the complainants being given access to any personal information about them in the requested documents. However, as I have said above, the disputed documents do not contain information about the complainants, their property or their business. Accordingly, I consider that the latter public interest carries less weight.

I also consider that there is a public interest in the accountability of agencies for their decision-making processes. However, in this instance, I consider that that public interest has also been satisfied by the agency providing the complainants with access to edited copies of various documents. I do not consider that the disclosure of the personal information about third parties would, in any way, further enhance the complainants' understanding of the information already disclosed to them.

In balancing the competing interests, I have given more weight to the public interest in protecting the personal privacy of third parties. In the absence of any material from the complainants that satisfies the onus on them under s.102(3) of the FOI Act to persuade me that the disclosure of personal information about third parties would be in the public interest, I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

### **The alleged discrepancy concerning a "post-it" note**

The complainants also raised an issue with me concerning a yellow "post-it" note attached to Document 13. The complainants claim that when the agency released a copy of that note to them, the contents of the note were different to the details transcribed by them on an earlier occasion when they inspected the documents at the agency.

Searches conducted by my office found no other yellow notes of that kind attached to any of the other documents in the agency's files relating to this complaint. Mrs Nield informed my office that she believes the note in her possession is not the same one that she saw during the inspection and she is of the view that the agency has changed the note by re-writing it.

In my view, the contents of the note and the transcription of that note by the complainants are not dissimilar. One explanation is that Mrs Nield incorrectly transcribed the note. Another explanation is that the agency has changed that particular record in some way. Taking into account that the earlier transcription and the note are so similar, I consider the former explanation to be the most likely one. In any case, I do not consider that there is any evidence to support the claim that the agency has changed that particular record in the manner suggested by the complainants.

**B. KEIGHLEY-GERARDY**

INFORMATION COMMISSIONER  
10 December 1999