

STYLES AND GOSNELLS

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

**File Ref: 96125
Decision Ref: D05496**

Participants:

Patricia Ann Styles
Complainant

- and -

City of Gosnells
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - clause 5(1)(c) - reveal a confidential source of information - clause 5(1)(b) - reveal an investigation into a contravention or possible contravention of the law.

Freedom of Information Act 1992 (WA) ss. 68(1), 72(1)(b), 75(1), 76(1), 76(2), 76(4);
Schedule 1 clauses 3, 5(1)(b), 5(1)(c)

Dog Act 1976 (WA) ss. 32(1), 33D(1)

Interpretation Act 1984 (WA)

Police Force of Western Australia v Kelly and Smith (Supreme Court of Western Australia, 30 April 1996, unreported, Library No. 960227)

Manly v Ministry of Premier and Cabinet (Supreme Court of Western Australia, 15 June 1995, unreported, Library No. 950310)

DECISION

The decision of the agency is varied. Two of the documents and the matter deleted from the third document are exempt under clause 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*.

D A WOOKEY
A/INFORMATION COMMISSIONER

11th October 1996

REASONS FOR DECISION

BACKGROUND

1. This complaint arises out of a decision of the City of Gosnells ('the agency') to refuse Ms Styles ('the complainant') access to documents of the agency requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 8 January 1996, the complainant made a complaint to the agency concerning an incident that occurred while the complainant was exercising her dog at a park on 30 December 1995. The complainant alleged that her dog was attacked by another dog in the presence of the complainant and the other dog's owner and another person. The complainant alleges that both she and her dog sustained injuries as a result of the incident.
3. A statement was taken from the complainant, and certain other inquiries made by the agency. By letter dated 21 February 1996, the agency informed the complainant that the matter of the alleged dog attack had been thoroughly investigated by its officers and that, although an incident had occurred, it was considered not to have constituted a dog attack. In that letter the complainant was informed that the owner of the other dog had been informed of the need for constant and effective control of the dog while in public, and that no further action would be taken in respect of the matter, which the agency considered closed.
4. Following further correspondence between the complainant and the agency, the agency informed the complainant that the agency determines whether or not legal action should be taken in such matters on the basis of the available evidence. All persons known to have been present at the time of the incident had been interviewed separately and their accounts differed substantially from that of the complainant. On the evidence collected the agency did not support a prosecution for a dog attack.
5. By letter dated 19 April 1996, stamped as having being received by the agency on 22 April 1996, the complainant applied for access to documents comprising "...*Council's record of investigation into a complaint I made about a dog attack.*"
6. By letter dated 31 May 1996, the agency advised the complainant that it had determined that access would be provided to certain documents; access would be provided to edited copies of four documents, with matter claimed to be exempt under clause 3 of Schedule 1 to the FOI Act deleted; and that access was refused to other documents, being comments from third parties, on the basis that they are exempt under clause 3.
7. On 17 June 1996, the complainant lodged an application, dated 12 June 1996, for internal review of the agency's initial decision. By letter dated 28 June 1996, the agency informed the complainant that the initial decision was

confirmed and that, in addition to being exempt under clause 3, the documents were also exempt under clause 5(1)(c) of Schedule 1 to the FOI Act.

8. On 23 August 1996, the complainant lodged a complaint dated 21 August 1996, seeking external review by the Information Commissioner of the agency's decision to refuse access to documents.

REVIEW BY THE INFORMATION COMMISSIONER

9. On 26 August 1996, pursuant to section 68(1) of the FOI Act, the Information Commissioner notified the agency of the complaint and, pursuant to sections 75(1) and 72(1)(b) of the FOI Act, required the production to her of the documents to which access had been refused and the agency's FOI file maintained in respect of the complainant's access application. Those documents were produced on 29 August 1996.
10. Inquiries were made by an Investigations Officer on behalf of the Information Commissioner and those inquiries included discussions with the complainant and with officers of the agency. Having considered the documents produced to her by the agency, including the disputed documents themselves, various documentation provided to her by the complainant, and the results of the investigations conducted on behalf of the Information Commissioner by the Investigations Officer, the Information Commissioner informed the parties of her preliminary view in respect of the complaint.
11. That view was that the matter deleted from three of the documents may be exempt under clause 3(1) of Schedule 1 to the FOI Act; that none of the documents exempt is under clause 5(1)(c) and that two documents and part of one document may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The parties were informed of the reasons for that view and the complainant was invited to reconsider her complaint. The complainant subsequently withdrew that part of her complaint concerning personal information about third parties which may be contained in the disputed documents, but did not otherwise withdraw her complaint.
12. Accordingly, as the complainant no longer seeks access to those parts of the documents containing personal information about third parties, the deleted parts of the three documents which the Information Commissioner considered, in her preliminary view, may be exempt under clause 3 for that reason are no longer in dispute.

THE DISPUTED DOCUMENTS

13. Two documents and part of a third document remain in dispute. For the convenience of the parties, I refer to those documents by the same document number assigned to them by the Information Commissioner throughout the conduct of this complaint. Those documents are:

Doc. No.	Description of document	Exemption claimed	
3	Statement from third party to Ranger of agency.	Clause 3 Clause 5(1)(c)	(for whole document)
5	Summary of interview with third party.	Clause 3, clause 5(1)(c)	(for whole document)
6	Hand-written report dated 11 December 1996 from Ranger Denise Parker to Senior Ranger.	Clause 3	(for deleted part only)

THE EXEMPTIONS

Clause 5(1)(c)

14. The agency has claimed that Documents 3 and 5 are exempt under clause 5(1)(c) of the FOI Act which provides that matter is exempt if its disclosure could reasonably be expected to enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered. Clause 5(1)(c) is clearly directed at protecting the confidentiality of the source of information to an agency in relation to the administration or enforcement of the law, rather than the confidentiality of the information itself.
15. For a document to be exempt under clause 5(1)(c), I consider that there are three requirements that must be established. They are that the source of the information to the agency must be confidential; that the information must relate to the administration of enforcement of the law; and that disclosure could reasonably be expected to enable the existence or identity of that source to be discovered.
16. Although I consider that disclosure of Documents 3 and 5 would reveal the identity of the sources of information contained in them, the agency has not provided any evidence to support its claim that those sources are confidential, in the sense required for exemption under clause 5(1)(c). Having examined the disputed documents and other documents already disclosed to the complainant by the agency, I am not persuaded that the sources of information contained in those documents are confidential and I find that those documents are not, therefore, exempt under clause 5(1)(c).
17. However, in dealing with a complaint, I am empowered by section 76(1) of the FOI Act to review any decision of an agency in respect of an access application and to make any decision the agency could have made in relation to the access

application. I am empowered by section 76(2) to, *inter alia*, vary the agency's decision to which the complaint relates. I am prohibited by section 76(4) from making a decision to the effect that access is to be given to a document if it established that it is an exempt document.

18. In view of those provisions, I consider that, if the evidence presented to me establishes that a document that an agency has claimed to be exempt is exempt under a particular exemption clause, even though the agency has not cited that particular clause, then I must find the document exempt. Although it was not claimed by the agency, I consider that the evidence before me establishes that Documents 3 and 5 and the deleted part of Document 6 are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

Clause 5(1)(b)

19. Clause 5(1)(b) provides:

“5.Law enforcement, public safety and property security

Exemptions

(1) Matter is exempt matter if its disclosure could reasonably be expected to -

(a) ...

(b) reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;”

20. In the decision of the Supreme Court of Western Australia in *Police Force of Western Australia v Kelly and Smith* (30 April 1996, unreported, Library No. 960227), Anderson J, after referring to the decision of Owen J in *Manly v Ministry of Premier and Cabinet* (Supreme Court of Western Australia, 15 June 1995, unreported, Library No. 950310), said at page 8:

“...documents which reveal that there is an investigation, the identity of the people being investigated and generally the subject matter of the investigation probably would satisfy the requirement stipulated by Owen J that the document “must reveal something about the content of the investigation”.”

21. At pages 12 and 13 of that decision, His Honour said that “[o]nce it appears that disclosure of the matter could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, the matter is exempt...” At page 10, His Honour said:

“I do not see why any element of novelty or exclusivity should be imported into the phrase “reveal the investigation”. A document may reveal a state of affairs which is also revealed by other things. The same state of affairs may be separately revealed in several documents. I do not think there is any difficulty in saying that the separate disclosure of each separate document reveals that state of affairs.”

22. Therefore, even though the complainant may be aware of certain information concerning the investigation, if the documents contain any information concerning the identity of the person or people being investigated and the subject matter of the investigation of a possible contravention of the law, then their disclosure could reasonably be expected to reveal the investigation of a possible contravention of the law and they will be exempt.
23. Although informed of the Information Commissioner’s view that the documents may be exempt under clause 5(1)(b) and the detailed reasons for that view, the complainant made no submissions in respect of clause 5(1)(b).
24. When the complainant lodged her complaint with the agency, the agency began an investigation into the circumstances of the alleged dog attack. The documents which remain in dispute in this matter are documents created by the agency in the course of its investigation into the incident. It is not in dispute that the purpose of the investigation was to determine whether there was sufficient evidence to initiate a prosecution for an offence under the *Dog Act 1976* (‘the Dog Act’). Under section 9 of the Dog Act, a local government has the administrative responsibility to enforce the provisions of that Act.
25. Under section 33D(1) of the Dog Act, if a dog attacks or chases any person, or any animal or bird in the charge of another person, every person liable for the control of the dog commits an offence, except in certain circumstances also detailed in that section. The prescribed penalty for the offence is a fine of \$1,000. Section 32(1) of the Dog Act provides the requirements for the control of dogs in, amongst other things, designated exercise areas. Failure to control a dog in accordance with the provisions of section 32(1) constitutes an offence.
26. The Dog Act is a written law as defined in the *Interpretation Act 1984*. The Commission of an offence under the Dog Act would clearly constitute a contravention of the law. Accordingly, I am of the view that an investigation into the commission or possible commission of an offence under the Dog Act constitutes an investigation of a contravention or possible contravention of the law for the purposes of clause 5(1)(b). Documents 3 and 5 and the deleted part of Document 6 contain information gathered in the course of, and for the purpose of, such an investigation, specifically, witness accounts of the incident under investigation.
27. Therefore, for the reasons I have given, in my opinion, the documents in dispute contain matter which could reasonably be expected to reveal the

investigation of a contravention or possible contravention of the law in a particular case, even though no charges have resulted, the relevant law being the Dog Act.

28. Accordingly, I find that Documents 3 and 5 and the matter deleted from Document 6 are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.
