

WARD AND FAMILY/CHILDREN

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 96132

DECISION No: D05696

PARTIES: Robert John Ward

Complainant

Department for Family and Children's Services

Respondent

No. of documents in dispute: 3

Exemption clause(s) : 3(1)

On 10 May 1996, Mr Ward ('the complainant') lodged an access application with the Department for Family and Children's Services ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents, file notes and correspondence made by the agency in connection with certain earlier telephone calls and visits he had made to offices of the agency. The complainant's application was treated by the agency as a request under the FOI Act for access to personal information about the complainant. Accordingly, the agency gave the complainant access in full to 10 documents and granted him access to edited copies of three other documents, after deleting from those three documents matter which the agency considered to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

On 25 July 1996, the agency received a facsimile communication from the complainant which it treated as a request for internal review in respect of its initial decision to give the complainant access to edited copies of three documents. On 7 August 1996, the internal reviewer of the agency confirmed the decision to give the complainant access to edited copies of those documents. On 2 September 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Pursuant to the provisions of the FOI Act, I obtained copies of the disputed documents from the agency. Although my Investigations Officer attempted to arrange a meeting with the complainant to discuss certain aspects of his complaint, that attempt was unsuccessful.

On 3 October 1996, after examining the disputed documents and considering the submissions of the parties, the then Acting Information Commissioner provided the parties in writing with her preliminary view of this complaint. It was her preliminary view that the matter deleted from the disputed documents is matter which is, *prima facie*, exempt matter under clause 3(1). The Acting Information Commissioner also gave the parties detailed written reasons for holding that view, and I agree with that view and those reasons. Although the complainant made further submissions to me in response to that preliminary view, those submissions have not dissuaded me from the preliminary view that the matter deleted from the documents by the agency is exempt matter under clause 3(1). A summary of the reasons provided to the parties follows.

The disputed matter

The three documents in dispute in this matter consist of (1) a facsimile transmission of two pages, dated 23/2/96, from the Canning Branch of the agency to the FOI Records Officer in Head Office; (2) an extract of Case Notes dated 1/2/96; and (3) Duty/Activity Register dated 6/2/96. The matter deleted from those documents consists of names, telephone numbers, a date of birth and other information about those named individuals. None of the deleted information relates to or concerns the complainant.

The Exemption - Clause 3(1) (Personal information)

Clause 3, so far as is relevant provides:

“Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).”*

In the Glossary in Schedule 2 to the FOI Act, “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 matter deleted from the disputed documents. I am satisfied that that matter is personal information about third parties as defined in the FOI Act. In my view, that matter is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

Limits on exemption

Pursuant to clause 3(5), matter is not exempt matter under clause 3(1) if the access applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant. In this instance, the complainant attached to his application for external review copies of 2 access applications dated 5 February 1996 made by third parties. Those applications bore annotations indicating that the complainant was authorised to receive and inspect copies of the documents the subject of those applications.

The third parties’ access applications, both dated 5 February 1996, predate the complainant’s access application by some five months. In my view, neither document constitutes evidence of consent by either of those third persons to the disclosure to the complainant of any personal information about either of them which may be contained in the disputed documents in this instance.

Although the complainant submitted that he had such consent, no evidence has been placed before me which satisfies me that the complainant is entitled to have access to the deleted matter.

Subclause 3(6) also limits the exemption in clause 3(1) and provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure of personal information about third parties would, on balance, be in the public interest. There is nothing before me in that regard.

Notwithstanding, I recognise that there is a public interest in an access applicant being able to exercise his or her right of access under the FOI Act. I also recognise a public interest in the maintenance of personal privacy. In the circumstances of this matter, I consider that those two competing public interests are the only relevant interests which must be balanced. In the absence of any material to persuade me otherwise, I consider that the public interest in maintaining the privacy of the third parties identified in the disputed documents outweighs the complainant’s right of access to that information.

Accordingly, for the reasons given in support of the Acting Information Commissioner’s preliminary view and summarised above, I find the matter deleted from the disputed documents is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
21 October 1996