

Monks and Logan City Council

(L 9/96, 16 November 1999, Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

1.-4. These paragraphs deleted.

REASONS FOR DECISION

Background

5. The applicant, Ms Monks, seeks review of a decision by the Logan City Council (the Council) to refuse her access, under the FOI Act, to the names, and in some cases the suburb of residence, of individuals who (in 1991) had completed comment sheets, distributed by a consultant to the Council, to gauge community opinion on the issue of whether the Council should introduce a Development Control Plan (DCP) for the Carbrook/Cornubia area. The Council, and four third party participants in this external review, contend that the matter in issue is exempt matter under s.44(1) of the FOI Act.
6. By an application dated 31 January 1996, the applicant sought access to the draft DCP and any associated documents. By letter dated 14 February 1996, Mr T Rowen of the Council informed the applicant of his decision to grant access in full to 568 documents, and access to a further 48 documents (the comment sheets) subject to the deletion of the names and addresses of the persons (or organisations) who completed comment sheets, on the basis that those names and addresses were exempt matter under s.44(1) or s.45(1)(c) of the FOI Act. The applicant then sought internal review of Mr Rowen's decision, which was affirmed (in a letter dated 28 March 1996) by Mr G Kellar, Chief Executive Officer of the Council.
7. By letter dated 18 April 1996, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Kellar's decision.

External review process

8. The documents containing the matter in issue were obtained and examined. After consultation with the applicant, it was confirmed that -
 1. she wished to pursue access to the names of all persons who completed comment sheets;
 2. she did not seek access to the addresses of those persons if they resided within Council boundaries; but
 3. she did seek access to the suburb of residence of those people who resided outside Council boundaries.

9. At my request, the Council advised me which addresses were located outside Council boundaries. My office then attempted to consult each of the persons who completed comment sheets. A number of individuals, and all of the organisations, indicated that they consented to disclosure of the information sought about them. The Council was accordingly authorised to disclose that matter to the applicant. However, a number of individuals objected to disclosure of their names and, where relevant, suburbs.
10. This means that the only matter remaining in issue is the names of those individuals who completed the comment sheets (their names being recorded on the comment sheets) which have been numbered by the Council (in the course of processing the relevant FOI access application) as documents 105, 107-108, 111-119, 131-133, 142-143, 145, 152-155, 157 and 169-170, along with the suburb of residence recorded in documents 118 and 152. Four of the individuals who objected to disclosure of their details applied for, and were granted, status as participants in this review, in accordance with s.78 of the FOI Act. I will refer to them as third parties A, B, C and D respectively.
11. In the first instance, the Deputy Information Commissioner informed the Council and the third parties of his preliminary view that the matter in issue may not concern the personal affairs of the individuals named, because the individuals appeared to be taking part in a public process. He invited the Council and the third parties to lodge submissions and/or evidence in support of their contention that the matter in issue is exempt under s.44(1) of the FOI Act. The submissions lodged by the Council and the third parties were exchanged between the participants, and the applicant was given the opportunity to lodge submissions in response. The submissions of the third parties were provided to the applicant in edited form so as not to disclose the identity of the parties, which is in issue in this external review. In making my decision, I have considered the following material:
 4. the documents containing the matter in issue
 5. the initial and internal review applications and decisions
 6. the external review application
 7. submissions of the applicant dated 21 November and 12 December 1996, and 9 May and 9 September 1997
 8. submissions on behalf of the Council dated 2 January and 14 February 1997
 9. submissions from Third Party A dated 11 November 1996 and 6 April 1997
 10. a submission from Third Party B dated 14 November 1996
 11. a submission from Third Party C dated 20 November 1996
 12. a submission from Third Party D dated 26 November 1996.
12. Correspondence was received from other third parties who did not apply to become participants, and from elected representatives. However, this correspondence did not add to the arguments relevant to the issues I must address, and I have not considered it in reaching my decision.
13. I should note that in the submission on behalf of the Council dated 2 January 1997, it was contended that the matter in issue was also exempt under s.40(a), s.41(1) and/or

s.45(1)(c) of the FOI Act, although later correspondence appeared to indicate that the Council only sought to rely on s.44(1) of the FOI Act. In any event, I am satisfied that s.40(a), s.41(1) and s.45(1)(c) have no application to the matter in issue, for reasons explained in my letter to the Council's solicitors dated 16 January 1997. I am also satisfied that a contention advanced by the Council's solicitors, to the effect that the doctrine of legitimate expectation required a finding that the matter in issue is exempt under s.44(1), was entirely misconceived, for reasons explained in my letter to the Council's solicitors dated 16 January 1997, and in the Deputy Information Commissioner's letter to the Council's solicitors dated 20 February 1997.

14. I note that one third party submitted that the matter in issue is exempt under s.42(1)(c) and s.46(1)(b) of the FOI Act. However, I have only found it necessary to consider the application of s.44(1) of the FOI Act.

Application of s.44(1) of the FOI Act

15. Section 44(1) of the FOI Act provides:

44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

16. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.

Personal affairs matter

17. In my reasons for decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227, I identified the various provisions of the FOI Act which employ the term "personal affairs", and discussed in detail the meaning of the phrase "personal affairs of a person" (and relevant variations thereof) as it appears in the FOI Act (see pp.256-257, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

1. family and marital relationships;
2. health or ill health;
3. relationships and emotional ties with other people; and
4. domestic responsibilities or financial obligations.

Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

18. The task of characterising information comprising a person's name often gives rise to difficulties, and I recently recapitulated the relevant principles at paragraphs 21-23 of *Re Pearce and Queensland Rural Adjustment Authority* (Information Commissioner Qld, Decision No. 99008, 4 November 1999, unreported):

21. *A person's name, in isolation, does not ordinarily constitute information concerning that person's personal affairs. In Commissioner of Police v the District Court of New South Wales and Perrin (1993) 31 NSWLR 606, Mahoney JA said (as p.638):*

A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.

Likewise, in State of Queensland v Albietz [1996] 1 Qd R 215, de Jersey J said (at p.221):

I do not think that the name by which a person is known ordinarily forms part of that person's "personal affairs".

22. *However, a person's name almost invariably appears in a document in the context of surrounding information. It is the characterisation of a person's name, in the context of the information which surrounds it, which may give rise to difficulties. Thus, Lockhart J, sitting as a member of a Full Court of the Federal Court of Australia, in Colakovski v Australian Telecommunications Corporation (1991) 100 ALR 111, said (at page 119):*

There is a real question as to whether the name and telephone number can answer the description of 'information relating to the personal affairs' of that person under s.41(1). Viewed as an abstract conception I would be inclined to the view that it could not, but such questions are not considered by Courts in the abstract.

23. *Thus, while disclosure of a person's name, in the abstract, would not ordinarily be a disclosure of information concerning that person's personal affairs, disclosure of that name in the context in which it appears may disclose information concerning the person's personal affairs (or it may not - there is always a question of the proper characterisation of the matter in issue, in its context, which must be addressed in each particular case).*

19. In the context of its surrounding information (which has already been disclosed to the applicant), disclosure of the matter in issue would disclose the fact that identifiable individuals were willing to participate in the process of consultation undertaken by the Council's consultants (during the preliminary stages of preparation of a draft DCP for the Carbrook/Cornubia area) by completing the comment sheets, and the fact that those individuals made the particular comments recorded on the sheets that bear their names. The initial question for determination is whether that information is properly to be characterised as information concerning the personal affairs of the respective individuals who completed comment sheets. Although the issue is relatively easy to define, it involves a difficult exercise of judgment.
20. Prior to receipt of submissions from the Council and the third party participants, the Deputy Information Commissioner ventured the preliminary view that the individuals concerned were engaged in a public (rather than a private) activity when they participated in the consultation process organised on behalf of the Council, and that disclosure of their names, in the context of the respective comment sheets, would not disclose information concerning their personal affairs. The applicant's submissions appeared to endorse this view, asserting (in her submission dated 9 September 1997):

If the commissioner now gives anonymity to a few objectors it could in fact set a precedent for any future public consultative processes and put in doubt the integrity of any future public consultations and involvement in issues which affect the taxpayers and ratepayers of this nation.

21. In the submission dated 2 January 1997 lodged on behalf of the Council, the Council's solicitors put the following argument:

... a document in which an individual discusses that individual's preferred relationship with his or her environment, and the control of that environment through the exercise of planning controls by a local authority, is properly characterised as "the personal affairs of a person" in terms of s.44(1). The name and address of that person should therefore be deleted from any such submission made by that person pursuant to s.32 of the [FOI Act].

It is not to the point with respect that the consultation process may have been conducted as part of what might be considered to be a "public" consultation process. ... There is a reasonable apprehension in this case that the privacy of natural persons will be disturbed if their names and addresses are released. A discussion by them, in their submissions, about development controls, essentially a discussion of their preferred relationship with their environment, constitutes an aspect of the affairs of those persons in the sense that the matters discussed are matters of private concern to the individuals. ...

...

... The particular context must be considered in each case when deciding whether to exclude names, addresses and telephone numbers. ... Matters relevant to a consideration of the relevant context here include:

- 5. the fact that the submissions were made prior to the [FOI Act] and citizens would have had a reasonable expectation of confidentiality (notwithstanding [s.10 of the FOI Act]);*
- 6. the fact that, in the experience of the agency, the privacy of persons who have made submissions of various types as part of the functioning of local government, can be interfered with by others who hold a contrary view;*
- 7. the fact that the substance of the submissions relate to those individuals' relationships with their environment and are therefore matters of private concern to the individuals who made submissions;*
- 8. the fact that these individuals have objected to disclosure of their names and addresses as acknowledging apprehension of the invasion of their privacy and the expectation of confidentiality.*

22. The submissions of the third parties are adequately represented by the following comments of Third Party D:

In your preliminary view, you state that I was engaged in a public rather than a private activity when I participated in the public consultative process organised on behalf of the Logan City Council. I agree with you that my comments were in the public process and are a part of the public activity of the community consultative process. However, my name and address were not included as comment, and therefore should not be considered in the public domain.

The information sheet prepared by Hollingsworth Dames & Moore asked for comments that would form the basis of the submission. There was no mention of either my name or address forming part of the public domain information. My comments were made in good faith, without fear of reprisal from groups or individuals who have different opinions. I did not agree to having my name made public. Releasing my name interferes with my rights as a private citizen. Please note, I view only releasing my name as the same as releasing my personal details; a telephone book can easily be used to find my address. The public consultative process depends on the community participating and so seeks to encourage individuals to contribute their opinions to the process. The community will only do that if their comments can be made without fear of prejudice or intimidation. To disclose personal details, a name or address, will in fact undermine the public consultative process.

I agree with your concern over maintaining the integrity of the consultative process. However, I also believe that the integrity of individual participants in this process amounts to verifying that the comments are from bona fide members of our community, and that is something Logan City Council and Hollingsworth Dames & Moore were responsible for. If there is still a question of integrity, an

independent body could be used to check names of participants against the electoral roll. The question of integrity is not a valid reason for releasing personal details of individual participants to the public.

23. I consider it is necessary to examine in some detail the context in which the matter in issue appears. At the time when the comment sheets were prepared, the statutory requirements for making a DCP (which formed part of the planning scheme for the relevant area) were set out in the *Local Government (Planning and Environment) Act 1991* (the *P & E Act*). The *P & E Act* required the Council to go through various stages in developing a DCP, including a public notification and display stage. During that stage, any person could make a written submission in relation to a draft DCP. Every submission was required to be signed, and to include the name and address of the person making the submission, although there was no requirement for public display of submissions.
24. However, the comment sheets in issue were used in a preliminary stage of development, that predated any part of the statutory process laid down in the *P & E Act*. It appears that, prior to any statutory steps being undertaken, the Council considered it appropriate to make preliminary investigations with regard to a possible DCP. To that end, in 1989, the Council resolved to retain Hollingsworth Dames & Moore (Hollingsworth), Engineers and Planners, to carry out a planning study. Following initial investigations, Council resolved to have Hollingsworth develop a draft DCP for consideration by Council. As part of that process, Hollingsworth developed a community consultation program to inform interested persons of the proposal to prepare a DCP, and to provide the opportunity for input prior to preparation of a draft DCP. Hollingsworth proposed to prepare an information leaflet for distribution to residents and other interested persons. In order to focus comments from the public on relevant considerations, a standardised comment sheet was prepared. An advertisement was then run in a local newspaper stating that the DCP was to be incorporated into the Council's planning scheme and that all interested persons were invited to be involved in the process and contribute "*by attending the community participation open house. Come and speak with the consultants and put your ideas in a comment sheet.*"
25. The comment sheet was part of a four page document that was distributed in letter boxes and made available at Council chambers and a local shopping centre, and at the 'open house'. The information sheet covering the comment sheet stated:

This information sheet has been prepared to advise residents in the area and other interested persons that the development control plan is being prepared and to invite comments and submissions from the public on what planning strategies should be included.

Once comments and submissions are received, they will be included in the planning process and given due consideration in the development and preparation of the development control plan.

All interested persons are encouraged to respond using the enclosed comment sheet, so the community's comments can be included in the decision making process.

26. The document went on to state that there would be two opportunities to contribute to the planning process. The first was the "initial consultation" phase whereby members of the public were encouraged to consider features and aspects of the area and the way in which they would like it to develop, and then to attend the open house to review maps and reports and consult with Hollingsworth staff and to "respond positively by the attached comment sheet and at the open house so that community opinion can be built into the plan". The second stage of "statutory review" would proceed at a later date.
27. The comments in the comment sheet formed a basis for a report from Hollingsworth to the Council dated June 1991, entitled "Carbrook and Cornubia Development Control Plan - Community Consultation". However, no steps were taken to implement the statutory process set out in the *P & E Act*, and the DCP did not proceed.
28. The applicant states that she was informed by an officer of the Council that comments would be open to public scrutiny, although she conceded in a telephone conversation with a member of my staff (on 23 May 1996) that there was no express statement that the identity of the authors of comments would be open to public scrutiny. The applicant has also argued that the individuals who completed the comment sheets were taking part in a public process and that there was no reference in the information sheet suggesting that comments would be kept confidential.
29. I have previously held that the fact that an individual, acting in his/her personal capacity, has lodged a complaint with a government department or agency is properly to be characterised as information concerning that person's personal affairs: see *Re Stewart* at p.268, paragraph 119; *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 at p.487, paragraphs 26-27, and pp.488-490, paragraphs 33-38; and *Re Morris and Queensland Treasury* (1996) 3 QAR 1 at p.12, paragraph 28(b). At p.489 (paragraphs 34 and 36) of *Re Byrne*, I said:
 34. *There was nothing in the circumstances attending the making of the complaint that might take the making of it out of the sphere of the private aspects of the third party's life and arguably place it in the public sphere (cf. the discussion in Re Stewart at paragraphs 60 to 62 about the possible argument that matters widely known in the community or easily verifiable from public records cannot be said to be "personal"). For example, if the third party's identity and complaint had been announced by the third party at a meeting of the GCCC that was open to the public, or published in a letter to the Gold Coast Bulletin, it would be arguable that the making of the complaint was a public act rather than a personal affair of the third party, for the purposes of applying s.44(1) of the FOI Act to a record of the complaint in the possession of the GCCC. (The public nature of the making of a complaint would doubtless be relevant in any event to the exercise of the discretion possessed by agencies or Ministers under s.28(1) of the FOI Act as*

to whether or not to rely on the s.44(1) exemption even if it were available.) I note in this regard what was said by Eames J of the Supreme Court of Victoria concerning s.33(1) (the personal affairs exemption) of the Freedom of Information Act 1982 Vic in University of Melbourne v Robinson [1993] 2 VR 177 (at p.187):

"The reference to the 'personal affairs of any person' suggests to me that a distinction has been drawn by the legislature between those aspects of an individual's life which might be said to be of a private character and those relating to or arising from any position, office or public activity with which the person occupies his or her time."

...

36. *While the subject matter of the third party's complaint in this case cannot itself be characterised as information concerning the personal affairs of the third party (it could be described as information concerning local civic affairs), I am satisfied that disclosure of the matter in issue would disclose the fact that the third party made the complaint which is noted in the Memorandum, and I am satisfied that that fact is information concerning the personal affairs of the third party, within the meaning of s.44(1) of the FOI Act.*

30. At p.256 (paragraph 76) of *Re Stewart*, I said:

76. *When dealing with matters that fall into the grey area, I think it is legitimate to draw on the privacy material discussed earlier, for assistance. I think it is legitimate to resort for a guiding principle to a variant, appropriate to the context, of the fallback test to which the law frequently resorts in areas which substantially call for the making of value judgments reflecting current community standards, i.e. the reasonable person test. In my opinion, an appropriate guiding principle when difficult and marginal cases are encountered in the grey area should be that the phrase "personal affairs of a person" extends to the kinds of information concerning the affairs of a person which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which the person (whose affairs the information concerns) ought to be entitled to control, and hence, which should be capable of being claimed to be exempt from mandatory disclosure under the FOI Act.*

31. Under the *P & E Act* (which has now been superseded), amendment of a planning scheme was frequently a public process. For example, objections could be made to a particular rezoning application, and a decision of a local authority could be challenged by either the

applicant or an objector in the public forum of the Planning and Environment Court. In such a case, both the substance of the objections, and the identity of the objectors, were likely to become public knowledge. In the case of a DCP, people making submissions within the statutory framework were required to provide their name and address, although I am not aware of any statutory requirement that the name and address be made public.

32. However, the consultation process under consideration in this case preceded that formal and public framework (and indeed, in this instance, the statutory processes never were invoked). The comments were sought from members of the public in the course of preliminary investigations by consultants acting on behalf of the Council. The opportunity was available to attend a public forum (the open house), but attendance was not a prerequisite to completing a comment sheet, and there was no indication that the identities of individuals who completed comment sheets would be made public.
33. I consider that the individuals who completed comment sheets ought reasonably to have expected that their comments might be disclosed in a public forum, whether in whole or in a summarised form, in order to promote further public comment/debate about the proposed DCP. However, I do not consider that they would have (or ought reasonably to have) expected disclosure of information about their identities in the same way. Given the preliminary and informal nature of the consultation process, I consider (applying the test suggested in paragraph 76 of *Re Stewart* - see paragraph 30 above) that information as to the identity of the individuals who completed comment sheets is information which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which those individuals ought to be entitled to control. The choice of whether or not to make a comment to a consultant on a preliminary proposal was, in my view, sufficiently connected to the private aspects of the lives of the relevant individual that disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning their personal affairs. Hence I find that the matter in issue comprising the names of individuals is *prima facie* exempt under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1).
34. As is probably evident from the foregoing discussion, I regard this as a difficult, if not borderline, case, and had I been considering the names of individuals who made written submissions in relation to a draft DCP, as part of the statutory process prescribed in the *P & E Act*, the outcome of the exercise of characterising that matter (for the purposes of applying s.44(1) of the FOI Act) may well have been different.
35. Turning to the matter in issue which consists of the suburbs of residence of the two individuals who did not reside within Council boundaries, I said in *Re Stewart* at p.258 (paragraph 81):

81. *For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no*

longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases: see, for example, Re Borthwick and Health Commission of Victoria (1985) 1 VAR 25 ...

36. Disclosure of the suburb names by themselves would not disclose the identity of the individuals who completed those particular comment sheets. Given my finding below at paragraph 41 in relation to disclosure of the names of the individuals in issue, I find that disclosure of the suburbs would not disclose information concerning the personal affairs of identifiable individuals, and that the suburb names on documents 118 and 152 are not exempt matter under s.44(1) of the FOI Act.

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Public interest balancing test

37. Because of the way in which s.44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information (to an extent that will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue in the particular circumstances of any given case), and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. It therefore becomes necessary to examine whether there exist public interest considerations favouring disclosure, which outweigh all identifiable public interest considerations favouring non-disclosure, such as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.
38. The applicant contended that she wished to obtain access to the names of authors because she was concerned that a number of environmental activists may have lodged comments which would unduly influence the Council. She considered that people who made comments should be prepared to stand by them. She was also concerned that a large number of the comments may have been made by people unconnected with the locality, living outside Council boundaries. She was also concerned that if people making submissions in this instance were allowed to remain anonymous, it could set a precedent for other community consultation processes.
39. It is first important to note that the applicant was given access to the text of all the comments. She was therefore in a position to rebut the substance of the comments made, if she considered them invalid or somehow skewed towards a particular point of view. Further, I note that only two of the individuals whose identities remain in issue resided outside Council boundaries. That is not to say that the consultant or the Council should have paid any less regard to their comments. Those individuals may well have had a significant interest (perhaps as owners of leased premises, or as people who worked or carried on a business) within the Council area, and in any event, the want of residence in, or even any connection with, the Council area did not necessarily preclude the expression of cogent or useful ideas about development within Council boundaries. However, my

decision that the suburbs appearing on documents 118 and 152 do not qualify for exemption will enable the applicant to ascertain which comments were made by people who resided outside Council boundaries. I do not consider that there is any significant public interest consideration that favours disclosure of the names of those persons.

40. As to the final argument of the applicant referred to in paragraph 38 above, it may well be (as I have observed above) that the position with regard to whether matter concerns the personal affairs of a person would be different in the case of persons who choose to become involved in the more formal, statutory-based submission process, relating to the development of a DCP. In that regard, I note with interest the remarks made by Deputy President Hennessy of the New South Wales Administrative Decisions Tribunal in *Gilling v General Manager, Hawkesbury City Council* [1999] NSW ADT 43, who, in applying the personal affairs exemption in the *Freedom of Information Act 1989* NSW to the names and addresses of objectors to a specific development application lodged by a landowner with the respondent Council (which, I note, contrasts with a more generalised Development Control Plan of the kind that was under consideration in the present case) said (at paragraphs 49-55):

49. Having access to the names and addresses of objectors furthers important objectives of the FOI Act including the openness and accountability of council decision making. One objective of the FOI Act, reflected in the Second Reading Speech, is to give people access to information on which government decisions are made and which vitally affect their lives.

50. The process of gathering submissions is intended to assist council to make an informed decision about whether to approve the development application. The names and addresses of the objectors and the details of the objections raised are relevant when council assesses development applications. Council needs to be satisfied that the objection is made in good faith by a concerned individual. If the name is not included there is a risk that a single individual may have lodged more than one objection or that the objection is fabricated. The address of an objector is also relevant for the same reasons. In addition, the address of an objector is relevant when considering the merits of the objection because, for example, if the person is complaining about noise levels or obstruction to their view, it will be important to know where the person lives in relation to the proposed development.

51. In this case, council has made a decision about Ms Gilling's development application which "vitally affects her life" without giving her access to some of the information on which that decision was based. Unless there are convincing privacy or other reasons for withholding certain information, all the factors taken into account by the council in making its decision must be known so that the decision is transparent and council can be accountable for it.

52. *The importance of applicants having access to the names and addresses of objectors is highlighted by the Ombudsman's FOI Policies and Guidelines (second edition) which recommend that objections to building applications and development applications be released by councils on request, without resort to the FOI Act. The Ombudsman goes on to say that:*

... the names, addresses and details of the objections raised by objectors must be included in reports to decision-makers if those objections are to be properly assessed by councils, or committees or council staff under delegated authority.

Councils should take all available opportunities to inform residents that confidentiality will generally not be available ... (at 49-50).

...

55. *The applicant's original purpose for requesting disclosure of the names and addresses was so that she could either contact them to discuss their objections and/or put arguments to council which addressed those objections. These are both legitimate reasons for seeking the information which would have furthered the public policy purposes of the legislation.*

41. I must consider each case on its merits, and weigh up the public interest considerations for and against disclosure of the particular matter in issue in each case. Considering the points raised above, I am not satisfied that there are public interest considerations favouring disclosure of the names of the relevant individuals, which are of sufficient weight to overcome the public interest consideration (inherent in satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act) which favours non-disclosure of information concerning the personal affairs of persons other than the applicant for access. I therefore find that disclosure of the names of the individuals which are in issue would not, on balance, be in the public interest, and that those names comprise exempt matter under s.44(1) of the FOI Act.
42. I should note that the Council and the third parties raised as considerations favouring non-disclosure the potential for the applicant to make contact with, and harass, the individuals who completed comment sheets. They cited as evidence of this District Court proceedings commenced by the applicant against a former Councillor. The Council also raised the potential for members of the public to be less likely to engage in consultation in the future if it became known that their identities might be disclosed. A considerable proportion of the submissions lodged by the participants was addressed to these issues. However, given the analysis which I have set out above, I have not found it necessary to consider the validity or weight of these alleged considerations favouring non-disclosure.

DECISION

43. I vary the decision under review (being the decision of Mr G Kellar made on behalf of the Council on 28 March 1996) by finding that the suburb names on folios 118 and 152 are not exempt matter under the FOI Act, but that the balance of the matter in issue (identified at paragraph 10 above) is exempt matter under s.44(1) of the FOI Act.