

Grimley and Department of Mines & Energy

(S 129/98, 2 August 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. By letter dated 6 May 1998, the applicant applied to the Department of Mines and Energy (the Department) for access under the FOI Act to a number of documents, including "*[t]he 'Schedule of Accidents' held in the minutes of meetings of the Electrical Industry Safety Advisory Committee since 1st July 1995 to this present date*".

6. By letter dated 1 July 1998, Ms P Ashe, the Department's FOI decision-maker, informed the applicant that she had determined that the Schedule of Accidents (the Schedule) - described as document 37, and consisting of 57 pages - should be disclosed in part only, subject to the deletion of information which Ms Ashe had determined was exempt from disclosure under s.44(1) of the FOI Act. The Schedule contains a record of accidents in Queensland relating to electric power or electrical contractors, which resulted in injury or death. Information about each accident is set out in four columns which record:

Number	Date	Whether fatal or non-fatal, plus name of injured employee and of employer	An account of the accident
--------	------	---	----------------------------

7. Each page of the Schedule records entries for, on average, three or four accidents, covering a period from January 1995 to March 1998. The matter which Ms Ashe determined was exempt under s.44(1) consisted of "*the names of members of the community and the names of deceased persons*". Access was, however, granted to information in the first two columns, and information in the final column recording accounts of accidents.

8. On 21 July 1998, the applicant sought internal review of Ms Ashe's decision, challenging the 'sufficiency of search' by the Department for documents falling within the terms of his access application. By letter dated 30 July 1998, the applicant informed the Department that he also wished to apply for internal review of Ms Ashe's decision that the names of employees which appeared in the Schedule were exempt from disclosure to the applicant, stating that "*I require the employees names in order to indicate the safety records of individual organisations to appropriate authorities*".

9. By letter dated 5 August 1998, Mr Rowan Hindley, the Acting Manager, Executive Support Unit, informed the applicant that he had decided to disclose a number of additional documents

to the applicant, but that he had decided to uphold Ms Ashe's decision with respect to the names of employees in the Schedule.

10. By letter dated 22 August 1998, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Hindley's decision with respect to matter claimed to be exempt in the Schedule, and also raised a 'sufficiency of search' issue. The applicant stated, however, that his letter dated 30 July 1998, expanding his application for internal review, should have requested access to the names of employers, not of employees, which was a typographical error. (The Department had deleted the names of employers from the Schedule, as well as the names of employees.) The applicant stated that he had subsequently pointed this error out to Mr Hindley, and that Mr Hindley had declined to alter his decision.
11. My Office subsequently confirmed with the applicant that he sought access to the names of employers, and did not wish to press for access to the names of employees.

External review process

12. The Department was requested to provide this Office with a copy of the matter in issue, and with details of any searches which had been undertaken to locate the additional documents which the applicant contended should be in the possession of the Department. The Department forwarded copies of relevant documents to my Office under cover of a letter dated 7 September 1998, including a copy of a letter dated 31 August 1998 from Mr Hindley to the applicant, explaining that the documents which the applicant believed had not been located and dealt with in the course of his FOI access application either did not exist, or were not received by the Department until after that FOI access application was made, and therefore fell outside the scope of that access application.
13. The applicant was subsequently informed that I had no jurisdiction in relation to documents which fell outside the scope of his FOI access application dated 6 May 1998. The applicant informed my Office that he accepted that the additional documents fell outside the scope of that access application, and that he would pursue access to them by other means. That left in issue in this review only the names of employers in the Schedule.
14. On considering the Schedule, I formed the preliminary view that disclosure of any part of the Schedule that would identify an employee as having been injured or killed would disclose information concerning that employee's personal affairs, and that this would extend not only to the names of employees who were injured or killed but also to the names of self-employed contractors. It was my preliminary view that such matter qualified for exemption from disclosure to the applicant under s.44(1). The applicant was informed of my preliminary view and advised my staff that he accepted that view with respect to the names of self-employed contractors, and did not seek access to that matter.
15. The matter remaining in issue in this review therefore comprises the names of private firms or companies, and of electricity authorities, who were the employers of persons injured or killed in the electrical accidents listed in the Schedule. I will provide the Department with a copy of the Schedule with the matter remaining in issue marked on it.

16. By letter dated 7 June 1999, I informed the Department of my preliminary view that the matter remaining in issue was not exempt from disclosure to the applicant. The Department advised my Office, by letter dated 22 June 1999, that it did not accept my preliminary view, stating that:

In the normal course of events, I would agree with your interpretation of s.44(1) of the Freedom of Information Act 1992 (FOI Act).

However, I am sure you are aware of the tragedy and sensitivity which surrounds this case.

I support strongly Mr Robert Nelson's contention in his letter to you dated 7 September 1998 [forwarding copies of relevant documents to this Office] that:-

"...if the name of the employer organisation was not exempted, it would be possible to identify the deceased person and that disclosure of personal affairs might lead to attempts to contact the next of kin of the deceased."

It is the strong belief of the departmental officers involved in this matter, that release of further information to the applicant could lead to further distress being suffered by individuals whose loss has been great, already.

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

17. 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.

18. 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.
19. 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.
20. 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.
21. The matter remaining in issue comprises the names of employers of persons involved in accidents in the course of their work for those employers. Some of the employers are large organisations. Some of them may be relatively small. Disclosure of the names of employers would not, by itself, disclose anything about individual employees who have been injured or killed. What it might enable the applicant to do (and this is what the Department has expressed concern about) is to make enquiries of individual employers which might lead to the applicant being able to establish the identities of such employees. However, the responses of employers in any case would be a matter for them.
22. In a number of exemption provisions in the FOI Act, Parliament has adopted a test requiring consideration of whether certain prejudicial effects "could reasonably be expected to ..." arise. However, when applying s.44(1) my decision must be based on whether disclosure of the matter in issue would disclose information concerning the personal affairs of persons other than the applicant for access.
23. I have found, in a number of previous decisions, that matter which does not specifically name a person can nevertheless be capable of identifying a specific person to the applicant seeking access to that information (for example, information which the applicant would know that only one person could have provided to the agency). However, I do not accept that the matter remaining in issue in this case is matter of a kind which is capable, in itself, of revealing anything concerning the personal affairs of any of the employees named in the Schedule. The mere disclosure of names of employers would not disclose any information concerning the personal affairs of employees. That matter therefore does not qualify for exemption from disclosure under s.44(1) of the FOI Act.

DECISION

24. I vary the decision under review (being the decision of Mr Hindley dated 5 August 1998), by finding that the matter remaining in issue (identified at paragraph 15 above) is not exempt from disclosure under s.44(1) of the FOI Act.