

York and Queensland Police Service

(S 79/95, 15 August 1997, Information Commissioner Albietz)

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

1. - 5. [These paragraphs removed.]

REASONS FOR DECISION

Background

6. By letter dated 6 February 1995, the applicant requested access under the FOI Act to certain information held by the Queensland Police Service (the QPS). In that letter, the applicant relevantly stated:

I request all information naming dates, time, and any other accusations involving [a third party] v myself. It is important that every time she has phoned or visited the police and named myself or other persons about the same problems be included in any type of copys.

I am aware that what I request is a rather large file but every time I or others were accused is very important to help my case for compensation from the relevant partys involved.

It should be noted that I had asked the [local] police at various times for information as to this case but was refused anything even though I have seen the file and some of its vast amount of complaints, all of which were never found true by anyone.

7. Having received no response from the QPS within the time prescribed by the FOI Act, the applicant applied to me for review, under Part 5 of the FOI Act, of the QPS's deemed refusal of access to the information he had requested: see s.79 of the FOI Act. In his application for external review, dated 10 April 1995, he stated:

The document/file contains dates and times, what happened, etc. from accusations made by [the third party] of [the third party's address].

The file also contains information of other people that have been accused of the same thing before I was accused and now further people which are now accused.

It should be noted that I have been proven NOT guilty of anything with regards to [the third party].

...

As a result of [the third party] accusations, I have no choice but to commence legal action to recover costs incurred when losing the job, being evicted, moving expenses for the three moves, etc, plus I seek a public apology from her relieving (sic) myself from any past or present or future involvement from the whole matter.

The file is necessary to substantially prove her and the [local] police harassment upon myself.

There is a possibility that [the third party] will move from the area making the recovery of any costs very difficult indeed which is why I would appreciate the help to obtain the file and any other documents that "prove my innocence in writing".

I have been visited by the Superintendent of [the regional centre] Police at my request for an apology from the police, at this visit he had the file with him and although he gave a personal apology I was not able to copy any information, incidentally, these accusations would number around 400!

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External Review Process

8. Upon receipt of Mr York's application for external review, I obtained copies of the documents which the QPS identified as the documents falling within the terms of Mr York's FOI access application dated 6 February 1995. Those documents (numbered 001-030 (inclusive)) have been examined in my office.
9. By letter dated 31 May 1995, the QPS informed me that it was prepared to give the applicant access to the documents numbered 001-004 and 006-010.
10. By letter dated 26 April 1996, I authorised the QPS to give the applicant access to those documents, subject to the deletion of segments of those documents which concerned entirely separate police matters (having nothing to do with Mr York) being matter which fell outside the terms of Mr York's FOI access application.
11. By letter dated 7 May 1996, the QPS informed me of its revised position in respect of the balance of the matter in issue. In summary, the QPS was prepared to give the applicant access to the matter remaining in issue, except for certain matter which it considered fell outside the terms of the applicant's FOI access application and/or matter which it claimed to be exempt matter under s.44(1) of the FOI Act. That matter comprised the name of another person, and [the third party's] date of birth, where they appeared in the documents remaining in issue.

12. As a result of the QPS's revised position on the documents remaining in issue, I consulted a third party concerning disclosure of the documents in issue to the applicant. Whilst the third party did not apply to become a participant in the review, the third party objected to the applicant being given access to the matter which the QPS was prepared to release to the applicant.
13. The QPS was subsequently informed of the third party's objections and, by letter dated 3 October 1996, the QPS altered its position in respect of release of the documents to the applicant.
14. By letter dated 18 March 1997, I informed the applicant of my preliminary view in relation to the matter remaining in issue and invited the applicant to provide me with any written submission and/or evidence on which he wished to rely in this external review.
15. In that letter, I informed the applicant that certain of the information contained in the documents remaining in issue related to totally separate police investigations and as such was matter clearly falling outside the terms of his FOI access application. I indicated that I would proceed on the basis that this matter was no longer in issue in this external review.
16. By letter to my office dated 20 March 1997, the applicant raised a 'sufficiency of search' issue, stating:

The amount of incidents where the [local] Police came to me formally and said that "[the third party] has accused me of rocking her roof" was on dozens of occasions, plus on many of the Police visits, the Police had told me of many other complaints where [the third party] had named me.

17. By letter to the applicant dated 2 April 1997, the Assistant Information Commissioner sought from the applicant more specific details of the 'many occasions' on which the applicant claims the local police spoke to him concerning complaints made by [the third party].
18. By letter dated 8 April 1997, the applicant purported to respond to the Assistant Information Commissioner's letter to him dated 2 April 1997, but failed to provide any information which would be of assistance to the QPS in identifying and locating any further documents which may exist and fall within the terms of his FOI access application.
19. By letter dated 16 April 1997, the Assistant Information Commissioner sought further information from the applicant concerning the 'sufficiency of search' issue. The Assistant Information Commissioner confirmed that the applicant no longer wished to pursue access to [the third party's] date of birth and telephone number where that information appeared in the documents in issue, and gave the applicant a final opportunity to provide him with any written submission and/or evidence on which he

wished to rely in this external review. The applicant was given until 30 April 1997 in which to respond.

20. By letter dated 14 May 1997, the Assistant Information Commissioner provided the QPS with copies of the applicant's letters to this office dated 20 March 1997 and 8 April 1997 respectively. In that letter, the Assistant Information Commissioner drew the QPS's attention to the following excerpt from the applicant's FOI access application dated 10 April 1995:

I have been visited by the Superintendent of [the regional centre] Police at my request for an apology from the police, at this visit he had the file with him and although he gave a personal apology I was not able to copy any information, incidentally, these accusations would number around 400!

21. The Assistant Information Commissioner asked the QPS to respond in respect to the 'sufficiency of search' issue raised by the applicant.
22. By letter dated 16 May 1997, the QPS provided its response indicating, *inter alia*, that it could not be of any further assistance in respect of locating additional documents without further probative information being provided by the applicant.
23. By letter dated 27 May 1997, the Assistant Information Commissioner provided the applicant with a copy of the QPS's letter dated 16 May 1997 and informed the applicant that in the light of the QPS's response and the applicant's failure to provide any further details regarding the issue, he did not propose to ask the QPS to conduct further searches for documents falling within the terms of the applicant's FOI access application (a copy of this letter was provided to the QPS for its information).
24. During a telephone conversation on 30 May 1997, the applicant informed a member of my staff that he would provide this office with the relevant details concerning the 'sufficiency of search' issue in the near future.
25. By letter dated 18 June 1997, not having received anything further from the applicant, the Assistant Information Commissioner informed the applicant that if he did not receive any further information from the applicant, in writing, by 25 June 1997, I would proceed to determine the matter. Nothing further has been received from the applicant.
26. I do not propose to deal further, in these reasons for decision, with the 'sufficiency of search' issue raised by the applicant. The position with respect to that issue was made clear to the participants by the Assistant Information Commissioner's letter dated 27 May 1997, and nothing has occurred since that time which would cause me to alter that position.

Matter falling outside the scope of the applicant's FOI access application

Documents numbered 005 and 019

27. It is my view that these documents do not fall within the terms of the applicant's FOI access application. Documents numbered 005 and 019 do not relate to a complaint made by [the third party]. Further, disclosure to the applicant of these documents would not assist the applicant in respect of his stated purpose in requesting access to the documents in issue, i.e., to obtain documentary evidence to support a legal action against certain persons to recover damages for the loss he claims he has suffered as a result of the complaints made by [the third party] to the local police. (In referring to the applicant's stated purpose for requesting the documents, I do not mean to suggest that any such legal action by Mr York would have any legal merits or prospects of success. That is not for me to determine.)

Documents numbered 013, 015, 016, 017, 025, 026

28. These documents do not mention the applicant.
29. Whilst the matter contained in documents numbered 013, 015, 017, 025 and 026 relate to complaints made by [the third party] to the police, such matter is not, in my view, matter falling within the terms of the applicant's FOI access application. Neither the applicant nor any other person is named in connection with the complaints made in these documents
30. However, document 016 is somewhat different. Whilst it does not refer to the applicant in any way, another person is named in connection with the complaint by [the third party]. I consider that this document falls within the terms of the applicant's FOI access application in that the applicant requested information concerning "...every time [the third party] has phoned or visited the police and named myself or other persons about the same problem...".
31. I find that the documents numbered 005, 019, 013, 015, 017, 025 and 026 do not fall within the terms of the applicant's FOI access application, and hence are excluded from the scope of this application for review.

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

32. Sections 44(1) and (2) of the FOI Act provide:

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.

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.

33. 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.
34. 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, in the FOI Act (see pp.256-267, paragraphs 79-114, of *Re Stewart*). In particular, I said that information concerns the “personal affairs of a person” if it relates to 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. affairs relating to family and marital relationships;
 2. health or ill-health;
 3. relationships with and emotional ties with other people; and
 4. domestic responsibilities or financial obligations.
35. 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.

Document number 016

36. I consider that document 016 concerns the personal affairs of both [the third party] and another person, but contains no information concerning the applicant. Document 016 is therefore *prima facie* exempt from disclosure to the applicant under s.44(1) of the FOI Act. It is therefore necessary for me to consider if there are any public interest considerations of sufficient weight to displace the *prima facie* exempt status of that matter. The applicant has informed me that he requires the documents as requested from the QPS as evidence of [the third party's] harassment of him over a period of time. Given that this particular document does not mention him in any way, I do not consider that there are any public interest considerations favouring disclosure of document 016 which are of sufficient weight to displace the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act. I find that the document is exempt from disclosure to the applicant under s.44(1) of the FOI Act.

Documents numbered 011-012, 014, 018, 020-024, 027-030

37. I consider that the information contained in these documents is properly to be characterised as information concerning the 'shared' personal affairs of both the

applicant and [the third party] (with the exception of a small amount of matter which I will deal with separately below).

38. I considered the concept of 'shared personal affairs' in my decision in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279. At paragraph 176 of *Re "B"*, I stated:

Thus, if matter relates to information concerning the personal affairs of another person as well as the personal affairs of the applicant for access, then the s.44(2) exception to the s.44(1) exemption does not apply. The problem here arises where the information concerning the personal affairs of the applicant is inextricably interwoven with information concerning the personal affairs of another person. The problem does not arise where some document contains discrete segments of matter concerning the personal affairs of the applicant, and discrete segments of matter concerning the personal affairs of another person, for in those circumstances:

- (a) the former will fall within the s.44(2) exception;*
- (b) the latter will be exempt under s.44(1) (unless the countervailing public interest test applies to negate the prima facie ground of exemption); and*
- (c) s.32 of the FOI Act can be applied to allow the applicant to have access to the information concerning the applicant's personal affairs, by the provision of a copy of the document from which the exempt matter has been deleted.*

Where, however, the segment of matter in issue is comprised of information concerning the personal affairs of the applicant which is inextricably interwoven with information concerning the personal affairs of another person, then:

- (a) severance in accordance with s.32 is not practicable;*
- (b) the s.44(2) exception does not apply; and*
- (c) the matter in issue is prima facie exempt from disclosure to the applicant according to the terms of s.44(1), subject to the application of the countervailing public interest test contained within s.44(1).*

39. The majority of the matter in these documents which concerns the applicant's personal affairs is inextricably interwoven with information concerning the personal affairs of [the third party]. In accordance with my reasoning in *Re "B"* (see paragraph 111, page 344), such matter is *prima facie* exempt from disclosure to the applicant under s.44(1), subject to the application of the countervailing public interest balancing test contained within s.44(1).
40. In this case, there are a number of elements which favour disclosure of the matter to the applicant.
41. Since most of the matter in issue in these documents also concerns the applicant's personal affairs, he is entitled to rely on s.6 of the FOI Act, which provides:

6. If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding -

(a) whether it is in the public interest to grant access to the applicant; and

(b) the effect that the disclosure of the matter might have.

42. Further, it is clear from an examination of the matter in issue that the applicant is already clearly aware of much of the information contained in the documents, as on most of the occasions recorded in the documents, the police spoke to him regarding [the third party's] complaints. This also has the effect of reducing the weight to be accorded to protecting the privacy interests of [the third party] in respect of that information, at least in so far as disclosure to the applicant is concerned. In my view, these factors are sufficient in this case to displace the *prima facie* exempt status of those segments of the documents in issue which concern the personal affairs of both the applicant and [the third party].
43. However, there is some matter contained in the documents in issue which, in my view, concerns only the personal affairs of [the third party] and another person, and which can be easily severed from the information which concerns the applicant's personal affairs. The matter to which I refer comprises the name of another person, [the third party's] date of birth, and [the third party's] telephone number where that appears in the documents. The applicant has already indicated that he does not wish to pursue access to [the third party's] date of birth or her telephone number. Therefore, that matter is no longer in issue in this external review.
44. In respect of the name of the other person which appears in the documents, I said in *Re Stewart* (at paragraph 80) that the mention of a person's name in police records in association with some possible wrongdoing is information which concerns that person's personal affairs.
45. Such matter is, therefore, *prima facie* exempt matter under s.44(1) of the FOI Act. In considering the application of the public interest balancing test to such matter, I find that there are no public interest considerations favouring disclosure which are of sufficient weight to displace its status as matter which is *prima facie* exempt under s.44(1). I find that the references to the name of a person other than the applicant and [the third party], which appear in the document in issue, are exempt matter under s.44(1) of the FOI Act.

General

46. In respect of folio 024, I consider that I should mention that the third party claims that the information contained in this folio is inaccurate, in so far as it records the information provided to the police.

Decision

47. For the foregoing reasons, I vary the decision under review, by deciding that the applicant is entitled to be given access to documents numbered 001-030 (inclusive), with the exception of the following matter:
1. matter falling outside the terms of his FOI access application (relating to separate police matters) on folios 007, 010, 014, 018, 020, 021, 022, 023, 024, 027, 028, 029, 030.
 2. [the third party's] date of birth on folios 018, 020, 021, 022, 023, 024, 027, 030.
 3. [the third party's] telephone number on folios 014.
 4. reference to another person on folios 011, 014.
 5. documents numbered 005, 013, 015, 017, 019, 025 and 026, which I determine to be documents falling outside the terms of the applicant's FOI access application.
 6. document 016 which I find to be exempt in its entirety under s.44(1) of the FOI Act.