



Decision and Reasons for Decision

Application Number: 210206

Applicant: Mr R Mathews

Respondent: The University of Queensland

Decision Date: 10 October 2007

Catchwords: **FREEDOM OF INFORMATION – Section 35B Freedom of Information Act 1992 (Qld) – application fee – whether documents concern applicant’s personal affairs**

Contents

Background	2
Steps taken in the external review process	2
Matter in issue	3
Application of section 35B of the FOI Act	4
Personal affairs.....	4
Document (d).....	4
Scope of the access application	7
Conclusion	8
Decision	8

Reasons for Decision

Background

1. The applicant seeks review of the decision of the University of Queensland dated 3 April 2007 that, under the *Freedom of Information Act 1992* (Qld) (FOI Act), he is required to pay an application fee of \$36.00 on the basis that at least one of the documents to which he seeks access does not concern his 'personal affairs'.

2. In his FOI Application to the University dated 8 March 2007 the applicant stated:

This is an FOI access application for all the information on all documents in the possession of or under the control of the UQ, where that info relates to my personal affairs. I require all of those documents generated by, or coming under the control of UQ, (if not generated by UQ), not previously released to me, OR NOT THE SUBJECT OF PREVIOUS FOI APPLICATIONS BY ME, to UQ.

Included in this application is the email to AussieHQ with respect to my website, AustLawPublish.com where apparently UQ found some content unacceptable to them, so threatened to sue the Computer host of that site for defamation. Documents will be in existence in all the previous sources and included in UQConnect.

....Of course, I request remission and/or waiver of all FOI fees in relation to this FOI application.

3. In a decision dated 16 March 2007, Mr A Zgrajewski, Senior Administrative Officer, Freedom of Information Office, the University of Queensland, decided that notwithstanding that the access application expressly stated that access was sought only to documents relating to the applicant's personal affairs, he considered that the applicant's primary purpose was to obtain documents relating to the University's dealings with Aussie HQ, and that, as any correspondence to Aussie HQ concerning the applicant's website did not relate to the applicant's personal affairs, the FOI application was subject to statutory fees and charges.

4. By application dated 20 March 2007 the applicant sought internal review of Mr Zgrajewski's decision.

5. In his internal review decision dated 3 April 2007, Mr D Porter, Secretary and Registrar of the University, affirmed Mr Zgrajewski's decision.

6. By application dated 11 April 2007, the applicant sought external review of Mr Porter's decision under Part 5 of the FOI Act.

Steps taken in the external review process

7. By letters dated 1 May 2007 and 24 May 2007, the University supplied copies of four documents that it believed were responsive to the access application and that it considered did not concern the applicant's 'personal affairs'. The documents provided were:

- a) letter dated 7 March 2007
- b) email dated 5 March 2007
- c) extract from Australian Criminal Law Journal article
- d) email dated 7 March 2007 from the University to AussieHQ.

8. The four documents provided were reviewed. By letter dated 11 September 2007, I advised the applicant that it was my preliminary view that:
1. documents (a)-(c) each contained information that concerned the applicant's personal affairs
 2. while document (d) did not concern the applicant's personal affairs, due to the terms of the access application dated 8 March 2007, it was not within the scope of the applicant's application

and accordingly, there was no basis to require payment of an application fee under section 35B of the FOI Act.

9. I invited the applicant to advise me in writing, by no later than 26 September 2007 whether he:
- accepted my preliminary view and was prepared to withdraw his application for review, or
 - wished to contest my preliminary view

and informed him that, if I did not hear from him in this regard by 26 September 2007, I would proceed on the basis that the applicant did not wish to make submissions, and I would finalise this review so that the University may proceed with processing the access application dated 8 March 2007. The applicant did not respond to my letter. I note, however, that the applicant made submissions about the issues in this review in his external review application.

10. By letter dated 25 September 2007, I advised the University of my preliminary view set out at paragraph 8 above. I invited the University to advise me in writing, by no later than 10 October 2007, whether the University accepted my preliminary view above, or wished to contest my preliminary view.
11. By letter dated 28 September 2007, the University advised me that it accepted and agreed with my preliminary view.
12. In making my decision in this matter, I have taken the following into account:
- the applicant's FOI application dated 8 March 2007, application for internal review dated 20 March 2007 and application for external review dated 11 April 2007
 - Mr Zgrajewski's initial decision dated 16 March 2007 and Mr Porter's internal review decision dated 3 April 2007
 - documents (a)-(d)
 - relevant pages on the website <http://www.austlawpublish.com>, downloaded on 29 May 2007.

Matter in issue

13. The matter in issue in this review comprises documents (a)-(d) as set out above at paragraph 7.

Application of section 35B of the FOI Act

14. Section 35B(1) and section 35B (2) of the FOI Act provide:

35B Fees and charges for access to documents not concerning personal affairs

- (1) This section applies to an applicant applying for access to a document that does not concern the applicant's personal affairs.
- (2) The applicant must pay, at the time the application is made, an application fee.

15. Section 35B(1) of the FOI Act provides that an applicant must pay an application fee for access to documents that do not concern the applicant's 'personal affairs'. This means that if one of the documents that an applicant seeks does not concern their 'personal affairs', an application fee is payable.

16. The issue for determination in this review is whether or not any of documents (a)-(d) concern the applicant's personal affairs.

17. I note that a document concerns an individual's 'personal affairs', for the purpose of section 35B of the FOI Act, if any part of the document concerns the individual's 'personal affairs' (see *Ryder and Department of Employment, Vocational Education, Training & Industrial Relations* (1994) 2 QAR 150 at paragraph 19, and *Price and Surveyors Board of Queensland* (1997) 4 QAR 181 at paragraphs 26-29).

Personal affairs

18. In *Stewart and Department of Transport* (1993) 1 QAR 227 (*Stewart*), the Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act (see paragraphs 79-114 of *Stewart*). In *Stewart*, the Information Commissioner 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:

- family and marital relationships;
- health or ill health;
- relationships and emotional ties with other people; and
- domestic responsibilities or financial obligations.

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

20. Having examined documents (a)-(c), I consider that each contains matter that concerns the applicant's personal affairs, as matter contained in them concerns the applicant's health, relationships with others, and/or domestic arrangements. I note that the University of Queensland has accepted my preliminary view in this regard.

Document (d)

21. Document (d) is an email from the University to AussieHQ concerning a complaint about material on an AussieHQ webserver, the website <http://www.austlawpublish.com>.

22. In order to determine whether the applicant is required to pay an application fee, the question I am required to answer is: 'does any information in document (d) concern the applicant's personal affairs?'
23. In his external review application, the applicant submitted that the document (d) is personal to him as it relates to a file on his website, and not on another person's web site. He asserted that the website in question is his, in that:
 - it is rented from the web host by the applicant in his capacity as a private individual, and not by the company that publishes the journal that is posted on the web site
 - the applicant decides the content of the web site
 - the journal posted on the web site is merely a document the applicant elected to post on the web site, and can be found in various libraries
 - the opinion expressed in the journal is not the opinion of the company which published the journal. It is the applicant's personal opinion, expressed in his capacity as editor of the journal.
24. At paragraph 55 of *Stewart*, the Information Commissioner concluded that the adjective 'personal' is used in the phrase 'personal affairs' in the same sense as a person might use it in refusing to answer an intrusive question with a retort such as: 'I am not prepared to give you that information; it's personal'. The phrase 'personal affairs' does not capture all of the affairs of an individual, and is clearly distinct from a person's business or employment affairs, or other activities of a public kind. Rather, it captures a sense of matters relating to the private aspects of a person's life.
25. At paragraph 76 of *Stewart*, the Information Commissioner said that when difficult and marginal cases are encountered in the 'grey area', an appropriate guiding principle should be that the phrase 'personal affairs of a person' extends to the kinds of information that a notional reasonable bystander, applying the current community standards of persons with ordinary sensibilities, would regard as information, the dissemination of which the person (whose affairs the information concerns) ought to be entitled to control, and which should be eligible for exemption from disclosure under the FOI Act.
26. I consider that, in order to find that matter in document (d) falls within either the accepted 'core' meaning or within the 'grey' area of 'personal affairs', I would have to be satisfied that the applicant's control of the website concerns the private aspects of his life, and not other activities of a public kind.
27. There is no material in the email that mentions the applicant's name or identifies him in any capacity. Nothing in the email can be said to concern the applicant's family or marital relationships, or any of the other categories of information identified above as falling within the accepted 'core' meaning of 'personal affairs'.
28. In my view, the present situation may be analogous to that of a document containing a telephone number. In deciding whether or not a telephone number concerned a person's personal affairs, the Information Commissioner has previously distinguished between a person's private and business activities. For example, the Information Commissioner has made it clear, in decisions such as *Pearce and Qld Rural Adjustment Authority; Various Landholders (Third Parties)* (1999) 5 QAR 242, that residential addresses and residential telephone numbers are properly to be characterised as information that concerns a person's personal affairs, but a business address or business telephone number is not.

29. The Information Commissioner has described 'business affairs' as a business undertaking carried on in an organised way (whether full-time or intermittent) for the purpose of making profits or gains (see *Stewart* at paragraph 103). There is presently no material before me to suggest that the website is operated for a profit purpose. It is possible that the applicant's operation of a web site that is intended to be accessed without charge, may not concern his 'business affairs'.
30. However, I note that the website purports to be that of Australian Law Publishers Pty Ltd, with the name of that company, the ACN, and the address of the company's Registered Office clearly set out at the top of the website's home page. The applicant is named on the home page as 'Editor-in-Chief'. The applicant's involvement in the website appears to be as Editor-in-Chief of the 'Australian Criminal Law Journal', which is published by Australian Law Publishers Pty Ltd.
31. In *Stewart*, the Information Commissioner referred with approval to the comments of Deputy President Hall of the Commonwealth Administrative Appeals Tribunal in *Anderson and Australian Federal Police* (1986) 4 AAR 414, at pp. 433-434 where he said:

There are many circumstances in which a person may be referred to in correspondence or other documents without the documents containing information with respect to that person's personal (or "non-business") affairs. Correspondence signed in the course of one's business, profession or employment is an obvious example. Documents signed as the secretary of a social club or sporting body would normally be of a similar nature. In my view, acts, matters or things done by a person in their representative capacity on behalf of another person, body or organisation, would not normally be said to relate to that person's "personal affairs".
32. In *Nelson and Department of Education* (1994) 2 QAR 269, the Information Commissioner found that letters from Mr Nelson to the Department of Education and to the relevant Minister, which were written by Mr Nelson in his capacity as president of a Parents' & Citizens' Association and raised issues concerning the school community, were written by Mr Nelson in a representative capacity, on behalf of the parents who elected him as President. In addition, the Information Commissioner found that the letters (apart from two minor exceptions) did not concern the personal affairs of Mr Nelson or any other individual, and were properly characterised as information concerning the affairs of the P & C.
33. In *Thompson v Department of Infrastructure* [2002] VCAT 44 (30 January 2003), the Victorian Civil and Administrative Appeals Tribunal decided that an e-mail communication from a councillor to a Minister was made in his representative capacity and was not information that related to his personal affairs.
34. I note the applicant's submissions set out above. However, it appears that his involvement in the website, and the article contained on that website, is in his representative capacity as Editor-in-Chief of Australian Law Publishers Pty Ltd. I note that a company cannot have personal affairs: see *Stewart* at paragraphs 20-21.
35. In any event, I consider that even if the applicant's operation of the web site may not concern his 'business affairs' or 'public affairs', it also does not concern his 'personal affairs'. It is difficult to conceive that the operation of a web site that is able, and intended, to be freely accessed by any member of the public, could be properly characterised as concerning a private aspect of the applicant's life within the meaning of the FOI Act. There is no material before me to suggest that public access to the web

site is constrained in any way, for example, by password given to only family members or friends, or that operation of the site concerns any private aspect of the applicant's life. On the contrary, as noted above, the website is clearly accessible and intended for viewing by the public.

36. In my view, the material before me does not demonstrate that the applicant's control of the web site concerns the private aspects of his life.
37. I therefore find that document (d) does not concern the applicant's personal affairs.

The scope of the access application

38. The access application dated 8 March 2007 states:

This is an FOI access application for all the information on all documents in the possession of or under the control of the UQ, where that info relates to my personal affairs. I require all of those documents generated by, or coming under the control of UQ, (if not generated by UQ), not previously released to me, OR NOT THE SUBJECT OF PREVIOUS FOI APPLICATIONS BY ME, to UQ.

Included in this application is the email to AussieHQ with respect to my website, AustLawPublish.com where apparently UQ found some content unacceptable to them, so threatened to sue the Computer host of that site for defamation. Documents will be in existence in all the previous sources and included in UQConnect.

....Of course, I request remission and/or waiver of all FOI fees in relation to this FOI application.

39. The applicant's external review application dated 11 April 2007 states:

Please note, the first sentence of my application read: "..., where that info relates to my personal affairs." That defines my application as being a "personal affairs" application. If it is that UQ contends that the email to AussieHQ does not relate to my personal affairs, then it is not included in this application. The proper course was for UQ to fulfil my FOI request, but, if they really hold this view honestly, with-holding that email.

To operate on that basis now will involve an extended delay to me to receive this copy of this email. It should be decided at this juncture that the email relates to my personal affairs, or that at least some part of it relates to my personal affairs. ...

40. In the applicant's external review application, he initially asserted that his access application was a personal affairs application, and stated that if the University determined that the email did not concern his personal affairs, then the email was not included in the access application. However, in the third paragraph cited above from the external review application, the applicant indicated that he considered that the email was within the scope of the application and stated that it should now be decided that the email, or at least some part of it, did concern his personal affairs.
41. It is unclear, from these seemingly contradictory statements in the external review application, whether or not the applicant maintains that document (d) falls within the terms of his access application dated 8 March 2007.
42. In any case, the applicant has made it clear that his reason for considering the email to be within scope is that he believes that at least part of the email relates to his personal affairs and that his FOI access application concerns information relating to his personal affairs.

43. However, as set out above at paragraph 37, I consider that document (d) does not contain information that relates to the applicant's personal affairs. Accordingly, I find that, due to the terms of the access application, document (d) is not within the scope of the applicant's application.

Conclusion

44. In summary, I find that:

- documents (a)-(c) contain information that concerns the applicant's personal affairs
- document (d) does not concern the applicant's personal affairs
- due to the terms of the access application, document (d) is not within the scope of the applicant's application

45. Accordingly, I find that, as document (d) is not within the scope of the applicant's access application, there is no basis to require payment of an application fee under section 35B of the FOI Act.

Decision

46. I set aside the decision of Mr Porter dated 3 April 2007. In substitution for that decision, I find that the applicant is not required to pay an application fee under section 35B of the FOI Act, on the basis that I find that document (d) is not within the scope of the applicant's access application.

R Rangihaeata
Acting Information Commissioner

Date: 10 October 2007