

OFFICE OF THE INFORMATION )  
COMMISSIONER (QLD) )

S 102 of 1993  
(Decision No. 95009)

Participants:

KEITH WILLIAM STEWART  
Applicant

- and -

DEPARTMENT OF TRANSPORT  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - application for access - interpretation of the terms of the applicant's FOI access application - applicant challenging sufficiency of search for documents falling within the terms of his FOI access application - whether search efforts of agency reasonable in all the circumstances.

FREEDOM OF INFORMATION - refusal of access - matter in issue comprising home address and home telephone number of an officer of the respondent - whether matter in issue exempt from disclosure to the applicant under s.44(1) of the *Freedom of Information Act 1992* Qld.

*Freedom of Information Act 1992* Qld s.44(1)

*Shepherd and Department of Housing, Local Government & Planning, Re* (Information Commissioner Qld, Decision No. 94007, 18 April 1994, unreported)

*Smith and Administrative Services Department, Re* (1993) 1 QAR 22

*Stewart and Department of Transport, Re* (1993) 1 QAR 227

*Ronald Keith Stewart and Department of Transport, Re* (Information Commissioner Qld, Decision No. 95007, 12 May 1995, unreported)

## DECISION

The decision under review (being the internal review decision of Mr W J Rodiger, on behalf of the respondent, dated 24 March 1993) is varied, in that I find that -

- (a) the address and home telephone number appearing on the file note made by Mr Noel Smith relating to an incident which occurred on 12 June 1992 is exempt matter under s.44(1) of the FOI Act;
- (b) following the disclosure to the applicant of additional documents during the course of my review, I am satisfied that there are no reasonable grounds for believing that the respondent has possession or control of any documents or parts of documents, falling within the terms of the applicant's FOI access application dated 10 February 1993, to which the applicant has not been given access, except for the letter dated 12 June 1992 from Mr Ronald Stewart to the Minister for Transport referred to in (c) below; and
- (c) while there are reasonable grounds for believing that the respondent has possession or control of a letter dated 12 June 1992 from Mr Ronald Stewart to the Minister for Transport, I am satisfied that the search efforts made by the respondent, and by members of my staff, to locate that document have been reasonable in all the circumstances of the case, and that the document cannot now be located.

Date of Decision: 15 May 1995

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

Participants:

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Applicant

- and -

DEPARTMENT OF TRANSPORT  
Respondent

### REASONS FOR DECISION

#### Background

1. The applicant complains that the respondent has failed to locate and deal with all documents falling within the terms of his initial application for access under the *Freedom of Information Act 1992* Qld (the FOI Act). The applicant further seeks review of the respondent's decision to refuse the applicant access to a part of one document which the respondent claims is exempt under s.44(1) of the FOI Act. I note that the applicant is the son of Mr Ronald Keith Stewart who has been a participant in two previous external reviews in which I have published reasons for decision: *Re Stewart and Department of Transport* (1993) 1 QAR 227, which I shall refer to in these reasons for decision as *Re Stewart*; and *Re Ronald Keith Stewart and Department of Transport* (Information Commissioner Qld, Decision No. 95007, 12 May 1995, unreported), which I shall refer to as *Re Ronald Stewart*.
2. By letter dated 10 February 1993, Keith Stewart applied for access to documents held by the Department of Transport (the Department) in the following terms:

*I request all personal documents under the Freedom of Information Act from the Queensland Transport Dept., which concern me personally.*

*The dates are from 31-10-91 to 23-8-92, also from 4-2-91 to 15-7-92.*

*Also any documents to and from Mr David Hamill.*
3. The initial decision on behalf of the Department was made by Mr P Moar, FOI Co-ordinator, on 8 March 1993 and communicated to Keith Stewart by a letter of that date, signed by Mr B J Butterworth of the Department. That letter informed Keith Stewart that it was Mr Moar's decision "to grant access to the documents which concern you personally", and attached copies of all documents considered to be relevant.
4. By a letter dated 10 March 1993, Keith Stewart then applied for internal review of Mr Moar's decision. The internal review was conducted by Mr W J Rodiger of the Department, who communicated his decision to Keith Stewart by letter dated 24 March 1993. Mr Rodiger's letter enclosed copies of further documents which had been located and were identified as falling within the terms of Keith Stewart's FOI access application, and went on to say:

*As you asked for documents relating only to your personal affairs, that is documents such as medical records, family or domestic relationships, then these were provided under cover of this Department's letter of 8 March 1993.*

*However, other documents are available of a non-personal nature, namely 79 documents, and to obtain access to these under the Freedom of Information Act an application fee of \$30.00 is required and in addition photocopying charges of \$0.50 per page would apply should you wish copies.*

5. Keith Stewart applied for review of Mr Rodiger's decision, under Part 5 of the FOI Act, by completing an Application for Review of Decision form which was received by my office on 2 June 1993. That form (which was co-signed by Keith's parents) stated:

*It is plain to see that it is impossible to obtain these documents because we are unable to get past these same people all the time and it is impossible to pay about \$70.00 for them as Keith is under age and we are only on a pension and also we feel that these documents are of a personal nature and that this Department is deliberately covering up to prevent justice being done.*

### **Scope of the FOI access application**

6. At paragraphs 6-10 of my decision in *Re Ronald Stewart*, I discussed the scope of Ronald Stewart's FOI access application in light of the circumstances involved in an earlier FOI access application by him and his wife, Carolyn Stewart, which resulted in my decision in *Re Stewart*. In *Re Ronald Stewart*, I came to the conclusion that, given the wording of Ronald Stewart's FOI access application and the matters which had arisen in the earlier case of *Re Stewart*, Ronald Stewart's FOI access application should be interpreted as an application for documents relating to his "personal affairs", as that term is interpreted for the purposes of the FOI Act. I consider that those same factors are also relevant to the interpretation of Keith Stewart's FOI access application in this case.
7. It is clear to me that Keith, who is of school age, has had considerable assistance from his parents in formulating his FOI access application, and correspondence which has flowed from it. I do not suggest that there is anything untoward in Keith being assisted by his parents. He should feel free to seek assistance from any person he chooses in framing an FOI access application and in subsequent correspondence. However, the help given to him by his parents, combined with the similarity between the wording of Keith's FOI access application and that made by his father in *Re Ronald Stewart*, is enough to satisfy me that in making his FOI access application Keith Stewart was seeking access to documents which concern his "personal affairs", as that term is interpreted for the purposes of the FOI Act. This interpretation is supported by the fact that Keith Stewart has been made aware of the requirement to pay an application fee of \$30 when access is sought to documents which do not concern the applicant's personal affairs (see paragraph 4 above), but has not paid an application fee, and has made it clear during the course of the review that he does not believe an application fee is payable in respect of the documents to which he seeks access.
8. In considering this external review application, I have therefore interpreted Keith Stewart's FOI access application dated 10 February 1993, as an application for access to documents held by the Department which concern Keith Stewart's personal affairs.

### **Sufficiency of Search**

9. I have previously considered my jurisdiction, and powers on review, in respect of sufficiency of search issues in my decisions in *Re Smith and Administrative Services Department* (1993) 1 QAR 22 and *Re Shepherd and Department of Housing, Local Government & Planning* (Information Commissioner Qld, Decision No. 94007, 18 April 1994, unreported). As I said in *Re Shepherd*, at paragraphs 18-19, there are two questions which I must answer:
- (a) whether there are reasonable grounds to believe that the requested documents

exist and are documents of the agency (as that term is defined in s.7 of the FOI Act);

and if so,

- (b) whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of a particular case.

10. In *Re Ronald Stewart*, I indicated that a number of external review applications had been made by members of the Stewart family for documents held by the Department and by the Minister for Transport (see paragraph 20 of *Re Ronald Stewart*). I also noted that numerous searches for documents, which might fall within the terms of any one of the various FOI access applications lodged by members of the Stewart family, had been conducted by my staff and staff of the Department and the Minister. At paragraphs 20-30 of my decision in *Re Ronald Stewart*, I described the searches that had been undertaken.
11. As a result of those searches, a number of further documents were identified as falling, or arguably falling, within the terms of Keith Stewart's FOI access application, and the Department has agreed to the release of all the documents so identified.
12. In *Re Ronald Stewart*, I referred to a letter dated 12 June 1992 (a copy of which was provided by Mr Ronald Stewart for my information) from Mr Ronald Stewart to the Minister for Transport. That document also falls within the terms of Keith Stewart's FOI access application. I described the searches undertaken for that document at paragraphs 21-24 of my decision in *Re Ronald Stewart*. For the reasons set out at paragraph 32 of that decision I find that there are reasonable grounds to believe that the requested document exists and is a document of the agency, but I find that the search efforts made by the agency, and by my staff, to locate the document have been reasonable in all the circumstances, even though ultimately unsuccessful.
13. As to Keith Stewart's general claim that there are other documents concerning his personal affairs held by the Department, I find that there are no reasonable grounds to believe that the requested documents exist. Extensive searches carried out by the Department and my staff, and examination of a wide range of documents by my staff, have not given rise to any indication that there are further documents in existence which fall within the terms of Keith Stewart's FOI access application for documents relating to his personal affairs. I cannot identify any further searches which the Department might reasonably be called upon to undertake in a quest for such documents.

#### **Part of document not released**

14. In a letter dated 10 August 1994, I drew Keith Stewart's attention to a document to which he had been granted access subject to the deletion of matter claimed by the Department to be exempt matter under s.44(1) of the FOI Act. By letter dated 25 August 1994, Keith Stewart indicated that he sought access in full to the document referred to in my letter of 10 August 1994.
15. That document is a file note made by an officer of the Department, Mr Noel Smith, about an incident involving Keith Stewart which took place on 12 June 1992. Keith Stewart has been given access to a copy of the note with the home address and home telephone number of Mr Smith deleted.
16. Section 44(1) of the FOI Act provides as follows:

*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.*

17. I have previously considered the question of whether addresses and telephone numbers can be regarded as information concerning the personal affairs of a person in my decision in *Re Stewart*. In paragraphs 86-90 of *Re Stewart*, I said:

86. *Despite statements in many earlier tribunal decisions in both the Commonwealth and Victoria (see, for example, Re Properzi and Department of Immigration & Ethnic Affairs (1984) ADMN 92-035; Re Simons and Victorian Egg Marketing Board (No. 1) (1985) 1 VAR 54; Re F and Health Department (1988) 2 VAR 458) that a person's name, address and telephone number constitute part of that person's personal affairs, more recent decisions of senior judges call for a more considered approach to that question of characterisation according to the particular context in which that information appears. I have already referred to Perrin's case where the names alone of police officers performing their police duties were in issue. In Colakovski (at p.119) Lockhart J said:*

"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."

*His Honour had no difficulty in holding that the information in issue, viewed in its full context, answered the statutory description of information which relates to the "personal affairs" of a person.*

87. *In Argent v South Australian Police Department (District Court of South Australia, Roder J, 13 November 1992, Judgment No. D2671), the Court was dealing with an FOI access application for records held by the respondent in relation to a traffic accident in which the appellant sustained personal injury. The names and addresses of persons said to be witnesses to the accident in question were claimed by the respondent to be exempt material on the basis that disclosure would be an unreasonable disclosure of information concerning the personal affairs of a person. Having quoted the passage from Lockhart J's judgment in Colakovski that is set out above, the Court said:*

"... I have doubt that in the circumstances of this case, the information which has been withheld from the appellant is information ... which does not relate to the personal affairs, within the meaning of the Act, of the bus operator. Each case must be looked at in its own circumstances to determine what might be involved in relation to what are personal affairs. The name and telephone number of the person in *Colakovski's case*, if alone disclosed, would not have resulted in the disclosure of information relating to personal affairs *per se*. But, because giving that information and the manner in which it had been obtained would effectively reveal other matters about a person's

personal affairs it would in its own context involve the release of information about personal affairs. In the present case, on its own facts and its own circumstances, if the name and home address of the bus operator were to be released all that would be revealed is that the bus operator, a person living at a certain address, was a witness to an accident which had happened on a public thoroughfare, and as a result of which information was provided by him to the police in his capacity as a member of the public. In those circumstances, I cannot see how the release of the information relating to name and home address would result in the release of information relating to the bus operator's personal affairs as that term is used in the legislation. Whilst it may be true that in some circumstances the release of an address might lead inevitably to the release of information relating to a person's personal affairs, there is nothing before me to lead me to the conclusion that that would occur in the present case."

88. *While I consider that the result in Argent's case was justified, I have reservations about the analysis which suggests that a person's home address does not fall within the ordinary meaning of information relating to that person's personal affairs. I agree with the New South Wales Court of Appeal in Perrin's case that a name alone does not ordinarily fall within the meaning of the phrase "personal affairs"; see per Mahoney AJ at p.22, who said:*

"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."

*I also note that in the passage quoted at paragraph 84 above, Kirby P expressed in passing (and without deciding) a note of reservation about whether private addresses of police officers constitute their personal affairs. However, the appearance of a name in conjunction with a home address would seem to me to fall, in the normal case, on the other side of the line. The address at which a person chooses to reside and make their home seems to me to fall within that zone of domestic affairs which is clearly central to the concept of "personal affairs". A business address would be materially different.*

89. *The disclosure of the name and address of a witness to a motor vehicle accident might well be justified on public interest grounds, i.e. in assisting the parties to civil litigation to have access to all relevant sources of evidence so as to ensure that litigants have at least the opportunity to seek to put all relevant evidence before the court, or to determine their approaches to pre-trial settlement of their dispute in the light of all relevant available evidence. (In substantially similar circumstances Jones J of the Victorian AAT held in Re Phillip Page and Metropolitan Transit Authority (1988) 2 VAR 243 that the names and addresses of witnesses to a road accident constituted the witnesses' personal affairs, but that disclosure to the applicant who was injured in the accident would not be unreasonable.)*
90. *Many of the earlier tribunal decisions which automatically applied the principle that a person's name, address or telephone number are part of that person's personal affairs might well have been correctly decided if the context in which they appeared was properly evaluated. However, I think that the more recent cases*

*properly call for a more careful evaluation and characterisation of the context in which a person's name, address or telephone number (or any combination thereof) appear, before it is decided that their disclosure would disclose information concerning the personal affairs of a person.*

18. In the circumstances of this case, I find that the home address and home telephone number of Mr Smith is information concerning his personal affairs, notwithstanding that he has provided them in the course of making a work-related file note. The information is not relevant to the events the note describes, but appears to have been included merely for reference.
19. I must therefore consider whether there is any public interest in Keith Stewart having access to that information, which is of sufficient strength to outweigh the *prima facie* public interest in protecting Mr Smith's personal affairs. In the circumstances of this case, I can see no public interest considerations which might weigh in favour of Keith Stewart having access to this information.
20. I therefore find the deleted matter to be exempt matter under s.44(1) of the FOI Act.

### **Conclusion**

21. As the file note made by Mr Smith was not initially considered by the internal review decision-maker, and further documents were discovered in the course of my review, it is appropriate that I vary the decision under review. I find that -
  - (a) the address and home telephone number appearing on the file note made by Mr Noel Smith relating to an incident which occurred on 12 June 1992 is exempt matter under s.44(1) of the FOI Act;
  - (b) following the disclosure to the applicant of additional documents during the course of my review, I am satisfied that there are no reasonable grounds for believing that the respondent has possession or control of any documents or parts of documents, falling within the terms of the applicant's FOI access application dated 10 February 1993, to which the applicant has not been given access, except for the letter dated 12 June 1992 from Mr Ronald Stewart to the Minister for Transport referred to in (c) below; and
  - (c) while there are reasonable grounds for believing that the respondent has possession or control of a letter dated 12 June 1992 from Mr Ronald Stewart to the Minister for Transport, I am satisfied that the search efforts made by the respondent, and by members of my staff, to locate that document have been reasonable in all the circumstances of the case, and that the document cannot now be located.

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