

# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 96006**  
**Application L 1/96**

**Participants:**

MARK IVAN STEINBACK  
**Applicant**

IPSWICH CITY COUNCIL  
**Respondent**

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - application for review of decision requiring payment of \$30 application fee for access to documents - applicant requested access to documents concerning complaints to the respondent about a particular property owned by the applicant, including complaints which predated his ownership of the property - applicant leases the property to residential tenants - whether any of the requested documents do not concern the applicant's personal affairs within the meaning of s.29(2) of the *Freedom of Information Act 1992 Qld* and s.6 of the *Freedom of Information Regulation 1992 Qld* - words and phrases: "concerns", "concerning".

*Freedom of Information Act 1992 Qld* s.29(2), s.44(1), s.44(2)

*Freedom of Information Regulation 1992 Qld* s.6

*Peace and Good Behaviour Act 1982 Qld*

*Bolton and Department of Transport, Re* (Information Commissioner Qld, Decision No. 95035, 20 December 1995, unreported)

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

**DECISION**

I affirm the decision under review (being the decision made on 4 January 1996 by Mrs C Harsant on behalf of the respondent) that a \$30 application fee is payable by the applicant in respect of his FOI access application dated 4 December 1995.

Date of decision: 9 April 1996

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

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### REASONS FOR DECISION

#### Background

1. The applicant seeks review of the respondent's decision requiring payment of a \$30 application fee in respect of an access application, under the *Freedom of Information Act 1992 Qld* (the FOI Act), dated 4 December 1995, which relevantly states:

*Due to the current harassment of tenants at [the address of a property owned by the applicant was stated here - it is referred to in these reasons for decision as the "subject property"], also the fact of phone harassment of my parents, I require, under the Freedom of Information Act 1992 Qld the names of complainants to this address, and the dates received.*

*I believe this spans a number of years as the previous owner has had tenants driven from this address. I have had to date, three tenants harassed to the point of leaving, and have had an assault on my person (reported) and a window broken in the house by a brick (reported).*

*I am left with no option but to take legal action.*

*Please forward all details of complaints from 1987 onwards to the above PO box.*

2. By letter dated 11 December 1995, Mr C Simpson of the Ipswich City Council ("the Council") wrote to the applicant informing him that he was required to pay a \$30 application fee before processing of his FOI access application could begin.

3. On 21 December 1995, the applicant applied for internal review of Mr Simpson's decision. He submitted as follows:

1. *I am an inmate within the meaning of s.10 of the Corrective Services Act Qld 1988 and consider the fee sought is beyond my capabilities at the present time.*
2. *I am the owner of [the subject property] and said complaints affect my income from said property ensuring payment of Ipswich City Council payments. This income has been placed in jeopardy twice due to the direct involvement of this Council.*

4. The internal review was undertaken by Mrs C Harsant, Records Manager of the Council. By letter dated 4 January 1996, she decided to affirm the original decision, stating:

*Whilst I can appreciate the subject of your request may be of concern to you personally it is nonetheless not regarded as "personal affairs" in terms of this legislation. Therefore the required fee must be paid before your request can be accepted as an application under the Act. Refer Information Commissioner's decision number 93006. [This is a reference to *Re Stewart and Department of Transport* (1993) 1 QAR 227] Unfortunately there is NO provision under the Act to waive this fee.*

5. The applicant applied to me, on 18 January 1996, for external review under Part 5 of the FOI Act, of the respondent's decision requiring payment of a \$30 application fee.

#### **Relevant legislative provisions**

6. Section 29(2) of the FOI Act provides:

*An applicant applying for access to a document that does not concern the applicant's personal affairs may be required, by regulation, to pay an application fee at the time the application is made.*

7. Section 6 of the *Freedom of Information Regulation 1992* (the FOI Regulation) provides:

#### ***Application fee for access to document***

**6.(1)** *An applicant who applies for access to a document that does not concern the applicant's personal affairs must pay an application fee of \$30 at the time the application is made.*

**(2)** *An application fee is not payable for access to a document that concerns the applicant's personal affairs.*

8. Although not strictly relevant to the disposition of this case, s.44(1) and s.44(2) of the FOI Act are mentioned below, and I will set them out for ease of reference:

*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.*

### **The external review process**

9. The documents identified by the Council as falling within the terms of the applicant's FOI access application were obtained and examined. They comprise:

- (i) extracts from file number 60-1969-0002: comprising a letter of complaint and a number of file notes recording complaints concerning noise, unsightliness and dog attacks in respect of the subject property, together with reports on investigation of the complaints; and
- (ii) printouts from the Council's customer service system: comprising computer records of two complaints concerning the subject property, and investigator's comments.

10. In support of his application for external review, the applicant submitted:

*I wish to point out that my request to the Ipswich City Council is to establish the persons involved in the constant harassment, of myself and the chain of tenants I have had and the owner before me, at [the subject property].*

*Personal Affairs*

*I have been personally assaulted at this address and a tenant previously had been frightened with a firearm - reported to Goodna Police.*

*A recent event involving a firearm has also caused concern.*

*I have also had a brick through the window of this house.*

*I enclose an application for a Peace and Good Behaviour Order. I require the information to complete [the name of the person against whom Mr Steinback proposes to seek the Peace and Good Behaviour Order].*

*I am currently imprisoned and feel the \$30.00 fee is unjust as I only receive \$1.15 per working day and \$9.50 amenities allowance per week.*

11. The applicant attached to his application for external review a draft Complaint form under the *Peace and Good Behaviour Act 1982 Qld*. The applicant is named as the complainant. The space provided for the name and address of the putative respondent to the complaint is blank. The grounds set out in the draft complaint consist of a summary of incidents at the subject property in the period from November 1993 to 23 November 1995.

12. On 8 February 1996, the Deputy Information Commissioner wrote to the applicant in the following terms:

*At this stage of the external review, I am able to form the preliminary view that the above-noted decision on behalf of the Ipswich City Council (the Council) to require payment of a \$30.00 application fee is correct.*

...

*You will note that the regulations confer no discretion on an agency to waive payment of the application fee, whether on grounds of impecuniosity of the applicant, or otherwise.*

...

*In the Information Commissioner's decision in Re Ritchie and Department of Minerals and Energy (5 February 1993 - S8/93), the Information Commissioner decided that an application for access to documents need only seek one document which does not relate to the personal affairs of the applicant to attract the imposition of the application fee. I note that your FOI access application seeks access to complaints made to the Council, in respect of [the subject property] prior to your ownership of that property. It appears clear to me that any such information would not be information which concerns your personal affairs.*

*The Information Commissioner considered the meaning of the term "personal affairs" for the purposes of the FOI Act in his decision in Re Stewart and Department of Transport (1993) 1 QAR 227, a copy of which is enclosed. In particular, the Information Commissioner 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:*

- *affairs relating to family and marital relationships;*
- *health or ill-health;*
- *relationships with and emotional ties with other people; and*
- *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, based on a proper characterisation of the matter in question. The Information Commissioner has also decided that complaints made by persons to public authorities are the personal affairs of the complainant (Re Byrne and Gold Coast City Council (1994) 1 QAR 477, a copy of which is enclosed).*

*In your application for internal review dated 21 December 1995, you have noted that you derive income from [the subject property]. In Re Stewart, the Information Commissioner decided that information concerning a person's business or professional affairs is not information concerning the personal affairs of that person (see paragraphs 82 and 107 of Re Stewart).*

*I therefore do not consider that information relating to complaints made to the Council about [the subject property] is information which concerns your personal affairs, and therefore you are required to pay the \$30.00 application fee before the Council is obliged to process your FOI access application.*

13. I subsequently received a submission from the applicant dated 11 February 1996. The principal argument raised by the applicant was that he requires the documents requested under the FOI Act in order to complete a complaint form under the *Peace and Good Behaviour Act* so that he might obtain a restraining order against the person he considers responsible for harassing the applicant, and his tenants, in relation to the subject property. His argument appears to be that, in the face of threats to his tenants, if he does not take action against the supposed wrongdoer by means of the *Peace and Good Behaviour Act* complaint, then should harm come to his tenants, he will be liable to prosecution under various sections of the *Criminal Code* on the basis of an omission to take appropriate action. Such liability to prosecution (according to the applicant's contention) explains his need to access the documents, and means that the documents concern his personal affairs.

### **Conclusion**

14. The applicant's argument is, in essence, an attempt to connect the contents of the requested documents to the personal affairs of the applicant by reference to circumstances which are quite extraneous to the proper characterisation of the information contained in the requested documents. In previous decisions, I have stated that the question of whether or not information concerns a person's personal affairs is essentially a question of fact to be determined according to the proper characterisation of the information in the documents to which access has been requested. Thus, in *Re Bolton and Department of Transport* (Information Commissioner Qld, Decision No. 95035, 20 December 1995, unreported), I said (at paragraphs 16-17):

16. *In Re Cannon and Australian Quality Egg Farms Limited (1994) 1 QAR 491 at p.516, paragraph 67, I considered the meaning of the word "concerning" in the context of s.45(1)(c)(i) of the FOI Act, in particular, its meaning in the phrase "information ... concerning the business, professional, commercial or financial affairs of an agency or other person ...". I held that the relevant meaning of the word "concerning" in that context is "about, regarding".*

17. *I consider that the word "concerning", and its relevant variations, i.e. "concern", "concerns", have the same meaning when used in other provisions of the FOI Act and FOI Regulation in conjunction with the phrase "personal affairs of a person" : see s.44 of the FOI Act and the two provisions set out at paragraphs 6-8 above. They call for a proper characterisation of the information or document in issue to determine whether it is about the personal affairs of the applicant for access (in the case of s.44(2) and [s.29(2) of the FOI Act and s.6 of the FOI Regulation] ) or about the personal affairs of an identifiable individual (in the case of s.44(1) of the FOI Act).*

15. Examination of the documents to which the applicant seeks access discloses that they are not about his personal affairs at all (as to the meaning of "personal affairs" see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at pp.249 and 256-266). For example, several of them concern complaints made in respect of the subject property before the applicant owned it. They clearly do not contain any information about the applicant's personal affairs.  
The stated purpose for which the applicant wants them does not transform those documents into documents which concern the applicant's personal affairs.
16. Given the terms in which s.29(2) of the FOI Act and s.6 of the FOI Regulation are framed, an FOI access application need seek only one document which does not concern the personal affairs of the applicant for access to attract the imposition of the \$30 application fee.
17. Moreover, neither the FOI Act nor the FOI Regulation confer a discretion on an agency to waive payment of the application fee, whether for reasons of impecuniosity on the part of the applicant, or otherwise.
18. Accordingly, I find that the Council was correct in requiring the payment of a \$30 application fee by Mr Steinback in respect of his FOI access application dated 4 December 1995, and  
I affirm the decision under review.

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F N ALBIETZ  
**INFORMATION COMMISSIONER**