

F & K and Queensland Police Service

(S 90/96, 5 September 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. - 4. [These paragraphs removed.]

REASONS FOR DECISION

Background

5. By letter dated 21 November 1995, the applicants requested access, under the FOI Act, to a copy of the complete police report on the death of [a person ('the deceased')], who died on 1 April 1995. The applicants are the deceased's sister and brother-in-law.
6. By letter dated 12 April 1996, Acting Senior Sergeant R J McCall, on behalf of the Queensland Police Service (the QPS) informed the applicants that he had -
 1. identified a total fifteen folios which were responsive to the terms of the applicants' FOI access application;
 2. decided to give the applicants full access to folio 001 and folios 003-012;
 3. decided to give the applicant's access to folio 002 subject to the deletion of matter which he found to be exempt matter under s.44(1) of the FOI Act; and
 4. decided to refuse the applicant's access to folios 013-015 on the ground that they comprised exempt matter under s.44(1) of the FOI Act.
7. The applicants sought internal review (in accordance with s.52 of the FOI Act) and, by letter dated 13 May 1996, Assistant Commissioner G L Early informed the applicants that he had decided to affirm the initial decision of Acting Senior Sergeant R J McCall.
8. By letter dated 29 May 1996, the applicants applied to me for review, under Part 5 of the FOI Act, of Assistant Commissioner Early's decision.

External Review Process

9. At the commencement of the review, the QPS was requested to provide (for my examination and reference during the course of the review) copies of folios 002 and 013-015, as well as copies of folios 001 and 003 to which the applicants were given access in their entirety.
10. After examining those documents, I wrote to the applicants on 11 July 1996, conveying my preliminary views on the issues for determination in this external review. I invited the applicants to provide me with any written submission and/or evidence on

which the applicants wished to rely in this review. I further informed the applicants that, in the interests of procedural fairness, it would be necessary to provide the QPS with a copy of their written submission and evidence, and that it may also be necessary to provide ..., the deceased's husband with a copy of their submission and evidence for his comment and response.

11. The applicants subsequently requested, and were granted, an extension of time in which to provide me with their written submission and evidence. By letter dated 29 July 1996, the applicants provided me with their written submission and evidence in this matter, and indicated that they did not want the submission disclosed to [the deceased's husband].
12. By letter dated 12 August 1996, I requested that the QPS address some of the matters raised in the applicants' submission and evidence, in particular, the applicants' assertion that the police officer who investigated the death of [the deceased] had during a telephone conversation with 'F', read out the contents of a 'post-it note', addressed to [the deceased's husband], and believed to have been written by the deceased before her death. The contents of the 'post-it note' constitute the matter in issue on folio 002. I also asked the QPS to inform me whether the original 'post-it note' was still held by the QPS.
13. By letter dated 15 October 1996, the QPS responded to my letter dated 12 August 1996. The QPS provided me with a photocopy of the original 'post it note' and informed me that the original was held in the Property Office at [a police station]. The QPS also provided me with a statutory declaration of Constable Glen Fletcher dated 8 October 1996, in which Constable Fletcher stated that he had had at least one conversation with 'F', but that he could not recall the content of the conversation(s).
14. By letter dated 28 October 1996, the Deputy Information Commissioner, requested further information from the applicants concerning the content of the conversation which the applicants claim took place between Constable Fletcher and 'F', during which the contents of the 'post-it note' were read out to 'F'. I note that the applicants' stated interest in obtaining access to the 'post-it note' is to have the handwriting verified as that of the deceased. I note also that the QPS investigators did not consider it necessary to obtain expert handwriting analysis of the 'post-it note', since they were satisfied that there were no suspicious circumstances attending the death of the deceased.
15. The Deputy Information Commissioner also informed the applicants that the original 'post-it note' would now be treated as a document in issue in this review. (The QPS was likewise informed, by letter dated 29 October 1996.) Thus, the following comprises the matter in issue in this review:
 5. the matter deleted from folio 002, which consists of the contents of the 'post-it note' addressed to the deceased's husband, and apparently written by the deceased before her death;

6. folios -13-015, which comprise a statement given to QPS investigators by [the deceased's husband]; and
 7. the original 'post-it note'.
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16. In response to the Deputy Information Commissioner's letter dated 28 October 1996, 'F' provided this office with a statutory declaration dated 22 November 1996.
 17. By letter to the applicants dated 2 December 1996, I conveyed my views on the issues for determination, in light of the additional material submitted to me in the course of the review. I also gave the applicants a further opportunity to provide me with any additional submission and/or evidence on which they wished to rely.
 18. By letter dated 16 January 1997, the applicants responded, providing me with copies of their Optus telephone account and passport entry, to evidence the fact that the telephone conversation between 'F' and Constable Fletcher took place.
 19. By letter dated 17 March 1997, the Assistant Information Commissioner provided the QPS with copies of the submission and evidence lodged by the applicants. The QPS was given the opportunity to lodge any written submission and/or evidence on which the QPS wished to rely in this external review.
 20. By letter dated 20 May 1997, the QPS indicated that it did not wish to provide any further submission in respect of the issues for determination in this review. However, the QPS did provide this office with a report by Inspector Leith, dated 8 May 1997, which addressed concerns stated by the applicants, in their submission dated 29 July 1996, in respect of alleged deficiencies or inadequacies in the investigation conducted by the QPS into the death of [the deceased].
 21. With the consent of the QPS, a copy of Inspector Leith's report was provided to the applicants under cover of the Assistant Information Commissioner's letter dated 26 May 1997, and the applicants were given until 10 June 1997 to make any response that might be relevant to the issues requiring determination in this review. I have not received anything further from the applicants.
 22. [The deceased's husband] became aware of the applicants' application for external review, and regularly contacted my staff to ascertain the progress of the review. On a number of the occasions, he indicated to a member of my staff that he was willing to discuss any concerns the applicants might have regarding the circumstances of his wife's death. That offer was communicated to the applicants, but not availed of by the applicants. [The deceased's husband] did not become a participant in the review, and was not given copies (or otherwise informed of the contents) of the applicants' submission and evidence. [The deceased's husband] did, however, inform my staff that he maintained his objection (which he first conveyed to the QPS when consulted by the QPS in accordance with s.51 of the FOI Act) to disclosure of matter in issue, on privacy grounds.

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

23. The QPS claims that the matter in issue is exempt under s.44(1) of the FOI Act, which 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.

...

24. 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.
25. 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.256-267, 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.
26. 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 matter in question.
27. Having examined the matter in issue, I am satisfied that it must properly be characterised as information concerning the personal affairs of persons other than the applicants. It is information which falls within the core meaning of the term "personal affairs" described above, in that it comprises, mostly, information concerning the relationship between [the deceased's husband] and the deceased, together with some information concerning the health of the deceased prior to her death.

28. The matter in issue is, therefore, *prima facie* exempt under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1). In that regard, I must consider whether there are any public interest considerations favouring disclosure of the matter in issue which are sufficiently strong to displace the *prima facie* exempt status of the matter in issue, so as to warrant a finding that its disclosure would, on balance, be in the public interest.
29. It is clear from their application for external review, and the material lodged with me by the applicants, in the course of the review, that the applicants consider that the investigation conducted by the QPS into the death of [the deceased] was deficient. They have formed this view based on the contents of the documents to which the QPS gave them access under the FOI Act, their own inquiries, and their personal knowledge of the deceased and her relationship with her husband. The certified cause of death of [the deceased] was hanging. The QPS investigation revealed no suspicious circumstances and the QPS concluded that the death was a suicide. The coroner determined not to conduct an inquest.
30. I consider that there is a public interest in accountability of the QPS for the conduct of sufficiently thorough investigations into deaths occurring within QPS jurisdiction. In such cases, the need for an appropriate level of scrutiny of QPS operations, and an appropriate level of accountability for the effective performance of QPS functions, is felt most acutely by close relatives of the deceased. In that regard, they stand in a position not too dissimilar from that of complainants to the QPS, or victims of crime, whose position (with regard to an entitlement to an account of a relevant police investigation and its outcome) I addressed in *Re McCann and Queensland Police Service* (Information Commissioner Qld, Decision No. 97010, 10 July 1997, unreported) at paragraphs 58-60, and *Re Godwin and Queensland Police Service* (Information Commissioner Qld, Decision No. 97011, 11 July 1997, unreported) at paragraphs 52-56. However, as I remarked in *Re Godwin* (at paragraph 52): "The extent of the detail that could be offered by way of explanation in such circumstances would necessarily vary from case to case, depending on the need to respect any applicable obligations or understandings of confidence, or applicable privacy considerations".
31. I consider that the applicants have been given a satisfactory account of the police investigation. Folios 001-003, to which the applicants have been given access (with the exception of the matter in folio 002 which sets out the contents of the 'post-it note') details the investigation conducted by the QPS and also contains a detailed summary of the information provided in [the deceased's husband] statement that was considered significant by QPS investigators. In addition they have now been given access to the report of Inspector Leith which specifically addresses each of the matters raised by the applicants in their submission dated 29 July 1996 as evidencing deficiencies in the police investigation. I consider that if the applicants wish to pursue their concerns further with either the QPS, or another agency, authority or person, they have sufficient information to do so.
32. Having examined the contents of the 'post-it note' which was addressed to [the deceased's husband], I can well understand why [the deceased's husband] would regard its disclosure under the FOI Act (with no consequent restrictions on its further dissemination) as a significant invasion of privacy, in respect of both himself and his deceased wife.

Disclosure of the 'post-it note' is not necessary for the applicants to pursue their concerns with respect to the adequacy of the police investigation. If the applicants are able to satisfy an appropriate authority of the necessity to obtain expert handwriting analysis, the original 'post-it note' (which remains in the possession of the QPS) can be provided to an appropriate expert for comparison with a sample of the deceased's handwriting, without any need for the contents of the 'post-it note' to be more widely disclosed.

33. 'F' has sworn that the contents of the 'post-it note' were read out to him over the telephone by Constable Fletcher. Because 'F' cannot recall much of what was read out to him, it is not possible to verify his account by checking his recollection of what he heard against the contents of the 'post-it note'. Constable Fletcher has stated that he can recall a conversation with relatives of the deceased, but cannot recall reading out the contents of the 'post-it note'. On the balance of probabilities, I find that the contents of the 'post-it note' were either read out (whether in full or in part, it is impossible to verify), or paraphrased, by Constable Fletcher in a telephone conversation with 'F'. However, it is clear from 'F's' statutory declaration dated 22 November 1996 that, even if the 'post-it note' was read out to him in full, 'F's' recollection of it is not accurate or complete. In these circumstances, I do not consider that there is any significant diminution of the weight to be attached to the public interest in protecting the privacy of the information concerning the personal affairs of [the deceased's husband] and the deceased, which is contained in the 'post-it note'.
34. I note, too, that s.6 of the FOI Act cannot afford any assistance to the applicants, with respect to the application of the public interest balancing test in s.44(1), because the matter in issue does not comprise information concerning the personal affairs of the applicants.
35. On the material before me, I am not satisfied that the public interest considerations favouring disclosure of the matter in issue are of sufficient weight to overcome the strong privacy interest attaching to the matter in issue, so as to justify a finding that disclosure of the matter in issue would, on balance, be in the public interest. I therefore find the matter in issue is exempt matter under s.44(1) of the FOI Act.

DECISION

36. While I have, in essence, affirmed the approach adopted in the QPS decisions, the original 'post-it note' should have been, but was not, dealt with in the decision under review. In giving my formal decision, under s.89 of the FOI Act, I will, therefore, set aside the decision under review. In substitution for it, I decide that the matter to which the applicants have been refused access (which is identified in paragraph 15 above) is exempt matter under s.44(1) of the FOI Act.