

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 166 of 1993
(Decision No. 95010)

Participants:

CAROLYN DAWN 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 her FOI access application - whether search efforts of agency reasonable in all the circumstances.

Freedom of Information Act 1992 Qld s.29(2)
Freedom of Information Regulation 1992 Qld s.6

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 3 August 1993) is varied, in that I find that -

- (a) 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 8 June 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 (b) below; and
- (b) 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

.....

F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

CAROLYN DAWN STEWART
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 her initial application for access to documents under the *Freedom of Information Act 1992 Qld* (the FOI Act).
2. By letter dated 8 June 1993, Carolyn Stewart applied to the Department of Transport (the Department) for access to documents, in the following terms:

I request all documents from all parties relating to "my personal affairs" arising out of the Queensland Transport inquiries from complaints I have made against [here a person, who will be referred to as Mrs Z was identified and that person's part-time occupation was stated] ...

3. The initial decision on behalf of the Department was made by Mr B J Butterworth and communicated to the applicant by a letter dated 21 June 1993. In that letter Mr Butterworth said:

I have enclosed documents which fit the definition of personal affairs documents in the Freedom of Information legislation. These are the only documents which do not attract the application fee and production costs.

Documents relating to other persons e.g. [Mrs Z] could be regarded as personal affairs documents and be supplied free of charge but only to them. They could not be regarded as your personal affairs.

Similarly documents relating to an investigation of a person other than yourself would not be regarded as your personal affairs. Should you require documents such as these, you must, as indicated by the Information Commissioner, pay the \$30.00 application fee and be prepared to pay production costs of the order of 50 cents per page.

4. By a letter dated 17 July 1993, Carolyn Stewart applied for internal review of Mr Butterworth's decision, stating:

I wish to lodge an appeal on the grounds that not one of the documents I requested concerning "MY PERSONAL AFFAIRS AND RELATING TO THE DISPUTE ABOUT THE SCHOOL CROSSING AT THE HARRISTOWN STATE PRIMARY SCHOOL", have been sent to me.

5. The internal review was conducted by Mr W J Rodiger of the Department, who, in a letter dated 3 August 1993, affirmed the earlier decision of Mr Butterworth. By letter dated 24 August 1993, Carolyn Stewart applied for review under Part 5 of the FOI Act in respect of Mr Rodiger's decision.

Scope of the FOI access application

6. At paragraphs 6-10 of my decision in *Re Ronald Keith Stewart and Department of Transport* (Information Commissioner Qld, Decision No. 95007, 12 May 1995, unreported), which I shall refer to in these reasons for decision as *Re Ronald Stewart*, I discussed the relevance of an earlier application by Carolyn Stewart and Ronald Stewart for documents relating to what I described in that decision as the school crossing dispute. (My reasons for decision in that earlier application are reported as *Re Stewart and Department of Transport* (1993) 1 QAR 227.) In *Re Ronald Stewart*, I determined that 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.
7. I consider that the terms of Carolyn Stewart's FOI access application make it clear that she sought access only to documents which relate to her "personal affairs", thus avoiding the requirement to pay an application fee that might otherwise be imposed by s.29(2) of the FOI Act and s.6 of the *Freedom of Information Regulation 1992*. I must therefore consider the sufficiency of search undertaken by the Department for documents which relate to Carolyn Stewart's personal affairs, as that term is interpreted for the purposes of the FOI Act.
8. Carolyn Stewart has indicated that she does not seek access to documents which may be held by the Department concerning registration, licensing or accidents relating to motor vehicles or vessels. She has also indicated that she does not wish to pursue access to documents, copies of which have been provided to her husband, Ronald Stewart. I will therefore not consider further, in my reasons for decision, documents which fall into either of those categories.

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. At paragraph 20 of my reasons for decision in *Re Ronald Stewart*, I indicated that there were a number of external review applications made by members of the Stewart family for documents held by the Department and by the Minister for Transport. I also noted that searches had been conducted by my staff, and staff of the Department and the Minister, for documents which might fall within the terms of any of the various FOI access applications lodged by members of the Stewart family. I described these searches at paragraphs 20-30 of my decision in *Re Ronald Stewart*. From those searches, members of my staff have identified all documents which concern, or which may reasonably be argued to concern, the personal affairs of Carolyn Stewart. In examining documents which might be relevant, my staff have taken a liberal view of what matter may concern Carolyn Stewart's personal affairs and the

Department has been co-operative in agreeing to grant her access to further matter, notwithstanding initial concerns relating to the classification and exempt status of such matter in some instances. The Department has agreed to the release in full of all documents so identified.

11. 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 of Transport. That document also falls within the terms of Carolyn 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 to locate the document have been reasonable in all the circumstances, even though ultimately unsuccessful.
12. As to Carolyn Stewart's general claim that there are other documents concerning her 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 Carolyn Stewart's FOI access application for documents relating to her personal affairs. I cannot identify any further searches which the Department might reasonably be called upon to undertake in a quest for such documents.
13. I noted in *Re Ronald Stewart* that one of the underlying causes of Mr Stewart's refusal to accept my preliminary view in relation to sufficiency of search was his interpretation of the term "personal affairs" as it is used in the FOI Act. It is clear that the interpretation of this term urged on me throughout this and other applications by members of the Stewart family is much wider than the interpretation which I adopted in my decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227 and which I have reiterated in numerous decisions since that time. For example, in a letter dated 25 August 1994, Carolyn Stewart stated:

I wish to advise you that I still feel that a number of documents are deliberately being withheld as statements from other people involved are being withheld by the Transport Dept. and as my name will be mentioned in these statements, I feel these documents must be released to me as part of my personal affairs.
14. Carolyn Stewart's insistence on a wide interpretation of the term "personal affairs", in the face of my decisions giving it a more limited scope, is, I believe, the major factor influencing her claims that further documents which fall within the terms of her FOI access application must exist.
15. I acknowledge that numerous documents exist which deal with what I have referred to as the school crossing dispute, but only some of these relate to Carolyn Stewart's personal affairs. I am satisfied that Carolyn Stewart has been given access to all documents which fall within the terms of her FOI access application dated 8 June 1993.

Conclusion

16. As further documents were discovered in the course of my review, it is appropriate that I vary the decision under review. I find that -
 - (a) 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 8 June 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 (b) below; and

- (b) 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.

F N ALBIETZ
INFORMATION COMMISSIONER