

OFFICE OF THE INFORMATION )  
COMMISSIONER (QLD) )

S 70 of 1994  
(Decision No. 95014)

Participants:

RONALD KEITH STEWART  
Applicant

- and -

MINISTER FOR TRANSPORT  
Respondent

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

FREEDOM OF INFORMATION - applicant challenging sufficiency of search by respondent for documents falling within the terms of his FOI access application - whether search efforts of respondent have been reasonable in all the circumstances

*Freedom of Information Act 1992 Qld*

*Freedom of Information Regulation 1992 Qld*

*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)

*Carolyn Dawn Stewart and Minister for Transport, Re* (Information Commissioner Qld, Decision No. 95013, 16 May 1995, unreported)

## DECISION

The decision under review (being the internal review decision of Mr W J Rodiger, on behalf of the respondent, dated 14 December 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 November 1993, to which the applicant has not been given access, except for the letter dated 12 June 1992 from the applicant to the respondent 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 the applicant to the respondent, I am satisfied that the search efforts made on behalf of 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: 16 May 1995

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

Participants:

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- and -

MINISTER FOR TRANSPORT  
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### REASONS FOR DECISION

#### Background

1. The applicant complains that the respondent has failed to locate and deal with all documents which fall within the terms of his initial application for access to documents under the *Freedom of Information Act 1992* Qld (the FOI Act).
2. By letter dated 8 November 1993, Ronald Stewart applied to the Minister for Transport (the Minister) for access to documents, in the following terms:

*I wish to lodge an FOI against the Minister of Transport, Mr D Hamill.*

*The information I am seeking dates from 21/11/91 up to the present time.*

*This information concerns my personal affairs which involve [here a person, who will be referred to as Mrs Z was identified and that person's part-time occupation was stated] and a number of people which she has drawn into these events which have developed and made it necessary for this FOI application.*

3. The initial decision in response to this application was made on behalf of the respondent by Mr B J Butterworth of the Department of Transport (the Department) and communicated to Ronald Stewart by a letter dated 30 November 1993, which stated:

*Your letter of 8 November 1993 addressed to the Minister for Transport has been passed to me for response as The Hon The Minister is aware of your previous submissions.*

*I regret that I cannot see any difference between this application and that which you lodged previously, which you have taken to the Information Commissioner.*

*Whilst an appeal is pending with the Information Commissioner, I am not permitted to proceed further with the matter and I cannot process your request.*

4. By a letter dated 6 December 1993, Ronald Stewart applied for internal review of that decision stating:

*Re your letter dated 30th November, 1993, I do not class this FOI application as the same as the one that is lodged with the Information Commissioner and it is a*

*separate application.*

*I must now ask for an internal review against your decision (which I know will be refused).*

5. The internal review was conducted by Mr W J Rodiger of the Department, who, in a letter dated 14 December 1993, informed Mr Stewart as follows:

*I have investigated the situation and am satisfied that the documents which would be responsive to your request have not changed since your original application. You have lodged an appeal with the Information Commissioner in regard to the original application and as Mr Butterworth pointed out, the Department is unable to proceed with a further application whilst the appeal is being decided.*

6. By letter dated 20 December 1993, the applicant applied for a review under Part 5 of the FOI Act in respect of Mr Rodiger's decision.
7. At paragraphs 8 to 15 of my decision in *Re Carolyn Dawn Stewart and Minister for Transport* (Information Commissioner Qld, Decision No. 95013, 16 May 1995, unreported) I discussed the distinction between "documents of an agency" and "official documents of a Minister". Identical considerations apply, in this application, to those expressed in the cited paragraphs.

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

8. 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.
9. I consider that the terms of Ronald Stewart's FOI access application to the Minister, dated 8 November 1993, make it clear that he sought access only to documents which related to his "personal affairs", thereby intending to avoid the requirement to pay an application fee under the *Freedom of Information Regulation 1992*. I must therefore consider the sufficiency of search undertaken on behalf of the Minister for documents which relate to Ronald Stewart's personal affairs, as that term is interpreted for the purposes of the FOI Act.
10. As to the time period covered by this application, Ronald Stewart applied for documents created between 21 November 1991 and "the present time". The Minister (through his delegates) has been willing to provide access to documents created up to 14 December 1993 (the date of Mr Rodiger's internal review decision) and I have treated this as the cut-off date for searches.

#### **Sufficiency of Search**

11. 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, the two questions which I must answer in such a case are:

- (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.

12. At paragraph 20 of my 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. I also noted that searches were carried out in Departmental offices in Brisbane and Toowoomba, and in the Minister's office, for documents which might fall within the terms of any of the various applications. I described those 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 Ronald Stewart. As a result of those searches a number of further documents were identified as falling within the terms of Ronald Stewart's various FOI access applications. The Department has agreed to release to Mr Stewart, without deletions, all documents so identified, with the exception of seven documents which were released in part. The position with respect to those documents is explained at paragraphs 35-43 of my decision in *Re Ronald Stewart*.

13. I turn now to my findings in relation to the question of sufficiency of search. In *Re Ronald Stewart*, I referred to a letter dated 12 June 1992 from Ronald Stewart to the Minister (a copy of which was provided by Ronald Stewart for my information). That document also falls within the terms of Ronald Stewart's FOI access application to the Minister. 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 an official document of the Minister, but I find that the search efforts made on behalf of the Minister to locate the document have been reasonable in all the circumstances, even though ultimately unsuccessful.

14. As to Ronald Stewart's general claim that there are other documents concerning his personal affairs in the possession or under the control of the Minister, I find that there are no reasonable grounds to believe that such documents exist. Extensive searches carried out by staff of the Minister and the Department, and by staff of my office, plus 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 Ronald Stewart's FOI access application for documents relating to his personal affairs. I cannot identify any further searches which the Minister might reasonably be called upon to undertake in a quest for such documents.

### **Conclusion**

15. 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 November 1993, to which the applicant has not been given access, except for the letter dated 12 June 1992 from the applicant to the respondent 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 the applicant to the respondent, I am satisfied that the search efforts made on behalf of 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**