

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 113 of 1995
(Decision No. 95035)

Participants:

WARREN KENNETH BOLTON
Applicant

- and -

DEPARTMENT OF TRANSPORT
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - application for review of decision requiring payment of a \$30 application fee for access to documents - documents concern administrative matters relating to roadworks undertaken by the respondent - applicant claims that documents concern his personal affairs since he was fined for breaching speed restrictions when traversing the roadworks - whether the requested documents 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), s.45(1)(c)(i)
Freedom of Information Regulation 1992 Qld s.6

Cannon and Australian Quality Egg Farms Limited, Re (1994) 1 QAR 491
Stewart and Department of Transport, Re (1993) 1 QAR 227

DECISION

I affirm the decision under review (being the decision made on 13 June 1995 by Mr W J Rodiger on behalf of the respondent) that a \$30 application fee is payable by the applicant in respect of his FOI access application to the respondent dated 15 May 1995.

Date of Decision: 20 December 1995

.....

F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

WARREN KENNETH BOLTON
Applicant

- and -

DEPARTMENT OF TRANSPORT
Respondent

REASONS FOR DECISION

Background

1. The applicant challenges a decision by the Department of Transport (the Department) requiring payment by the applicant of a \$30 application fee in respect of the applicant's request to the Department under the Freedom of Information Act 1992 Qld (the FOI Act) for access to certain documents. On 15 May 1995, the applicant applied to the Department under the FOI Act for access to:
 - (1) *duplicate copy of form F994 for road works at Bruce H'way "Boncoon Creek" "Kunwarrer turnoff area" showing location of sign at beginning of job and on 8/4/95. (Appendix D).*
 - (2) *documents of delegated authority from the Director-General of the Transport Dept. Qld to officer signing the F994 for the above job.*
 - (3) *documents that would indicate the duration of work carried out on 8/4/95 and the direction of activities undertaken by personnel that day.*
 - (4) *... the Contract document for the above job and copies of any relevant plan or conditions.*
 - (5) *copy of Daily records for 8/4/95 showing the exact location of all sign arrangements (Appendix B).*
2. By letter dated 29 May 1995, Mr B J Butterworth, on behalf of the Department, wrote to the applicant advising that "before your request can be accepted as an application under the Act, you are required to pay the statutory application fee of \$30."
3. On 5 June 1995, the applicant applied for internal review of the Department's decision to require payment of a \$30 application fee, arguing as follows:

... my request [concerned] the provision of information about matters relating to operations of a road construction job at Banwan Creek, Bruce Highway, Rockhampton, that effected my being issued with a speeding fine ... on 8 April

1995.

The information being sought is about decisions and circumstances that had an effect upon me personally and I believe that as such is information personally related to me and should be exempt from an application fee under the FOI Act 1992.

4. The internal review decision was given on behalf of the Department on 13 June 1995 by Mr W J Rodiger, who confirmed the initial decision, saying:

Whilst I can appreciate that the subject of your request is a matter of concern to you personally, the application refers to matters which can not be regarded as "personal affairs" in terms of this legislation, namely, roadworks being carried out by the Department.

5. By letter dated 24 June 1995, the applicant applied to me for review, under Part 5 of the FOI Act, of Mr Rodiger's decision requiring payment of a \$30 application fee.

Relevant legislative provisions

6. Subsection 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, I have referred below to s.44(1) and s.44(2), 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 Department as falling within the terms of Mr Bolton's FOI access application have been obtained and examined. They comprise forms detailing the erection and removal of traffic signs details of delegated authority from the Director-General for the installation of traffic signs, diary notes on work hours and location for 8 April 1995, job

documents, and a site diary for 8 April 1995.

10. In his application for external review dated 24 June 1995, the applicant included brief submissions in support of his case, as follows:

I recently was issued with a speeding ticket by the Queensland Police Service. I believe that the signs erected that restricted the speed and consequently led to my alleged offence were not lawfully erected.

...

I approached [the Department] to gather the evidence necessary to prove my case. [The Department] has advised that under FOI this information is not "personal affairs" within the meaning of the Act and therefore I must pay to obtain the details.

...

I assert that matter under consideration does have a "personal impact" on me, that the basis of decision making of [the Department] affected me personally as they placed me in a position where I could suffer personal loss and caused me to be charged for an offence, which in fact I may not have committed.

The information required is essential to the conduct of my case and in this regard also it is a personal matter.

11. On 4 July 1995, I wrote to the applicant in the following terms:

Given the terms in which s.29(2) of the FOI Act and s.6 of the FOI Regulation are framed, an application for access to documents need seek only one document which does not concern the personal affairs of the applicant to attract imposition of a \$30 application fee. The word "concerns" in the above provisions means "about, regarding". Those provisions call for a determination of whether the information contained in the documents to which an applicant has requested access is information about the applicant's personal affairs.

It is my preliminary view that the Department has correctly applied the above provisions to your FOI access application dated 15 May 1995. It seems that you have fallen into the error of thinking that, because you can see a connection between the information to which you have requested access and your personal affairs (i.e. your being charged with a traffic offence), the information to which you have requested access can objectively be judged as information which concerns your personal affairs.

In a series of formal decisions, I have stated repeatedly 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 contained in the document to which access has been requested. The information to which you have requested access is not about your personal affairs at all. Its only connection with your personal affairs is indirect and remote, arising from a set of circumstances which are quite extraneous to the proper characterisation of the information contained in the documents to which you have sought access.

12. In the event that the applicant did not accept my preliminary view, I invited him to forward a written submission in support of his contention that the documents to which he had requested access concerned his personal affairs for the purposes of the FOI Act.
13. The applicant wrote to me on 25 July 1995, arguing as follows:

Your first error lays with confusing "specific" and "general". As synonyms for "personal" and "non personal" i.e. if a document mentions a noun proper it's therefore "specific" and therefore "personal". A document that does not mention a noun proper is therefore "general" and accordingly therefore "non personal".

The second error you make is with the concept of the "intent", at the time of creation of a document i.e. at the time a document is created did it seek to qualify its specific future clients in personal terms and clearly identify them--. If it did not, then you say that document cannot be a "personal document" (for FOI purposes).

However, my view must be abundantly clear and you must have already perceived it from the nature of my application, but reiterated it is this:-

*A "life's **event**" makes a document a "personal affair" not the intention at the time the document was created.*

...

Translating this to my case, I am not making a "general public" interest enquiry as to how the Transport Department is currently making its roads, I am seeking to see documents that are impacting on me in a personal manner. As a matter of fact -- There is no difference in these two examples -- only degree of quantum!

The test is simple, if a document ceases to exist, would this impact on the individual under consideration in a direct material manner?

If the answer is no this then indicates "non personal".

If the answer is yes this then indicates "personal".

Under this test the documents that I seek from the Transport Dept. would truly be documents that are of a "personal nature" to me and rightly should fall within that category for FOI purposes.

Conclusion

14. The applicant's argument, in essence, is that because certain documents (which, on their face, are about mundane matters of public administration) have impacted on him in a personal manner, they are documents which concern his personal affairs. I have previously considered and rejected an essentially identical proposition: see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at pp. 266-267; paragraphs 112-114.

15. In *Re Ryder and Department of Employment, Vocational Education, Training & Industrial Relations* (Information Commissioner Qld, Decision No. 94023, 9 September 1994, unreported) at paragraph 22, I expressed the view that a general document containing guidelines for the completion of an application form of some type, while it may be used by a person in completing the application form, does not, by being so used, become transformed from being a general document to one concerning that individual's personal affairs.
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 the two provisions set out at paragraphs 6-8 above) or about the personal affairs of an identifiable individual (in the case of s.44(1) of the FOI Act).
18. An examination of the documents to which the applicant has requested access indicates that they are not about his personal affairs at all (as to the meaning of "personal affairs", see *Re Stewart* at p.249, pp. 256-266). The incurring of a speeding charge by the applicant did not thereby transform the documents in issue to documents concerning the applicant's personal affairs.
19. I affirm the decision under review.

.....
 F N ALBIETZ
INFORMATION COMMISSIONER