

# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 96017**

**Application L 8/96**

## **Participants:**

MARGARET WILLSFORD

**Applicant**

BRISBANE CITY COUNCIL

**Respondent**

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - information which would identify the registered owner of a dog which collided with the applicant's motor vehicle on a public road - whether information concerning the personal affairs of the dog-owner - disclosure would assist the applicant to pursue a legal remedy which may be available in respect of damage caused by the collision - whether disclosure of the information would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992 Qld*.

*Freedom of Information Act 1992 Qld* s.5, s.44(1), s.52, s.73(1), s.73(1)(d), s.78  
*Transport Infrastructure (Roads) Regulation 1991 Qld* s.13

*Alpert and Brisbane City Council, Re* (Information Commissioner Qld, Decision No. 95017, 15 June 1995, unreported)

*Byrne and Gold Coast City Council, Re* (1994) 1 QAR 477

*Cairns Port Authority and Department of Lands, Re* (1994) 1 QAR 663

*Carroll v Rees* (1985) Aust Torts Reports 80-732

*Eadie v Groombridge* (1992) 16 MVR 263

*Fotheringham and Queensland Health, Re* (Information Commissioner Qld, Decision No. 95024, 19 October 1995, unreported)

*Graham v Royal National Agricultural and Industrial Association of Queensland* [1989] 1 Qd R 624

*Pemberton and The University of Queensland, Re* (Information Commissioner Qld, Decision No. 94032, 5 December 1994, unreported)

*Searle v Wallbank* [1947] AC 341

*State Government Insurance Commission v Trigwell* (1979) 142 CLR 617

*Stevens v Nudd* [1978] Qd R 96

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

*Young and Workers' Compensation Board of Queensland, Re* (1994) 1 QAR 543

## **DECISION**

I set aside the decision under review (being the decision made on behalf of the respondent by Ms R Chapman on 19 December 1995). In substitution for it, I decide that the matter in issue (described in paragraph 2 of my accompanying reasons for decision) is not exempt from disclosure to the applicant, under s.44(1) of the *Freedom of Information Act 1992* Qld, and that the applicant has a right to be given access, under the *Freedom of Information Act 1992* Qld, to the matter in issue.

Date of decision: 27 August 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 to refuse her access, under the *Freedom of Information Act 1992 Qld* (the FOI Act), to the name and address of the registered owner of a dog which collided with the applicant's motor vehicle in a suburban street on 5 September 1995. The collision resulted in the dog's death, and damage to the applicant's motor vehicle.
2. By application dated 20 October 1995, Ms Willsford applied to the Brisbane City Council (the Council), under the FOI Act, for access to documents concerning the registration of the dog involved in the accident, citing the dog's registration number 37942/95. On 29 November 1995, Mr P Wesener, the Council's FOI Officer, decided to give the applicant partial access to two documents identified as falling within the terms of her FOI access application:
  - a 1995 dog registration renewal - Council copy;
  - a computer printout from the Council dog registration information system.

The applicant was given access to the two documents, subject to the deletion of the name and address of the individual recorded as the owner of the dog. Mr Wesener decided that the matter deleted from the documents was exempt matter under s.44(1) of the FOI Act.

3. By letter dated 8 December 1995, Ms Willsford applied for internal review of Mr Wesener's decision, in accordance with s.52 of the FOI Act. The review was undertaken by Ms R Chapman, Director of the Council's Legal Services Branch, and communicated to the applicant by letter dated 19 December 1995. Ms Chapman affirmed Mr Wesener's decision, observing:

*I have reviewed the documents and ... I agree with Mr Wesener that the material to which you seek access is exempt as its release would disclose information which concerns the personal affairs of a person or persons.*

*In certain circumstances, it might be that the public interest dictates that the information should be disclosed, regardless of the "personal affairs" exemption. For example, where it can be shown that a dog has attacked another person and caused damage, then there would be a strong case for disclosing the name and address of the owner/s of the dog. However, in this case there is no evidence of any extenuating circumstances and so the original decision must stand.*

4. On 15 April 1996, Ms Willsford applied to me for review, under Part 5 of the FOI Act, of Ms Chapman's decision. The substance of Ms Willsford's case is captured in the following comments from her application for review:

*The dog, which is the subject of this application, damaged my vehicle, and I seek particulars of ownership in order that I may claim on the owners for such damage. If car registration is subject to public search, then I cannot see why dog registration is not also so available.*

...

*... If society deems it necessary to maintain registers of ownership, then that society should have due access to them. Under the present system it seems that dog registration is merely a source of revenue for the Council.*

5. Ms Willsford's application for review was lodged outside the time limit specified in s.73(1)(d) of the FOI Act. However, since the Council indicated that it had no objection to an extension of time, and since I considered that Ms Willsford's application for review disclosed a reasonably arguable case (*cf. Re Young and Workers' Compensation Board of Queensland* (1994) 1 QAR 543 at p.553, paragraph 22), I decided to exercise the discretion conferred on the Information Commissioner by s.73(1)(d) of the FOI Act, so as to allow the time for lodgment of an application for review of Ms Chapman's decision to be extended to 16 April 1996.

### **External review process**

6. The two documents in issue were obtained from the respondent and examined. The Deputy Information Commissioner wrote to the person named in the matter in issue to inform her of the application for review, ascertain whether she objected to the disclosure to the applicant of her name and address, and draw her attention to her right to apply, under s.78 of the FOI Act, to be a participant in this review. I received a letter from the father of the person who was registered as being the owner of the dog, stating that he and his wife were the actual owners of the dog, and that they objected to the disclosure of the matter in issue to the applicant, but did not wish to participate in the review.
7. On 10 May 1996, I wrote to the applicant communicating my preliminary view and inviting the applicant to lodge evidence or submissions in support of her case. By letter dated 3 June 1996, the applicant lodged a written submission in support of her contention that the matter in issue was not exempt matter under s.44(1) of the FOI Act.

8. On 5 June 1996, the Deputy Information Commissioner forwarded to the Council a copy of the applicant's submission, and extended to the Council the opportunity to lodge a written submission and/or evidence in support of its case. By letter dated 10 July 1996, the Council advised that it did not wish to lodge any further material in support of its case, but that it relied upon the material discussed in the decisions of Mr Wesener and Ms Chapman.

**The application of s.44(1) of the FOI Act**

9. Section 44(1) of the FOI Act 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.*

10. 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) in the FOI Act (see pp.256-257, 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:

- family and marital relationships;
- health or ill health;
- relationships with and emotional ties to 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, to be determined according to the proper characterisation of the information in question.

11. At paragraph 81 of *Re Stewart*, I said:

*For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1). This is an expedient (permitted by s.32 of the Queensland FOI Act) which has often been endorsed or applied in reported cases: see, eg, Re Borthwick and Health Commission of Victoria (1985) 1 VAR 25 ... .*

(See also *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 at p.490, paragraph 38.) No doubt, it was on this basis that the Council considered that it was able to disclose to the applicant documents of the type described above, provided that identifying particulars were deleted. The respondent's decision would be justified (subject to the application of the public interest balancing test incorporated in s.44(1) of the FOI Act) if the documents under consideration contain information which is properly to be characterised as information concerning the personal affairs of the person whose name and address has been deleted.

12. I consider that the ownership of a dog for domestic purposes (i.e., for non-commercial purposes) is a matter which relates to the private aspects of a person's life. Accordingly, to disclose the matter in issue would disclose information concerning the personal affairs of an identifiable individual. There appears to be some question as to who actually owned the dog which was killed in the collision with the applicant's motor vehicle: whether it was the person identified on the Council's dog registration information system, or that person's parents. Nothing really turns on this in the present case: the disclosure of the matter in issue would enable the identities of both the person recorded as registered owner, and that person's parents, to be ascertained, since they bear the same surname and reside at the same address.
13. I find that the matter in issue is information which concerns the personal affairs of the person identified as the registered owner of the dog, registration number 37942/95, on the Council's records.
14. The issue then arises as to whether there are public interest considerations favouring disclosure of the name and residential address of the registered owner of the dog, which are of sufficient weight to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.
15. This is not a case where disclosure of the matter in issue would serve the public interest in accountability of government, or keeping the community informed of government's operations, being two public interest considerations that are given explicit recognition in s.5 of the FOI Act. Section 5 of the FOI Act, however, was intended to be illustrative and explanatory (as is clear from s.5(3) of the FOI Act): it was not intended to, nor according to its terms does it purport to, place constraints on the range of public interest considerations which, in any particular set of circumstances, might relevantly be taken into account in applying a public interest balancing test contained within an exemption provision. (See also, in this regard, *Re Fotheringham and Queensland Health* (Information Commissioner Qld, Decision No. 95024, 19 October 1995, unreported) at paragraph 23).
16. I consider that, in an appropriate case, there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances (*cf. Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at pp.713-714, paragraphs 103-104; p.717, paragraph 120; and p.723, paragraph 142). The public interest necessarily comprehends an element of justice to the individual: see *Re Pemberton and The University of Queensland* (Information Commissioner Qld, Decision No. 94032, 5 December 1994, unreported) at paragraphs 178 and 190, and the cases there cited. Although the public interest I have described is one which would apply so as to benefit particular individuals in particular cases, I consider that it is nevertheless an interest common to all members of the community and for their benefit.
17. The mere assertion by an applicant that information is required to enable pursuit of a legal remedy will not be sufficient to give rise to a public interest consideration that ought to be taken into account in the application of a public interest balancing test incorporated into an exemption provision in the FOI Act (*cf. Re Alpert and Brisbane City Council* (Information Commissioner Qld, Decision No. 95017, 15 June 1995, unreported) at paragraph 30). On the other hand, it should not be necessary for an applicant to prove the likelihood of a successful pursuit of a legal remedy in the event of obtaining access to information in issue. It should be sufficient to found the existence of a public interest consideration favouring disclosure of information held by an agency if an applicant can demonstrate that -

- (a) loss or damage or some kind of wrong has been suffered, in respect of which a remedy is, or may be, available under the law;
  - (b) the applicant has a reasonable basis for seeking to pursue the remedy; and
  - (c) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.
18. The existence of a public interest consideration of this kind would not necessarily be determinative - it would represent one consideration to be taken into account in the weighing process along with any other relevant public interest considerations (whether weighing for or against disclosure) which are identifiable in a particular case. On the other hand, it would ordinarily be true to say (to the extent that a decision-maker under the FOI Act is able to make an objective assessment of these matters from the material put forward by an applicant to establish (a), (b) and (c) above) that the greater the magnitude of the loss, damage or wrong, and/or the stronger the prospects of successfully pursuing an available remedy in respect of the loss, damage or wrong, then the stronger would be the weight of the public interest consideration favouring disclosure which is to be taken into account in the application of a public interest balancing test incorporated in an exemption provision of the FOI Act.
19. The damage suffered by the applicant in this case is not of great magnitude: property damage to a motor vehicle in the order of approximately \$650. Nor is it clear that the applicant has strong prospects of successfully pursuing an available remedy in respect of that damage. Mere proof of a collision with an animal on a public road is not, in itself, sufficient to establish liability on the part of the animal's owner: see *State Government Insurance Commission v Trigwell* (1979) 142 CLR 617; *Graham v Royal National Agricultural and Industrial Association of Queensland* [1989] 1 Qd R 624; *Stevens v Nudd* [1978] Qd R 96; *Carroll v Rees* (1985) Aust Torts Reports 80-732; *Eadie v Groombridge* (1992) 16 MVR 263.
20. The applicant will need to pursue further enquiries to establish whether she has a reasonable cause of action to recover the damage incurred in the collision, for example, whether the circumstances in which the dog came to be on a public road fall within the exception to the rule in *Searle v Wallbank* [1947] AC 341 (as to which see *Graham v RNAIAQ* at p.632), or would otherwise found an action in negligence against an identifiable person who owed a duty of care to take reasonable precautions which would have prevented a foreseeable risk of damage caused by the dog wandering on to a public road. The applicant will be denied the opportunity to pursue inquiries of that kind if she cannot ascertain the name and address of the owners of the dog.
21. It is not possible for me to say, on the basis of the material before me, that the applicant has strong prospects of successfully pursuing an available legal remedy for the damage incurred in the collision with the dog. However, I am satisfied that the applicant has a reasonable basis for seeking to pursue a legal remedy which may be available in respect of that damage. It is also clear that disclosure of the matter in issue would assist the applicant to evaluate whether a remedy is available, or worth pursuing. I am satisfied, therefore, of the existence of a public interest consideration favouring disclosure to the applicant of the matter in issue, which, in the application of s.44(1) of the FOI Act, must be weighed against the public interest in protecting from disclosure information which concerns the personal affairs of a person other than the applicant.

22. With respect to the latter, I consider that the privacy interest in the specific information in issue - identification of a person as a dog owner - is not a particularly strong one. Moreover, while I consider that information on the Council's register of dog-owners is ordinarily to be kept private and used for the Council's own administrative purposes, I consider that it must also have been envisaged that details from the Council's register of dog-owners could be disclosed to individuals or other agencies (e.g. the Queensland Police Service) able to demonstrate a sufficient interest in obtaining such details (as is the case with the records, maintained by the Queensland Department of Transport, of the registered owners of motor vehicles: see s.13 of the *Transport Infrastructure (Roads) Regulation 1991 Qld*).
23. In the present case, I consider that the public interest in the applicant obtaining access to the matter in issue is marginally stronger than the public interest in protecting the privacy interest, in the particular information, of the person whom the information in issue concerns. I find that disclosure to the applicant of the matter in issue would, on balance, be in the public interest, and hence that the matter in issue is not exempt from disclosure to the applicant under s.44(1) of the FOI Act.

### **Conclusion**

24. For the foregoing reasons, I set aside the decision under review. In substitution for it, I decide that the matter in issue (being the name and address of the owner of the dog registered as 37942/95, appearing on the two documents in issue described in paragraph 2 above) is not exempt from disclosure to the applicant under the FOI Act.

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F N ALBIETZ  
**INFORMATION COMMISSIONER**