

## Determination

### External review - section 39 *Freedom of Information Act 1991*

Applicant	[REDACTED]
Agency	Adelaide Hills Council
Ombudsman reference	2019/04517
Agency reference	FOI 19 2018/2019
Determination	The determination of the agency is reversed.

## REASONS

### Application for access

1. On 2 April 2019 the agency received an application under the Freedom of Information Act 1991 (**the FOI Act**) from a person (**the original applicant**) requesting access from the agency to:

[O]btain details of the [p]erson or [p]erson's who have [c]omplained about our dogs [b]arking at [REDACTED].

### Background

2. For ease of reference, the procedural steps relating to the application are set out in the appendix.
3. The applicant in this external review is an interested party with whom the agency consulted pursuant to section 26 of the FOI Act. When consulted, the applicant objected to the release of his name to the original applicant, stating '[r]eleasing of this document would involve unreasonable disclosure of information concerning my personal affairs, being my identity, address and contact details.'

### Jurisdiction

4. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

### Provisional determination

5. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 20 January 2020. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to reverse the agency's determination.
6. The parties provided no further submissions in response. I will, therefore, affirm the views expressed in my provisional determination.

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## Relevant law

7. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.<sup>1</sup>
8. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
9. In the present case, the agency determined to partially release the single document in issue to the original applicant, after redacting the present applicant's mobile and business telephone numbers and email address. In redacting this information, the agency relied upon clause 6(1) of Schedule 1 of the FOI Act. The actual content of the complaint was also redacted as being outside the scope of the original application.
10. Clause 6(1) provides:  
**6 – Documents affecting personal affairs**
  - (1) A document is an exempt document if it contains matter the disclosure of which would involve an unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
11. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
12. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

## Documents in issue

13. The agency identified one document within the scope of the application.
14. The document is titled 'CRM - Case Summary' and is the complaint form the applicant lodged with the agency. In that document the applicant raised a complaint concerning the incessant barking of the original applicant's dogs.

## Issues in this review

15. The issue to be determined is whether the agency has justified its determination to provide the original applicant with partial access to the document in issue.

## Consideration

16. In response to the agency's consultation, the applicant objected to the release of the document in issue on the ground that disclosure could lead to actions by the original applicant that would potentially compromise his welfare.
17. In conducting my external review, I must give consideration to the public interest in members of the public gaining access to information within documents held by the government. The object of the FOI Act, as expressed in section 3, is 'to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State.'

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<sup>1</sup> *Freedom of Information Act 1991*, section 12.

18. One of the means by which it is intended to achieve these objects is by:

... conferring on each member of the public ... a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest and the preservation of personal privacy.<sup>2</sup>

19. The right of access conferred by the FOI Act is however limited by the exemption clauses found in schedule 1 of the FOI Act and the consideration of clause 6(1) is relevant to this current matter.

20. In its notice of determination to the applicant as an interested party, the agency's Chief Executive Officer stated that:

This agency has taken into consideration your view that the requested document is exempted by virtue of clause 6 of Schedule 1 of the FOI Act. However, I have determined that in all the circumstances, access to the document should be granted in part.

#### *Clause 6(1)*

21. In determining whether the document is exempt pursuant to clause 6(1) I must consider two tests:

- whether disclosure of material would involve disclosure of the personal affairs of the applicant
- whether such disclosure would be unreasonable.<sup>3</sup>

22. The term 'personal affairs' is defined inclusively in section 4(1) of the FOI Act, and includes a person's:

- financial affairs
- criminal records
- marital or other personal relationships
- employment records
- personal qualities or attributes.

23. The term has also been held to involve 'matters of private concern to an individual'.<sup>4</sup>

24. The disclosure of a person's name and telephone number alone are not in themselves information relating to the personal affairs of that person;<sup>5</sup> it is necessary to consider the context in which the information is referenced in the relevant document.<sup>6</sup> It has been held by the District Court of South Australia that the disclosure of a person's name, identifying them as a complainant, may involve disclosure of their personal affairs.<sup>7</sup>

25. The original applicant knew that a complaint had been made in relation to his dogs barking. It is discernible that the purpose of the FOI application was to discover the identity of the person or persons who made the complaint.

26. A disclosure of the identity of the applicant would allow the original applicant to establish who made the complaint. I am satisfied that the disclosure of the document to which access is requested has the effect of identifying the applicant as the complainant.

<sup>2</sup> *Freedom of Information Act 1991*, section 3(2)(b).

<sup>3</sup> *Treglown v SA Police* (2011) 278 LSJS 231, [127].

<sup>4</sup> *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625, citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1986) 13 FCR 85 at 88-89.

<sup>5</sup> *Colakovski v Aust Telecommunications Corporation* (1991) 29 FCR 429, 437 per Lockhart J.

<sup>6</sup> *Lau & Cheng v Minister for Sustainability, Environment and Conservation* [2018] SACAT 57 at [44]-[46], available at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SACAT/2018/57.html>.

<sup>7</sup> *Treglown v SA Police* (2011) 278 LSJS 231, [147].

I am further satisfied that such information amounts to the 'personal affairs' of the applicant.

27. In *Treglown v SA Police*, the South Australian District Court stated that, when interpreting 'unreasonable' in clause 6, a decision maker needs:
- ... to consider not merely the content of the information which is sought to be disclosed, although in some circumstances that may be sufficient, but, as well, its relationship with other material known to the applicant, its level of sensitivity, the attitude of the person affected by the disclosure, the circumstances in which the information was originally obtained, whether it was already known to the applicant, the nature of the applicant's interest in it and any disclosed intentions with respect to its use.<sup>8</sup>
28. In addition, unreasonableness must have, 'as its core, public interest considerations',<sup>9</sup> such as protection of personal privacy, the objects of the legislation being satisfied and ensuring transparency and accountability within representative government.
29. The only information contained in the document in its redacted form is the complainant's name. In reaching my view I have given consideration to the fact that the original applicant is aware of a complaint in relation to his dogs barking and the fact that an expiation notice may be issued for nuisance barking if the situation is not remedied. I am satisfied that not knowing the name of the complainant does not in any way disadvantage the original applicant or inhibit him from resolving the complaint.
30. I have had regard to the applicant's objection to his identity being revealed. In considering whether the disclosure of the applicant's identity would be unreasonable, I have taken account of the following:
- the assurance made by the agency to the applicant of his anonymity in submitting the complaint
  - the relationship between the applicant and the original applicant
  - the concerns of another person in relation to the dogs barking and their hesitation in submitting a complaint.
31. In the circumstances, disclosure of the document in its redacted form would unreasonably displace the public interest in maintaining the applicant's personal privacy, particularly in circumstances where the agency had assured the applicant that his identity would be kept confidential.
32. Having regards to the above considerations I am satisfied that to reveal the applicant's identity, enabling the original applicant to make the association with the complaint, amounts to the unreasonable disclosure of the applicant's personal affairs.

### Determination

33. In light of my views above, I reverse the agency's determination.



Wayne Lines  
SA OMBUDSMAN

24 February 2020

<sup>8</sup> *Treglown v SA Police* (2011) 278 LSJS 231, [133], considering *Re Chandra and Minister for Immigration and Ethnic Affairs* (1984) 6 ALD N257, 259 and *Victoria Police v Marke* (2008) 23 VR 223.

<sup>9</sup> *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, 438.

## APPENDIX 1

### Procedural steps

Date	Event
2 April 2019	The agency received the FOI application dated 1 April 2019.
9 April 2019	The Agency consulted the applicant.
1 May 2019	The Chief Executive Officer of the agency determined the application.
13 May 2019	The Ombudsman received the applicant's request for external review dated 9 May 2019.
13 May 2019	The Ombudsman advised the agency of the external review and requested submissions and documentation.
15 May 2019	The agency provided the Ombudsman with its submissions and documentation.
20 January 2020	The Ombudsman issued his provisional determination and invited submissions from the parties.