

## Determination

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

Applicant	Mr Vincent Tarzia MP
Agency	Department for Communities and Social Inclusion
Ombudsman reference	2015/01069
Agency reference	HAS 121626
Determination	The determination of the agency is confirmed.

## REASONS

### Application for access

1. By application under the *Freedom of Information Act 1991* (the **FOI Act**) the applicant requested access from the agency to:

A list of all properties owned by the Housing Trust/Housing SA, including a list of tenants, located in the following suburbs: Paradise, Campbelltown, Felixstow, Glynde, Payneham, Hectorville, Tranmere, Magill, Kensington Gardens, Rosslyn Park and Auldana.

### Background

2. For ease of reference, procedural steps relating to the application and the external review are set out in the appendix.

### Jurisdiction

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

### Provisional determination

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 27 August 2015. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to confirm the agency's determination.
5. The agency advised that they did not wish to make submissions in response to my provisional determination. The applicant did not provide any submissions in response to my provisional determination.

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## Relevant law

6. 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>
7. 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.
8. Section 20(1)(c) and clause 6(1) of Schedule 1 to the FOI Act are relevant to my external review. They provide:

### Section 20(1)(c)

- (1) An agency may refuse access to a document -
  - (c) if it is a document that is usually and currently available for purchase

### Clause 6(1)

- (1) A document is an exempt document if it contained matter the disclosure of which would involve the unreasonable disclosure of information concerning personal affairs of any person (living or dead).

9. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
10. 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.

## Information in issue

11. The agency identified one document within the scope of the application, namely a table showing the total number of rental properties owned by Housing SA for lease within the suburbs specified by the applicant in his application. The agency granted access to the document in full.
12. The agency refused to grant access to a list of all properties owned by Housing SA, located in the suburbs specified in the applicant's application, and a list of the tenants' names.
13. The information in issue can be categorised as:
  - the addresses of Housing SA properties
  - the names of Housing SA tenants.
14. The agency considers that this information is exempt in accordance with section 20(1)(c) and clause 6(1) of Schedule 1 of the FOI Act.

## Issues in this review

15. The issue for me to consider in this review is whether the agency has justified its determination to refuse access to the information in issue.

## Consideration

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

## Parties' Submissions

### *The agency*

16. The agency failed to determine the applicant's FOI application within the statutory time period, resulting in a 'deemed refusal'.
17. In its notice of determination following internal review dated 4 February 2015, the agency advised that:
 

Housing SA has an obligation to protect the privacy of its tenants and I believe that tenants would have a reasonable expectation that their residential addresses and personal details would not be divulged to third parties. I also consider that release of addresses of Housing SA owned dwellings would be unreasonable on the grounds that it could lead to further stigmatisation of public housing estates and tenants, who are amongst the most disadvantaged and vulnerable people in the community.
18. By letter to my office dated 6 March 2015 the agency provided additional submissions in support of its determination:
  - there are more than 1000 Housing SA properties located within the suburbs specified in the applicant's application
  - releasing the information to the applicant would involve releasing the personal affairs of a large number of Housing SA clients
  - the names and addresses of clients are 'personal affairs' because:
    - DCSI believes most individuals would consider their name and home address to be their private information and would constitute their personal affairs
    - releasing that information would effectively provide the applicant with some indication of the financial affairs and personal qualities or attributes<sup>2</sup> of the tenants because it is well known that, in general, Housing SA tenancies are provided on the basis of income and other household circumstances
  - in determining whether disclosure was unreasonable, the agency considered the following:
    - once disclosed, the information may be disseminated without restriction and the privacy of Housing SA tenants within the electorate may be compromised
    - the release of Housing SA tenants' names and/or addresses would disclose other personal affairs information of tenants and may lead to possible stigmatisation
    - the applicant has no existing knowledge of the identities of Housing SA tenants in his electorate
    - the probability that tenants would not wish their names and/or addresses to be disclosed to third parties without their prior knowledge and consent.
19. The agency further noted that if the applicant was to request access to only the addresses of Housing SA properties, the agency could refuse access under section 20(1)(c) of the FOI Act on the basis that:
  - records pertaining to property ownership are available from the Land Titles Office of the Department for Planning, Transport and Infrastructure
  - a member of the public can obtain a list of the certificate of title reference numbers for all Housing SA properties across the state, for a fee

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<sup>2</sup> Section 4 of the FOI Act defines personal affairs to include that persons -

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records; and
- (e) personal qualities or attributes.

- for a larger fee (currently \$9.35 per property) the applicant can obtain individual property addresses
- the applicant could apply for a 'bulk data extract' and obtain the information outlined above at a cost of \$400.00.

### *The applicant*

20. In his application for external review, the applicant indicated that he was not persuaded by the agency's claim that access to residential addresses and tenant names was exempt under the FOI Act. The applicant submitted:

I am not satisfied that the law prevents the publication of residential addresses and tenant details under the broad definition of s 4 of the Act. The definition of what is considered 'personal affairs' is arguable. There does not appear to be authority which exempts documents which disclose a residential address for people who are not minors. There is no restriction on the disclosure of information pertaining to personal affairs under the *South Australia Housing Trust Act 1995* (SA).

### Are the documents exempt?

#### *Clause 6(1)*

21. The term 'personal affairs' is defined in section 4(1) of the FOI Act. The definition specifically refers to a person's financial affairs, criminal records, marital or other personal relationships, employment records and personal qualities or attributes. The term has been held to involve 'matters of private concern to an individual'<sup>3</sup> and the 'composite collection of activities personal to the individual concerned'.<sup>4</sup> This is relevant to clause 6(1).
22. The 'personal affairs' identified by the agency are the names and addresses of Housing SA tenants within the suburbs specified by the applicant in his application.
23. The name or address of a person is not expressly referred to in the definition of 'personal affairs' in section 4(1) of the FOI Act. However, the definition is not intended to be exhaustive.<sup>5</sup>
24. In *Sellars v South Australian Police*, the court adopted comments by his Honour Judge Roder in *Argent v SA Police*,<sup>6</sup> an unreported decision of the District Court of South Australia that each case must be looked at in its own circumstances to determine whether a person's name and address constitute personal affairs.<sup>7</sup>
25. In the present circumstances, I am satisfied that the name and address of Housing SA tenants constitute personal affairs.
26. As Housing SA tenants are allocated tenancy on the basis of their income and other household circumstances, I consider that the disclosure of documents containing the names and addresses of Housing SA tenants would reveal other matters about the tenant's personal affairs, such as their financial affairs.

<sup>3</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>4</sup> *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625.

<sup>5</sup> *Moore v Department for Education and Child Development* [2014] SADC 49, 19.

<sup>6</sup> 19 October 1992, Judgment No. D2671.

<sup>7</sup> *Sellars v South Australian Police* [2012] SADC 9, 16-17.

27. In addition to determining that a document contains information relating to 'personal affairs,' it must also be demonstrated, in accordance with clause 6(1), that the disclosure of such information would be unreasonable.
28. In *Treglown v SA Police* the South Australian District Court said 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>
29. In addition, unreasonableness has 'at its core, public interest considerations'.<sup>9</sup> Public interest considerations relevant to this matter are:
- fulfilling the objects of the FOI Act, including the preservation of personal privacy (the FOI Act generally does not restrict the use of information once it is released)
  - ensuring transparency and accountability within representative government.
30. Whilst I consider the addresses of properties owned by Housing SA to constitute the personal affairs of tenants, I do not consider that their disclosure would be unreasonable. This is my view having weighed up the agencies' submissions against the following factors for disclosure:
- addresses are not overly sensitive information as they are readily provided by people in a number of circumstances
  - the addresses do not only belong to the tenants but also give an indication of government housing stock, and I consider the release to be consistent with transparent and accountable representative government
  - addresses could be obtained by undertaking searches at the Land Titles Office and paying a fee
  - the applicant is a Member of Parliament in the relevant area, and the information sought has relevance to his Office in particular in light of the government's urban renewal policies.
31. Accordingly, I do not consider the addresses to be exempt under clause 6(1) of the FOI Act.
32. I do however consider that the names of tenants comprise personal affairs and should be exempt under clause 6(1) of the FOI Act. I concur with the thrust of the agency's submissions that the release of the names of tenants would be unreasonable. I accept the agency's submission with respect to the stigmatisation of tenants.<sup>10</sup> Most persuasive however is the agency's submission that tenants would not wish their names to be disclosed to third parties without their prior knowledge and consent.

### **Section 20(1)(c)**

33. Notwithstanding my view that the addresses of properties owned by Housing SA is not exempt information under clause 6(1), I do not consider that it should be released. This

<sup>8</sup> *Treglown v SA Police* [2011] SADC 139 (Unreported, South Australian District Court, Judge Herriman, 20 December 2011), [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, [18] and [106]-[103].

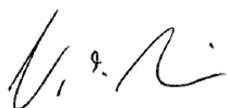
<sup>9</sup> *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, 438.

<sup>10</sup> This submission is supported by Australian Housing and Urban Research Institute Southern Research Centre, *The stigmatisation of social housing: findings of a panel investigation, Final Report No. 166*, April 2011, which at page 10 states: 'There is a risk that a focus on stigma inadvertently reinforces the negative assumptions that have been normalised and thereby render communities as somehow powerless'.

is because I am satisfied that the information is exempt under s 20(1)(c) because it is available from the Land Title Office for a fee.

**Determination**

34. In light of my views above, I confirm the agency's determination.

A handwritten signature in black ink, appearing to read 'W. Lines', written in a cursive style.

Wayne Lines  
SA OMBUDSMAN

14 September 2015

## APPENDIX

### Procedural steps

Date	Event
27 November 2014	The agency received the FOI application dated 5 November 2014.
27 December 2014	The agency failed to determine the application within the 30 day period required by the FOI Act, <sup>1</sup> and is deemed to have refused access to the documents. <sup>2</sup>
22 January 2015	The agency received the internal review application dated 20 January 2015.
4 February 2015	The agency reversed the deemed refusal and released one document to the applicant in full.
11 February 2015	The Ombudsman received the applicant's request for external review dated 11 February 2015.
16 February 2015	The Ombudsman advised the agency of the external review and requested submissions and documentation.
10 March 2015	The agency provided the Ombudsman with its submissions and documentation.
27 August 2015	The Ombudsman issued his provisional determination.
8 September 2015	Ombudsman SA received the agency's response to the provisional determination dated 7 September 2015.

<sup>1</sup> *Freedom of Information Act 1991*, section 14(2).

<sup>2</sup> *Freedom of Information Act 1991*, section 19(2).