

Decision D0082009 - Published in note form only

***Re Hargreaves and Shire of Shark Bay* [2009] WAICmr 8**

Date of Decision: 26 March 2009

Freedom of Information Act 1992: Schedule 1, Clause 3(1)

The complainant applied to the Shire of Shark Bay ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to various documents relating to the job application of the Chief Executive Officer of the agency ("the CEO").

Because the agency's initial decision was made by the CEO, internal review of that decision was not available by virtue of s.39(3) of the FOI Act.

Section 100(1) of the FOI Act provides that decisions by agencies are to be made by the CEO as principal officer, or by an officer directed by him for that purpose. In this case, the CEO dealt with this application himself and did not direct another officer to do so. While there appeared to have been a conflict in this case between the CEO's private interests in maintaining confidentiality of the disputed documents because they concern himself and his official duties as CEO to give effect to the FOI Act in a way that assists the public to obtain access to documents, The A/Information Commissioner ('the A/Commissioner') accepted the CEO's explanation that at the relevant time, and given the small size of the agency, there was no other suitable officer of the agency who could be directed to make the required decision.

The agency provided access to some documents that fall within the scope of the access application, including information about the qualifications of the CEO and a copy of the Employment Contract of the CEO. However, the agency refused access to other documents on the basis that they contained personal information about the CEO and other third parties, which was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainant applied to the A/Commissioner for external review of that decision.

The agency produced the disputed documents and its FOI file to the A/Commissioner and, after considering the information then available to him, one of the A/Commissioner's officers advised the complainant that, in his view, the documents were exempt as the agency claimed. However, the complainant did not wish to withdraw his complaint and provided the A/Commissioner with submissions to the effect that it was in the public interest for the requested documents to be disclosed to him.

The A/Commissioner considered the submissions made by the complainant and was satisfied that the requested documents contained personal information about a number of third parties, including the CEO. The CEO strongly objected to disclosure of the personal information about him being disclosed to the complainant.

In determining the complaint, A/Commissioner took the view that the onus was on the complainant under section 102(3) to provide sufficient probative evidence in support of release of personal information.

In the A/Commissioner's view, most of the complainant's submissions consist of a range of allegations he made about the past personal history, behaviour and issues purported to

adversely impact the integrity of the CEO of the agency and a former President of the Council of the agency. There was little evidence in support of those allegations and, therefore, the A/Commissioner gave less weight to the complainant's submissions when weighing the public interest for and against disclosure of personal and private information about a third party.

The A/Commissioner accepts that there is a public interest in citizens, including the complainant, being enabled to participate more effectively in local governance by requiring that certain documents concerning local government operations be made available to the public. However, in the A/Commissioner's view, that public interest is substantially served by means of the *Local Government Act 1995*, whereby information, including contracts of employment for CEOs and senior employees is required to be made available to the public. No evidence or submissions were given to the A/Commissioner to suggest that the job application and curriculum vitae form part of such a contract of employment, and there is no other statutory right of inspection or copying of those types of personal documents, which the A/Commissioner found in this particular case, based on his examination of them, to be of a private and personal nature.

The public interest in maintaining the privacy of individuals has been repeatedly upheld by the A/Commissioner and his predecessors. Nothing in the material provided to the A/Commissioner identified any public interest in disclosure sufficient to outweigh the strong public interest in the protection of the personal privacy of individuals about whom government-held documents contain personal information, as defined. Further, any personal interest the complainant may have in accessing the requested documents does not equate to a public interest in their disclosure.

The A/Commissioner confirmed the agency's decision to refuse access to the requested documents.