



Decision and Reasons for Decision

Application Number: 210526

Applicant: ABW

Respondent: Queensland Transport

Decision Date: 8 August 2008

Catchwords: **FREEDOM OF INFORMATION** – Sub-sections (1) and (2) of section 35B of the *Freedom of Information Act 1992 (Qld)* – whether applicant required to pay an application fee – whether documents sought concern the applicant’s personal affairs

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REASONS FOR DECISION

Summary

1. Queensland Transport (QT) has located at least one document in response to the applicant's freedom of information application dated 22 April 2008 which does not concern the applicant's personal affairs. Accordingly, under sub-sections (1) and (2) of section 35B of the FOI Act, the applicant is required to pay the application fee prescribed in section 3 of the *Freedom of Information Regulation 2006* (Qld).

Background

2. By letter dated 22 April 2008 (FOI Application), addressed to Main Roads/QT, the applicant requested details of all transactions or dealings relating to his boat and boat trailer after its sale on or about February 2008.
3. In a decision dated 7 May 2008 (Initial Decision), L Vasta, FOI & Privacy Coordinator, QT, decided that the FOI Application was of a non-personal nature and indicated that the applicant was required to pay a \$36.50 application fee before his application could be processed.
4. By letter dated 12 May 2008 (Internal Review Application) the applicant sought internal review of the Initial Decision.
5. In a decision dated 30 May 2008 (Internal Review Decision), B Owen, A/Director (Legal and Legislation), QT, affirmed the Initial Decision.
6. By letter dated 4 June 2008 (External Review Application), the applicant sought external review of the Internal Review Decision.

Decision under review

7. The decision under review is the Internal Review Decision at paragraph 5 above.

Steps taken in the external review process

8. By letters dated 13 June 2008, First Assistant Commissioner Rangihaeata:
 - indicated to the parties that the Internal Review Decision would be reviewed
 - asked QT to provide this Office with a copy of one example of the documents responding to the FOI Application that, in QT's view, did not concern the applicant's personal affairs.
9. On 17 June 2008 this Office received from QT copies of two documents in response to the request at paragraph 8 above.
10. By letter dated 22 July 2008 I indicated to the applicant that:
 - it was my preliminary view that he was required to pay an application fee in respect of the FOI Application
 - if he did not accept this preliminary view he was to provide written submissions by 8 August 2008.
11. By letter dated 26 July 2008 the applicant provided submissions for consideration in this external review.

12. In a telephone discussion on 7 August 2008 the Manager, FOI & Privacy, QT, confirmed to me that the respondent agency in this review is QT.
13. In making my decision in this matter, I have taken the following into account:
 - the FOI application, Internal Review Application and External Review Application
 - the Initial Decision and Internal Review Decision
 - copies of the Maintain Ship Registration screen print and Maintain Vehicle Registration screen print
 - the applicant's submissions dated 26 July 2008
 - the legislation identified in this decision
 - the decision in *Stewart and Department of Transport* (1993) 1 QAR 227 (*Stewart*).

Issue for determination – is an application fee payable?

14. The issue for determination in this external review is whether the applicant is required to pay an application fee in respect of the FOI Application.

Findings

Sub-sections (1) and (2) of section 35B of the FOI Act

15. Sub-sections (1) and (2) of section 35B of the FOI Act set out the requirement to pay an application fee in certain circumstances, providing specifically that:

35B Fees and charges for access to documents not concerning personal affairs

(1) This section applies to an applicant applying for access to a document that does not concern the applicant's personal affairs.

(2) The applicant must pay, at the time the application is made, an application fee.

16. Section 3 of the *Freedom of Information Regulation 2006* (Qld) provides that the 'application fee in relation to an application for access to a document is \$36.50'.

The applicant's submissions

17. The applicant submits¹ that he is entitled to any documents responding to the FOI Application for free because he:
 - was the owner of the boat
 - bought the boat brand new years ago and it involves both his personal and financial affairs
 - has paid main roads a lot of registration fees over the years.
18. The applicant also indicates that at his age it is not fair for him to have to pay fees for matters regarding his personal affairs and monies.

¹ In his facsimile dated 26 July 2008.

Requirement to pay an application fee

19. The FOI Act prescribes the circumstances in which an application fee is payable. Under sub-sections (1) and (2) of section 35B of the FOI Act an application fee is payable if an applicant applies for access to a document that does not concern the applicant's personal affairs.
20. If an application fee is payable, sub-section (1) of section 35C of the FOI Act provides that the application fee cannot be waived.
21. This means that the question of whether an application fee is payable must be determined by whether the applicant seeks access to a document that does not concern his personal affairs. Accordingly, whether it is fair to require the applicant to pay the application fee due to his age or the quantum of registration fees paid in the past is not a relevant consideration and cannot be taken into account in this decision.

Access to one non-personal affairs document is sufficient to attract an application fee

22. The Information Commissioner has previously stated² that:

... an application for access to documents needs seek only one document which does not concern the personal affairs of the applicant to attract the imposition of the...application fee.³

23. Accordingly, to determine whether an application fee is payable it is necessary to determine whether there is one document responding to the FOI Application which does not concern the applicant's personal affairs.

Personal affairs

24. Whether or not information contained within a document is information concerning an individual's personal affairs is a question of fact to be determined according to the proper characterisation of the information in question.
25. The Information Commissioner has stated that:
 - information concerns a person's personal affairs if it concerns the private aspects of a person's life⁴
 - the adjective 'personal' is used in the phrase 'personal affairs' in the same sense as a person might use it in refusing to answer an intrusive question with a retort such as: 'I am not prepared to give you that information; it's personal'.⁵
26. In other words, the phrase 'personal affairs' does not capture all of the affairs of an individual, and is clearly distinct from a person's business or employment affairs, or other activities of a public kind.
27. Ordinarily, information concerning:
 - family and marital relationships
 - health or ill health

² in relation to an earlier provision of the FOI Act that was substantially similar to sub-sections (1) and (2) of section 35B of the FOI Act.

³ See *Stewart* at paragraph 121.

⁴ See *Stewart* at paragraphs 79-114.

⁵ See *Stewart* at paragraph 55.

- relationships and emotional ties with other people
- domestic responsibilities or financial obligations

is characterised as information concerning an individual's personal affairs.

Characterisation of the information sought in the FOI Application

28. The applicant seeks access to transactional documents or dealings concerning a boat and boat trailer the applicant previously owned, but has since sold.
29. A person's financial obligations and liabilities ordinarily concern their personal affairs. However, in this instance the applicant no longer owns the boat and boat trailer and no longer has financial obligations in respect of these items. In such circumstances, I am not satisfied that these items concern his personal affairs.
30. By letter dated 13 June 2008, QT was asked to provide this Office with at least one example of a document that responds to the FOI Application which it considered did not concern the applicant's personal affairs. In response, QT provided copies of the following two documents:
 - a Maintain Ship Registration screen print
 - a Maintain Vehicle Registration screen print.
31. I have carefully examined the documents identified at paragraph 30 above and note that each contains the name and residential details of the current owner. Neither of these documents contains any information concerning the applicant.
32. Accordingly, I am satisfied that:
 - at least one document to which the applicant seeks access does not concern his personal affairs
 - under sub-sections (1) and (2) of section 35B of the FOI Act the applicant is required to pay an application fee to have the FOI Application processed
 - QT was correct in requiring payment of an application fee of \$36.50 in respect of the FOI Application.

DECISION

33. I affirm the decision under review, being the internal review decision of B Owen dated 30 May 2008.
34. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

S Jefferies
Acting Assistant Commissioner

Date: 8 August 2008