

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: F2010306  
Decision Ref: D0112011**

Participants:

**'C'**  
Complainant  
  
- and -  
  
**Department for Child Protection**  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – refusal of access – client records – child protection investigation – section 23(4) – personal information about a child who has not turned 16 – whether access would not be in the best interests of the child – whether the child does not have the capacity to appreciate the circumstances and make a mature judgement.

*Freedom of Information Act 1992*: section 23(4); Glossary in Schedule 2

*Re M and Child and Adolescent Health Service* [2009] WAICmr 16

## DECISION

The decision of the agency to refuse access to the disputed documents under section 23(4) of the *Freedom of Information Act 1992* is confirmed.

Sven Bluemmel  
INFORMATION COMMISSIONER

14 April 2011

## REASONS FOR DECISION

1. This complaint arises from a decision made by the Department for Child Protection ('the agency') to refuse 'C' ('the complainant') access to documents under the *Freedom of Information Act 1992* ('the FOI Act'). In order to protect the privacy of the complainant and other related parties, including the complainant's daughter who is under the age of 16, I have decided not to identify the complainant by name in these reasons for decision.

## BACKGROUND

2. In March 2010, information was provided to the agency about the complainant's daughter in relation to a particular matter. I understand that the complainant's daughter has an acquired brain injury and that she has limited or no insight into her actions. The agency made a series of inquiries in respect of the information it had received. From information contained in the agency's records provided to me, I understand that following the completion of its inquiries, the complainant was advised, albeit in broad terms, of the outcome of those inquiries. In particular, I understand that in May 2010 the agency informed the complainant that it had closed its involvement in the matter on the basis that the initial information it had received was unsubstantiated.
3. In June 2010, the complainant wrote to the agency seeking access to copies of various documents relating to the agency's investigation of the matter it handled involving his daughter. The agency transferred part of the application to the Western Australia Police and dealt with the remaining part of the application.
4. On 2 August 2010, the agency made its initial decision. The agency identified 14 documents as falling within the scope of the application and decided to give access to one document; access to an edited copy of two documents; and to refuse access to the remaining 11 under section 23(4) of the FOI Act. The agency advised the complainant that the information contained in the 11 documents consisted of personal information about another person (his daughter), who is a child under the age of 16 years. The agency considered that she did not have the capacity to appreciate the circumstances and that it was not in the best interests of the child to release the information to the complainant under the FOI Act.
5. The complainant sought internal review of that decision and, on 10 September 2010, the agency confirmed its initial decision.
6. On 4 October 2010, the complainant applied to the Information Commissioner for external review of the agency's decision.

## THE DISPUTED DOCUMENTS

7. The disputed documents in this matter are described by the agency as:

Document 1 – Interaction Report

Document 2 – Initial Inquiry Approved Outcome Report

Document 3 – Intake Case Plan  
Document 14 – Safety and Wellbeing Assessment  
Documents 3-8, 10 and 12 – Case Notes.

The agency identified nine documents consisting of Case Notes, but only seven of those documents remain in dispute.

### **REVIEW BY THE INFORMATION COMMISSIONER**

8. After receiving the complainant's complaint, I obtained copies of relevant documents from the agency. Thereafter, my Senior Investigations Officer made inquiries with the agency to clarify certain issues relating to decisions made under the FOI Act.
9. After examining the relevant documents and considering the other material before me, including the information gathered by my officer, I formed the preliminary view that the decision of the agency appeared, in all the circumstances, to be justified. On 20 January 2011, the parties were informed of my preliminary view and my reasons for that view. However, the complainant did not accept my preliminary view. He provided me with written submissions and maintained his claim that he is entitled to access the disputed documents.

### **REFUSAL OF ACCESS UNDER SECTION 23(4)**

10. Section 23(4) of the FOI Act provides:

*“If a document contains personal information and the applicant, or the person to whom the information relates, is a child who has not turned 16, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the child and that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.”*

### **THE COMPLAINANT'S SUBMISSIONS**

11. The complainant made a number of submissions to me in support of disclosure to him of the disputed documents. In summary, the complainant submits that:
  - as the father of the 14 year old child involved and as a person who has her long term care and welfare as his responsibility, releasing the information to him is in the best interests of the child. This is particularly important with a child who has suffered a significant brain injury;
  - he has sought access to the disputed documents to understand what happened in relation to the matter concerning his daughter to prevent it from happening again and also to determine what psychological or counselling needs his daughter might have;
  - whether or not my decision is consistent with past decisions of this office is not relevant to his complaint; and

- the fact that the officers who made the decision were experienced is not persuasive “*given that this should be a review of the facts and the decision and not just their process and experience*”.
12. In reviewing an agency’s decision to refuse access in accordance with s.23(4) of the FOI Act, my role is to decide whether, in the circumstances of the particular case, the use of s.23(4) is justified. In my view, I must be satisfied about four issues.
  13. First, I must be satisfied that the requested documents contain personal information about a child who has not turned 16. In the Glossary to the FOI Act, the term ‘personal information’ is defined to mean:

*“...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -*

    - (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
    - (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.”*
  14. Second, it must be established that the decision-maker, at the relevant time, was satisfied that giving access to the requested documents would not be in the best interests of the child. Third, I must be satisfied that the decision-maker, at the relevant time, held the view that the child does not have the capacity to appreciate the circumstances and make a mature judgement as to what might be in her best interests. Finally, I must be satisfied that the views of the decision-maker on the above issues were held on reasonable grounds.
  15. In this case, the complainant applied to the agency for access to documents contained on the agency’s case file concerning his 14 year old daughter. Accordingly, the information relates to a child who has not turned 16. Having examined the 11 documents in dispute, I accept that each contains ‘personal information’, as that term is defined in the FOI Act, about the complainant’s daughter. Therefore, I am satisfied that the agency has addressed the first issue.
  16. In considering whether or not access would be in the best interests of the child and whether or not the child has the capacity to appreciate the circumstances and make a mature judgment as to her own best interests, I have given weight to the professional expertise of the agency’s decision-makers. In that regard, I note that both decision-makers are senior officers. The original decision-maker is a District Director with more than 20 years’ experience in the area of child protection. The decision-maker on internal review is the Executive Director, Metropolitan Services, also with more than 20 years’ experience in that area. On the information before me, the caseworkers who had direct dealings with the child were consulted in relation to this matter and the relevant issues carefully considered.

17. I note the complainant's submissions and acknowledge his concerns and the issues he has raised. However, his submissions are not relevant to the matters for my determination in relation to the application of s.23(4) of the FOI Act, which are to consider whether the four issues referred to in paragraphs 13-14 have been satisfied in this case. My consideration of those matters is consistent with previous decisions of this office (see, for example, *Re M and Child and Adolescent Health Service* [2009] WAICmr 16).
18. Having considered the reasons given to the complainant by the decision-makers and the advice given to my officer by the agency, I am satisfied that the agency's decision to refuse access to the disputed documents was made after the agency was satisfied that access would not be in the child's best interests and that she lacked the capacity to appreciate the circumstances and make a mature judgement as to what might be in her best interests. I am also satisfied that the agency's decision was made on reasonable grounds following careful consideration of all of the relevant factors.

## CONCLUSION

19. In light of the above, I find the agency's decision is justified. Accordingly, I confirm the decision of the agency to refuse access to the disputed documents under s.23(4) of the FOI Act.

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