

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

**File Ref: F2015174
Decision Ref: D0162015**

Participants:

‘L’
Complainant

- and -

**Department for Child Protection and
Family Support**
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents relating to the adoption of a child – reliance on section 23(2) – whether it is apparent from the nature of the documents as described in the access application that all of the documents are exempt documents – clause 13(a) – information relating to the adoption of a child

Freedom of Information Act 1992: sections 23(2), 24 and 76; Schedule 1, clauses 3 and 13(a); Glossary

Police Force of Western Australia v Winterton (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997)

DECISION

The agency's decision is confirmed. I find that the agency's decision to refuse the complainant access to the requested documents under section 23(2) of the *Freedom of Information Act 1992*, on the ground that the documents are exempt under clause 13(a) of Schedule 1, is justified.

Sven Bluemmel
INFORMATION COMMISSIONER

21 September 2015

REASONS FOR DECISION

1. This complaint arises from a decision made by the Department for Child Protection and Family Support (**the agency**) to refuse 'L' (**the complainant**) access to documents under the *Freedom of Information Act 1992* (**the FOI Act**). To protect the privacy of the complainant and her son, I have decided not to identify the complainant by name in these reasons for decision.

BACKGROUND

2. On 21 August 2014, the complainant applied to the agency under the FOI Act for access to:
 - (a) documents relating to her son and to his adoptive parents;
 - (b) a copy of her son's original birth certificate; and
 - (c) a copy of the notes of an interview between the complainant and a named person at or around the time of her son's birth.
3. I understand that the complainant's son was adopted after the complainant gave birth to him in 1967.
4. In a notice of decision dated 28 January 2015, the agency refused the complainant access to the documents relating to her son and to his adoptive parents requested under points (a) and (b) above, without particularising those documents under section 23(2) of the FOI Act, on the basis that if such documents exist they would be exempt under clause 3(1) of Schedule 1 to the FOI Act. The agency refused access to a copy of the interview notes requested by the complainant in item (c) above under section 26 of the FOI Act, on the basis that they cannot be found or do not exist. The agency also advised the complainant to apply to the agency's 'Post Adoption Services' unit for a copy of her son's original birth certificate, which I understand she has subsequently obtained.
5. On 22 April 2015 the complainant applied to the agency for internal review of its decision to refuse access to the documents described at points (a) and (c) of her access application (**the requested documents**).
6. By internal review decision dated 4 May 2015, the agency confirmed its initial decision. However, it also claimed that the requested documents are exempt under clause 13(a) of Schedule 1 to the FOI Act.
7. On 8 June 2015, the complainant applied to me for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. Following my receipt of this complaint, I obtained the agency's file in respect of this matter. My office made inquiries with the agency to clarify certain matters arising from the contents of that file.

9. Section 76(1) of the FOI Act gives me, as Information Commissioner, the power to review any decision made by an agency and to make any decision in relation to an access application that could have been decided by the agency. Further, section 76(4) of the FOI Act provides that I do not have the power to make a decision to the effect that access is to be given to a document, if it is established that the document is exempt.
10. On 22 July 2015, after considering the material before me, including the terms of the complainant's access application, I informed the parties in writing of my preliminary view of this complaint including my reasons.
11. It was my preliminary view that it is apparent from the nature of the documents as described in points (a) and (c) of the complainant's access application that the requested documents are exempt under clause 13(a) of Schedule 1 to the FOI Act and therefore that the agency's decision to refuse the complainant access to those documents pursuant to section 23(2) of the FOI Act was justified. I received a written response from the complainant confirming that she did not accept my preliminary view.

REFUSAL OF ACCESS – SECTION 23(2)

12. Section 23(2) of the FOI Act provides as follows:
 - (2) *The agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if –*
 - (a) *it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and*
 - (b) *there is no obligation under section 24 to give access to an edited copy of any of the documents.*

13. Therefore, the first question I must determine is whether it is apparent from the nature of the documents described in the complainant's access application that they are all exempt.
14. The terms 'exempt document' and 'exempt matter' are defined in the Glossary to the FOI Act. An exempt document is one that contains exempt matter. Exempt matter means matter that is exempt under one or more of the clauses set out in Schedule 1 to the FOI Act.

Clause 13(a) – information relating to the adoption of a child

15. Clause 13 of Schedule 1 to the FOI Act, in so far as is relevant, provides:

13. Adoption or artificial conception information

Matter is exempt matter if its disclosure would reveal –

(a) *information relation to the adoption of a child or arrangements or negotiations for or towards or with a view to the adoption of a child;*

(b)

16. Unlike many other exemptions in Schedule 1, clause 13 does not contain a limit on the exemption, in the form of a public interest test or otherwise.
17. In point (a) of her access application the complainant sought access to documents relating to her son and to his adoptive parents; in point (c) of her access application she sought access to a copy of the notes of an interview she had with a named individual. I understand from the terms of the complainant's access application that that interview relates to the adoption of her son.
18. In my view, it is apparent from the nature of the documents as described in points (a) and (c) of the complainant's access application that they would all reveal information relating to the adoption of a child, being the complainant's son, and therefore that those documents are all exempt under clause 13(a) of Schedule 1 to the FOI Act. Therefore, I am satisfied that the first requirement of section 23(2) is established.

Section 23(2)(b) – edited copy

19. The next question for my consideration is whether the agency is obliged under section 24 of the FOI Act to give access to an edited copy of any of the requested documents.
20. Under section 24, an agency is not obliged to give access to edited copies of documents if it is not 'practicable' to delete exempt information from the requested documents: see *Police Force of Western Australia v Winterton* (Unreported, Supreme Court of WA, Library No 970646, 27 November 1997).
21. I consider, in this case, that it would not be practicable for the agency to delete the exempt information from the requested documents because the very nature of the documents the complainant has requested suggests that disclosing any part of them would reveal information relating to the adoption of a child which, as I have already noted, is exempt information. Further, editing the documents so that they did not reveal such information would result in documents being released to the complainant that had little meaning. Consequently, I consider that there is no obligation on the agency under section 24 of the FOI Act to give the complainant access to edited copies of the requested documents.
22. The complainant made further submissions to me about her reasons for seeking the information and the impact of its non-disclosure on her personally. While I appreciate the importance of those issues to the complainant, those submissions are not relevant to my determination of this matter and I am unable to take them into account in deciding whether access should be given.
23. Accordingly, I find that the agency's decision to refuse the complainant access to the requested documents under section 23(2) of the FOI Act is justified.

24. As I am satisfied that the agency's decision under section 23(2) is justified on the basis that it is apparent from the nature of the documents as described in the complainant's access application that the requested documents are exempt under clause 13(a) of Schedule 1 to the FOI Act, it is not necessary for me to consider whether or not the decision of the agency under section 26 or clause 3(1) is justified.
