

K & L AND FAMILY/CHILDREN

OFFICE OF THE INFORMATION COMMISSIONER (WA)

DECISION SUMMARY - issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

FILE Ref: 95197

DECISION Ref: D01596

PARTICIPANTS: “K and L“

Complainants

Department of Family and Children’s Services

Respondent

No. of documents in dispute: 74

Exemption clause(s) found to be applicable to disputed documents: 3(1)

On 29 July 1995, the complainants applied to the Department of Family and Children’s Services (‘the agency’) for access under the *Freedom of Information Act 1992* (‘the FOI Act’) to documents containing personal information about themselves. The agency granted the complainants access to a number of documents. However, access to others was refused on the grounds that those documents contain matter that is exempt matter under one or more of clauses 3(1), 6(1) or 8(2) of Schedule 1 to the FOI Act. The initial decision of the agency was confirmed on internal review and, on 13 October 1995, the complainants sought external review by the Information Commissioner.

I obtained copies of the disputed documents from the agency. After examining those documents and considering the material provided by the parties, on 20 February 1996, I provided the parties with my preliminary view and detailed reasons for that view. In my preliminary view all of the documents remaining in dispute between the parties contain personal information about third parties, including children in the care of the agency, other than the complainants which information is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Therefore, pursuant to s.102(3) of the FOI Act, the complainants bear the onus of persuading me that disclosure of the disputed documents would, on balance, be in the public interest.

The Documents in Dispute

The agency also decided that the complainants could gain access to one document outside the FOI process by purchasing that document from the Children’s Court of Western Australia (‘the Court’). The complainants disputed this decision and my view that the document in question is not a transcript of court proceedings, although it was initially described by the agency in that manner. However, it is clear to me from my examination of that document, that the document dated 24 May 1995 comprises the “Reasons for Decision” in relation to a particular matter determined by a Magistrate to which the complainants were parties. Accordingly, that document is available for purchase by the complainants from the Court. I confirm the agency’s decision to refuse access to that document on the ground that it is a document to which the access procedures of the FOI Act do not apply.

There are 73 other documents in dispute between the parties. Those documents were identified and described to the complainants in a schedule provided with my preliminary view. I am satisfied that the complainants have been informed of, and should be aware of, the nature and type of material which is claimed to be exempt under clause 3(1) of Schedule 1 to the FOI Act. Generally speaking, and without breaching my duty under s.74(2) of the FOI Act, the disputed documents consist of file notes, facsimile communications between officers of the agency and between officers of the agency and third parties, statements and reports. I am satisfied, from my examination of the disputed documents, that they contain “personal information”, as defined in the Glossary in Schedule 2 to the FOI Act about third parties.

The exemption - clause 3(1)

Clause 3, so far as is relevant provides:

“Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

(2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*

(3)...

(4)...

(5)...

(6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*

The complainants submission

The complainants submit that there is a public interest in promoting the welfare of children and other family members and they express some concern at the agency’s use of its powers under the *Child Welfare Act 1947* and associated legislation. The complainants claim that the staff and agents of the agency should be held accountable for their policies, procedures and practices.

The public interest

On the one hand, I recognise that there is a public interest in the maintenance of personal privacy. There is also a public interest in the agency being able to perform its statutory functions under the *Child Welfare Act 1947*, including the promotion of the welfare of children. In my view, those public interests weigh against disclosure of the documents. On the other hand, I recognise a public interest in the complainants being able to exercise their rights of access under the FOI Act. I also accept that there is a public interest in ensuring that the agency is accountable for its policies, procedures and practices.

However, I do not consider that the latter public interest would, necessarily, be served by the disclosure of the disputed documents because the disputed documents are not policy documents of the agency. Rather, they are documents dealing with sensitive and private matters between the agency and a number of third parties. Those documents only indirectly relate to the complainants. Further, I am satisfied that the complainants have been given access to the documents in the possession of the agency containing personal information about them and they have only been denied access to documents containing personal information about third parties. I am also satisfied that the agency has attempted to establish procedures to provide the complainants with informal access, on an ongoing basis, to relevant documents containing personal information about them.

Therefore, in balancing the competing public interests, for the reasons given to the parties in my preliminary view and for the reasons given above, I find that the public interest in maintaining the personal privacy of individuals other than the complainants outweighs the public interest in the complainants being able to exercise their rights of access under the FOI Act.

DECISION

The decision of the agency is confirmed. The disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
1 March 1996