

K & L AND POLICE

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

**File Ref: 95145
Decision Ref: D01696**

Participants:

K and L
Complainants

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - access to edited copies - ambit of access application - documents relating to allegations of child abuse - clause 3(1) - personal information about third parties - public interest factors for and against disclosure of personal information.

FREEDOM OF INFORMATION - access to edited copies - clause 5(1)(c) - existence or identity of a confidential source of information - investigation of allegations of child abuse - confidentiality of sources - enforcement or administration of the law.

Freedom of Information Act 1992 (WA) ss. 72(1)(b), 74(2), 75(1), 102(3); Schedule 1 clauses 3, 5(1), 6(1);
Schedule 2 Glossary.

Child Welfare Act 1947 (WA)

DECISION

The decision of the agency is confirmed. Document 1 contains matter that is outside the ambit of the access application; Documents 1, 5, 6, 7, 13, 14, 15 and 16 contain matter which is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act'); and the matter deleted from Documents 9, 10, 11 and 12 is exempt matter under clause 5(1)(c) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

20th March 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review arising out of a decision of the Police Force of Western Australia ('the agency') to refuse "K and L" ('the complainants') access to certain documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 13 March 1995 and on 18 March 1995, the complainants lodged separate access applications with the agency seeking access to documents relating to themselves and to the children of "K". On 17 April 1995, the agency received additional information from the complainants to assist it to identify the documents to which access was sought and, on 22 June 1995, the complainants authorised the agency to deal with the two access applications as a single application. On 28 June 1995, the agency refused the complainants access to documents on the ground that those documents were exempt under clauses 3(1), 5(1)(b) and 6(1) of Schedule 1 to the FOI Act. However, the agency granted the complainants access to an edited copy of one document from which exempt matter had been deleted. On 28 July 1995, after the agency's decision had been confirmed on internal review, the complainants sought external review by the Information Commissioner.
3. After I had received this complaint, the agency located additional documents that were within the ambit of the complainants' access application. Consequently, on 13 October 1995, the agency issued a second notice of decision in respect of those additional documents and refused the complainants access to 8 documents on the ground that those documents are exempt under clauses 3(1), 5(1)(b) and 5(1)(e) of Schedule 1 to the FOI Act. However, the agency granted the complainants access to two documents.

REVIEW BY THE INFORMATION COMMISSIONER

4. Pursuant to my powers under s.75(1) and 72(1)(b) of the FOI Act, I obtained copies of the documents in dispute from the agency, together with the agency's FOI file maintained in respect of this matter. I examined those documents and I considered the submissions from the parties, including additional information supplied to my office by the complainants. On 16 February 1996, I provided the parties with my preliminary view and reasons for that view, including my view as to the material facts referring to the material on which that view was based. It was my preliminary view that the disputed documents contain matter that may be exempt under clauses 3(1), 5(1)(b) and 5(1)(c) of Schedule 1 to the FOI Act.

5. However, I was also of the view that some matter within the disputed documents was not exempt as claimed by the agency. After receiving my preliminary view, the agency released further documents to the complainants in full. Other documents were released in edited form with matter which, in my preliminary view, may be exempt matter deleted from those documents.
6. The complainants were invited to make submissions as to whether disclosure of the matter within the disputed documents which I considered to be *prima facie*, exempt matter under clause 3(1) would, on balance, be in the public interest. I received a submission from the complainants on that point.

THE DISPUTED DOCUMENTS

7. The 12 documents remaining in dispute have been listed and described to the parties in my preliminary view. Those documents comprise an entry in a station occurrence book (Document 1); a document entitled “offence report” (Document 5); a record of interview (Document 6); a psychologist’s report (Document 7); an information report created by the Child Abuse Unit of the agency (Document 9); 3 computer reports containing summaries of an alleged offence (Documents 10, 11 and 12); a report of a clinical psychologist (Document 13); psychological reports (Document 14); and notes of interviews (Documents 15 and 16).
8. The agency claims that Document 1 contains matter that is outside the ambit of the access application. Further, the agency claims that the disputed documents or parts of the disputed documents, are exempt under clauses 3(1), 5(1)(b), 5(1)(c) and 5(1)(e) of Schedule 1 to the FOI Act. However, for reasons which follow, I find that 8 of the disputed documents contain matter which is exempt under clause 3(1) and the matter deleted from the remaining 4 documents is exempt matter under clause 5(1)(c) of Schedule 1 to the FOI Act. Further, I find that matter within Document 1 is outside the ambit of the complainants’ access application because it records other duties performed by an officer of the agency that do not concern the complainants in any respect.

THE EXEMPTIONS

(a) Clause 3 - Personal information

9. 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."*

10. In the Glossary in Schedule 2 to the FOI Act, "**personal information**" is defined as meaning: "...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."*

11. I have previously expressed the view that I consider that the exemption in clause 3(1) is designed to protect the privacy of third parties about whom personal information may be contained in documents held by government agencies. Personal information is not generally accessible under the FOI Act by others, without the consent of the person to whom the information relates. As such, it is an exception to the general right of access to documents which is available to a person under the FOI Act.

12. I am satisfied, from my examination of Documents 1, 5, 6, 7, 13, 14, 15 and 16, that those documents contain personal information about persons other than the complainants. I am unable to describe that information in detail without breaching my duty under s.74(2) of the FOI Act. However, I am able to say that the personal information is information that largely consists of medical information and psychological opinions about the children of "K" who are in the care of another State government agency as a consequence of having been made wards of the State. The Director of the Department of Family and Children's Services ('the Department') is the legal guardian of the children. The personal information about the children of "K" in the disputed documents names the children and describes other characteristics of their lives which, if disclosed, would enable the identities of the children to be ascertained. Therefore, I am satisfied that this matter is personal information as defined in the FOI Act about persons other than the complainants, and is *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act.

13. In addition, there is other matter in those documents that is personal information about third parties other than the children of “K”. In my view, all of that information is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
14. As the complainants are seeking to assert their rights under the FOI Act to have access to personal information about third parties, the complainants bear the onus under s.102(3) of the FOI Act of persuading me that the requirements of clause 3(6) have been satisfied, and that disclosure would, on balance, be in the public interest.

The public interest

15. The complainants assert that they are gravely concerned about the health, safety and welfare of “K’s” children. The complainants identified that there is a public interest in promoting the welfare of children and expressed concern that the Department makes irresponsible use of its powers under the *Child Welfare Act 1947*, with the result that the Department is unaccountable for its policies, procedures and practices.
16. Having inspected the documents in dispute, I am of the view that their disclosure would not go any way towards satisfying the public interest identified by the complainants in respect of the operation of the Department. Further, in respect of the agency, I consider there to be a very strong public interest in maintaining its ability to investigate and deal with allegations of child abuse and other matters relating to children. Clearly, there is a strong public interest in the protection of children and the agency has an important role to play in that regard. I accept that maintaining the confidentiality of certain information given to the agency in respect of such matters may be necessary to maintain the agency’s ability to properly investigate particular allegations.
17. I have also previously expressed the view in a number of my decisions that the protection of individual privacy under the FOI Act is an important public interest, especially in the absence of legislation that provides a measure of protection against the collection, use and distribution of personal information by State government agencies. In my view, the protection of personal privacy is equally applicable to children as to adults. I consider that the protection offered by the FOI Act in respect of the disclosure of personal information is one that can only be displaced by some other strong countervailing public interest.
18. In this case, I consider that the public interest in protecting the privacy of children of tender years who have been placed in the care of the State following an order of the Children’s Court of Western Australia outweighs any other public interest, including the public interest in the complainants being able to exercise their rights of access under the FOI Act. I am not persuaded as a result of the complainants’ concerns for the health, safety and welfare of the children involved, which concerns are not supported by any material before me, that disclosure of the documents to which access has been denied would, on balance,

be in the public interest. I consider the public interest in this instance is best served by the children being afforded the privacy that would be accorded to an adult in respect of his or her personal information in such matters.

19. The complainants submitted nothing in response to my preliminary view which persuades me that disclosure of personal information about third parties, including the children of “K”, would, on balance, be in the public interest. Accordingly, I find that Documents 1, 5, 6, 7, 13, 14, 15 and 16 contain matter which is exempt under clause 3(1) of Schedule 1 to the FOI Act.

(b) Clause 5(1)(c) - Protecting the identity or existence of confidential sources of information

20. Clause 5(1)(c) provides:

“(1) Matter is exempt matter if its disclosure could reasonably be expected to -

(c) enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered.”

21. The exemption in clause 5(1)(c) refers to a “confidential source of information” and is therefore, in my view, not directed at protecting from disclosure a source of confidential information. The requirement of confidentiality in clause 5(1)(c) relates to the nature of the source rather than the nature of the information. The information supplied from a confidential source need not be confidential (although it may be), but it must relate to the enforcement or administration of the law.
22. The matter which the agency claims is exempt under clause 5(1)(c) is matter which identifies the source of information provided to the Child Abuse Unit of the agency in relation to allegations made to the agency. I am informed by the agency that the Child Abuse Unit receives information and acts upon complaints concerning the alleged abuse of children received from a variety of sources. In order to gain the confidence of a child considered to be at risk or the subject of allegations, I am informed by the agency that the Child Abuse Unit withholds all relevant documents from parents, guardians, lawyers and any other interested parties.
23. I am satisfied that the agency, and particularly the Child Abuse Unit of the agency, is responsible for the enforcement of the criminal law relating to the abuse of children. I am also satisfied that the Child Abuse Unit receives information relating to its enforcement functions from people and sources that are not generally known to the public. I note that in Western Australia there is no mandatory reporting of suspected child abuse. Therefore, I am satisfied that people who supply information to the Child Abuse Unit may constitute

confidential sources of information related to the enforcement or administration of the law in Western Australia.

24. From my examination of Documents 9-12, I am satisfied that disclosure of the matter deleted from those documents could reasonably be expected to enable the identity of sources of information to the agency the identity of which is not known by the complainants or by the public generally, to be ascertained. The complainants have submitted nothing to persuade me otherwise. Accordingly, on the material before me, I am satisfied that the sources of the information to the agency contained within Documents 9-12 are confidential, and the exemption under clause 5(1)(c) is established. Accordingly, I confirm the decision of the agency, and I find the matter deleted from Documents 9-12 to be exempt matter under clause 5(1)(c) of Schedule 1 to the FOI Act.
25. Although the agency also claimed exemption for the disputed documents and parts of the documents under other clauses of Schedule 1 to the FOI Act, I need not consider those claims in light of the findings I have made.
