

**K & L AND FAMILY/CHILDREN**

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

**File Ref: 95055, 95107 &  
95094**

**Decision Ref: D01996**

Participants:

**K**  
Complainant  
  
- and -  
  
**Department for Family and Children's  
Services**  
Respondent  
  
- and -  
  
**L**  
Complainant  
  
- and -  
  
**Department for Family and Children's  
Services**  
Respondent  
  
- and -  
  
**F**  
Complainants  
  
- and -  
  
**Department for Family and Children's  
Services**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - access to edited copies - documents relating to agency's involvement in management of complainants' family - clause 3(1) - personal information about third parties - public interest factors for and against disclosure of personal information - clause 5(1)(a) - impair effectiveness of investigative methods or procedures - clause 5(1)(b) - reveal an investigation - matter within the knowledge of complainants - clause 5(1)(c) - existence or identity of confidential source of information - enforcement or administration of the law - clause 6(1) - deliberative processes of agency - whether disclosure contrary to public interest - clause 7 - legal professional privilege - record of legal advice given by agency's legal adviser - instructions to legal adviser - information obtained by agency for purpose of litigation - salaried legal officers - clause 8(2) - confidential communications - whether information is information of a confidential nature obtained in confidence - prejudice to future supply - clause 11(1)(b) - whether disclosure could reasonably be expected to prevent the objects of a test from being attained.

*Freedom of Information Act 1992 (WA)* ss. 21(a), 23(4), 32, 72(1)(b), 75(1), 102, Schedule 1 clauses 3, 5(1)(a), 5(1)(b), 5(1)(c), 6(1), 7, 8(2), 11(1)(a), 11(1)(b), Glossary in Schedule 2

*Child Welfare Act 1947 (WA)*.

*Criminal Code Act 1913 (WA)*.

*Re "K and L" and Department of Family and Children's Services* (Information Commissioner, WA, 23 November 1995, unreported).

*Re Sanfead and Medical Board of Western Australia* (Information Commissioner, WA, 15 November 1995, unreported).

*Re "C" and Department for Community Development* (Information Commissioner, WA, 12 October 1994, unreported).

*Manly v Ministry of Premier and Cabinet* (Supreme Court of Western Australia, 15 June 1995, unreported).

*Grant v Downs* (1976) 135 CLR 674

*Baker v Campbell* (1983) 153 CLR 52.

*Trade Practices Commission v Sterling* (1979) 36 FLR 244.

*Attorney-General (NT) v Kearney* (1985) 158 CLR 54.

*Re Lawless and Medical Board of Western Australia and Medical Practitioner "X"* (Information Commissioner, WA, 6 July 1995, unreported).

*Re Simonsen and Edith Cowan University* (Information Commissioner, WA, 13 July 1994, unreported).

## **DECISION**

The decision of the agency is varied as indicated in the schedule attached hereto.

D A WOOKEY  
ACTING INFORMATION COMMISSIONER

9th April 1996

<b>AGENCY'S FILE REFERENCE - W VOL I</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
1	1	30-31	Senior Social Worker	06/05/91	Submission to Director re increased subsidy
2	2	88-89	Senior Social Worker	24/01/92	Submission to Director to resume increased subsidy
3	3	91-94	Senior Social Worker	24/01/92	Submission to Director to resume increased subsidy
4	4	196-198	Unknown	1990	File notes record of conversation
5	5	218-221	A/Deputy Superintendent McCall Centre	25/05/90	Case review report
6	6	297-368	Social Worker	06/04/90- 28/12/90	File notes running record of events, contacts etc

<b>AGENCY'S FILE REFERENCE - W VOL I cont....</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
7	7	369-402	Social Worker	02/01/91- 17/12/91	File notes running record of events, contacts etc
8	8	403-420	Social Worker	09/01/92- 25/05/93	File notes running record of events, contacts etc

<b>AGENCY'S FILE REFERENCE - W VOL II</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
9	1	4	Social Worker	10/01/90	Child protection information system form
10	2	26-29	Social Worker	13/02/90	Child protection intake form
11	3	106-107	Psychologist	16/01/90	Psych report
12	4	114-116	Psychologist	16/01/90	Psych report
13	5	126	Psychologist	17/01/90	Psych report
14	6	130-133	Psychologist	31/01/90	Psych assessment
15	7	138-141	Clinical Psychologist	09/07/90	Psych report
16	8	221	Director	07/02/92	Memo to Minister re extension of wardship
17	9	313-324	Social Worker	05/04/93	Case conference report
<b>AGENCY'S FILE REFERENCE - W VOL III</b>					
18	1	103-114	Social Worker/ various	07/01/94 10/02/94	Reports re extension of wardship

<b>AGENCY'S FILE REFERENCE - W VOL III cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
19	2	151-153	Social Worker	04/08/93	File notes record of phone conversations with T/P
20	3	185, 186	Education Officer, Social Worker	31/05/94	File notes re events
21	4	195	Social Worker	07/07/94	File note record of discussion with T/P
22	5	199	Tutor	14/07/94	Tutorial record
23	6	201	Education Officer	18/07/94	File note record of event
24	7	202	Social Worker	21/07/94	File note record of event
25	8	203	Education Officer	25/07/94	Memo re contact
26	9	205, 206	Social Worker	26/07/94	Case note of events
27	10	207	Social Worker	28/07/94	Case note of event
28	11	208	Team Leader	28/07/94	Case review
29	12	209	Social Worker	29/08/94	Case note of event
30	13	214	Social Worker	19/09/94	Case note of event
31	14	216	Tutor	Sept 94	Tutorial record
32	15	220	Education Officer	26/09/94	File note of event
33	16	221	Social Worker	26/09/94	Case note of events
34	17	232	Social Worker	28/10/94	File note record of phone call from T/P

<b>AGENCY'S FILE REFERENCE - W VOL III cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
35	18	233	Social Worker	31/10/94	Case note record of event
36	19	238-241	Clinical Psych	14/11/94	Psych assessment report
37	1	1, 2	Psychologist	26/07/94	Discussion notes
38	2	6, 7	Psychologist	06/09/94	File note record of conversation with T/P
39	3	8	Tutor	26/08/94-08/09/94	Tutorial record
40	4	10	Education Officer	26/09/94	File note re record of event
41	5	12, 13	Psychologist	25/10/94	File note record of events
42	6	16, 17	Psychologist	11/11/94	File note record of interview
43	7	18-21	School Psych	Undated	Psych report
44	8	22-25	Psychologist	14/11/94	Psych report
<b>AGENCY'S FILE REFERENCE - WSPF</b>					
45	1	6	CDC Psychologist	17/01/91	Scale of intelligence record form
46	2	9	CDC Psychologist	31/01/90	Psych assessment report
47	3	37-40	Third party	26/07/90	Report
48	4	47-53	Social Worker	26/07/90	Record of coordinating meeting of agencies involved
49	5	61-62	Social Worker	03/01/91	File note of conversation
50	6	71-74	Psychologist McCall	09/07/90	Psych report
51	7	84	Psychologist	Undated	File note record of interview
52	8	85-87	Psychologist	16/01/91	Psych report



<b>AGENCY'S FILE REFERENCE - WSPF cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
53	9	88-90	Psychologist	Jan 91	File notes record of phone call
54	10	92-93	CDC Psychologist	04/01/91	Case review report
55	11	94	CDC Psychologist	10/07/90	Case review report
56	12	98, 99	Psychologist	19/02/91	Memo
57	13	104, 105	Psychologist	01/03/91- 08/03/91	File note
58	14	110-112	Psychologist	11/04/91- 24/04/91	File notes re conversations
59	15	115	Psychologist	20/05/91	File note re conversation
60	16	116	Psychologist	29/05/91	Memo - report of event
61	17	122-128	Psychologist	13/08/91	File notes record of conversations
<b>AGENCY'S FILE REFERENCE - D VOL I</b>					
62	1	6-7	Social Worker	13/02/90	Child protection duty intake form
63	2	54	Social Worker	27/07/90	Child protection system record form
64	3	111A- 111E	Social Worker	13/08/92	Child protection duty intake form and fax info

<b>AGENCY'S FILE REFERENCE - D VOL I cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
65	4	113	Social Worker	13/05/92	Child protection info system form
66	5	118	Social Worker	10/07/90	File note record of contact with T/P
67	6	166-169	Social Worker	16/08/90	Proposed plan of action
68	7	273-280	Social Worker	26/07/90	Minutes of coordinating meeting
69	8	281	Family Development Worker	02/08/90	Letter responding to minutes of coordinating meeting
70	9	346	Social Worker	16/05/90	File note record of contacts with T/Ps
71	10	374, 375	Social Worker	04/09/90	File note record of contacts with T/Ps
72	11	377	Social Worker	07/09/90	File note record of phone calls to T/Ps
73	12	379	Social Worker	10/09/90	File note record of contacts with T/P
74	13	384	Social Worker	11/09/90	File note record of contacts with T/Ps
75	14	387, 388	Social Worker	14/09/90	File note record of meeting and contacts

<b>AGENCY'S FILE REFERENCE - D VOL I cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
76	15	403, 404	Social Worker	13/11/90-21/11/90	File note record of contacts
77	16	408	Social Worker	03/12/90-21/12/90	File note record of contacts
78	17	411, 412	Social Worker	03/01/91-04/01/91	File note record of contact and events
79	18	415, 416	Social Worker	05/01/91-21/02/91	File note record of contacts and events
80	19	417	Social Worker	21/02/91	File note record of contacts and events
81	20	418	Social Worker	27/02/91	File note record of contacts and events
82	21	434	Social Worker	04/07/91-05/07/91	File note record of contacts and events
83	22	439	Social Worker	30/08/91-02/11/91	File note record of contacts and events
84	23	440	Social Worker	07/11/91	File note record of contacts and events
85	24	443	Social Worker	09/01/91-28/01/91	File note record of contacts and events
86	25	444	Social Worker	29/01/91-30/01/91	File note record of contacts and events
87	26	447	Social Worker	04/02/91-05/02/91	File note record of contacts and events
88	27	448	Social Worker	13/02/92-27/02/92	File note record of contacts and events

<b>AGENCY'S FILE REFERENCE - D VOL II</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
89	1	R21-25	Senior Casework Supervisor	21/09/94	Note of meeting
90	2	R29, 30	Social Worker	01/11/94	File note record of contacts
91	3	R37	Social Worker	09/11/95	File note record of contacts
<b>AGENCY'S FILE REFERENCE - D VOL III</b>					
92	1	18-20	Social Worker	29/11/94	Record of access visit
93	2	27-32	Social Worker	02/12/94	Admission conference
94	3	37-39	Senior Casework Supervisor	02/12/94	Report of admissions meeting
95	4	187-193	Social Worker	12/12/94	Report of access visits 26/11/94 and 3/12/94
<b>AGENCY'S FILE REFERENCE - D VOL IV</b>					
96	1	12-13	Social Worker	17/12/94	Report on access visit
97	2	15-16	Social Worker	28/12/94	Report on access visit

<b>AGENCY'S FILE REFERENCE - D VOL IV cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
98	3	34-36	Social Worker	01/01/95-03/01/95	File notes
99	4	42	Social Worker	03/01/95-06/01/95	File note record of contacts with T/P's
100	5	43, 44	Social Worker	Undated	File note record of events
101	6	49, 50	Social Worker	03/01/95	Access report
102	7	65-72	General Manager	03/01/95-05/01/95	File note record of contacts with T/Ps and events
103	8	81-82	Manager	05/01/95	File note record of contacts with T/Ps
104	9	90	Social Worker	06/01/95	Fax to legal section re access
105	10	108-109	Social Worker	06/01/95	Fax from Family Help Line

<b>AGENCY'S FILE REFERENCE - D VOL IV cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
106	11	140-142	Social Worker/ Manager	07/01/95	Access visit report and file note
107	12	150	Social Worker	09/01/95	Fax re current situation of placement
108	13	152-154	Social Worker	09/01/95	Report of children's progress
109	14	155	Social Worker	09/01/95- 10/01/95	File note record of contacts with T/Ps
<b>AGENCY'S FILE REFERENCE - D VOL V</b>					
110	1	43-45	Consumer advocate	25/01/95	Draft response
111	2	50	Social Worker	27/01/95	File note of contacts
112	3	51	Social Worker	27/01/95	File note record of contact
113	4	52	Social Worker	27/01/95	File note record of contact with T/Ps
114	5	69, 70	Cottage mother	17/01/95	Notes of child's activities

<b>AGENCY'S FILE REFERENCE - D VOL V cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
115	6	71	Social Worker	28/01/95	File note record of contacts with T/Ps
116	7	72	Social Worker	28/01/95	File note record of contacts with T/Ps
117	8	77-79	Social Worker	28/01/95	Memo from CCU
118	9	98	Social Worker	30/01/95	File note record of contacts
119	10	100	Social Worker	30/01/95- 31/01/95	File note record of contacts with T/P
120	11	111-112	Manager	01/02/95	File note record of contact with T/Ps

<b>AGENCY'S FILE REFERENCE - D VOL V cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
121	12	113-115	Social Worker	31/01/95	File note record of contact with T/P
122	13	116	Social Worker	01/02/95	File note record of contacts with T/Ps
123	14	120	Manager	06/02/95	File note record of contact with T/P
124	15	121	Manager	06/02/95	File note record of contact with T/P
125	16	128-130	Manager	06/02/95	Ministerial briefing notes and draft response
126	17	145, 146	Social Worker	09/02/95	Memo and fax memo re legal issues
127	18	147	Social Worker	06/02/95	File note record of contact with T/Ps
128	19	149	Social Worker	09/02/95	File note record of contacts with T/Ps



<b>AGENCY'S FILE REFERENCE - D VOL V cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
129	20	150-152	Social Worker	10/02/95	File note record of contacts with T/Ps
130	21	162	Social Worker	11/02/95- 13/02/95	File note record of events
131	22	167-172	Social Worker	14/02/95	Referral application
132	23	185	Social Worker	15/02/95	File note re contacts with T/Ps
<b>AGENCY'S FILE REFERENCE - D VOL VI</b>					
133	1	36-38	Social Worker	20/02/95	Report of contact
134	2	47-49	Clinical Psychologist	20/02/95	Fax re summary of events and allegations arrangements
135	3	51	Social Worker	21/02/95	File note record of events and contacts with T/Ps
136	4	95, 95a, 95b	Manager	Undated	Briefing notes
137	5	111, 112	Social Worker	24/02/95	Memo re placement of missing child

<b>AGENCY'S FILE REFERENCE - D VOL VI cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
138	6	172, 173	Social Worker	24/02/95	Fax re visit to children school
139	7	179	Social Worker	27/02/95	File note record of contacts with T/Ps
140	8	185	Legal officer	27/02/95	Advice re contact visit
141	9	251-252	Social worker	01/03/95	File note record of contacts with T/Ps
142	10	253-260	Social Worker	02/03/95	Fax re psych contact information for court
143	11	261	Social Worker	02/03/95- 03/03/95	File note record of contacts with T/Ps
144	12	265	Social Worker	03/03/95	File note record of planned action
<b>AGENCY'S FILE REFERENCE - D VOL VII</b>					
145	1	23-24	Social Worker	14/03/95	File note of contacts with T/Ps
146	2	32, 33	Social Worker	15/03/95	Fax
147	3	35	Clinical Psychiatrist	10/03/95	Memo to Barrister

<b>AGENCY'S FILE REFERENCE - D VOL VII cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
148	4	37-38	Clinical Psychiatrist	11/03/95	Memo to Barrister
149	6	47	Social Worker	17/03/95	Memo re summary of events
150	7	66	Social Worker	16/03/95-21/03/95	File note record of contacts with T/Ps
151	8	75, 76	Social Worker	06/02/95	Ministerial briefing notes
152	9	91	Social Worker	15/03/95	File note record of contacts with T/Ps
153	10	92	Social Worker	16/03/95-21/03/95	File note record of contacts with T/Ps
154	11	126-128	Senior Social Worker	22/03/95	Record of access visit
155	12	139, 140	Clinical Psychologist	29/03/95	Psych assessment of access visit
<b>AGENCY'S FILE REFERENCE - ASPF</b>					
156	1	10, 11	Family Care Worker	17/08/94	Report
157	2	15, 16	Social Worker	28/08/94	File note record of telephone conversation with T/P

<b>AGENCY'S FILE REFERENCE - AWF</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
158	1	1-7	Social Worker	23/07/84	File notes record of contacts with T/P
159	2	9	Social Worker	18/07/84	Intake form record of contact with T/P
160	3	11	Unknown	Undated	
161	4	16, 17	Social Worker	24/07/84	
162	5	18, 20	Social Worker	26/07/94	File note record of contacts with T/Ps
163	6	25, 26	Director	26/07/84	Original and copy of letter
164	7	27, 28	Social Worker	26/07/84	File note record of telephone conversation with T/Ps
165	8	29-36	Social Worker	23/07/84 20/08/84	File note record of contacts with T/Ps

<b>AGENCY'S FILE REFERENCE - AWF cont...</b>					
<b>DOC NO.</b>	<b>AGENCY'S DOC NO.</b>	<b>FOLIO</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>DESCRIPTION</b>
166	9	67	Social Worker	22/10/84	File note closure of case
<b>AGENCY'S FILE REFERENCE - FCA</b>					
167	1	33	WA Police Department	13/01/95	Correspondence
168	2	34	Interpol	11/01/95	Correspondence
169	3	66-131	Foster Care Assessor	February 95	Assessment Form

## REASONS FOR DECISION

1. This decision results from three applications for external review by the Information Commissioner arising from a decision of the Department for Family and Children's Services ('the agency') to refuse the complainants access to certain documents requested by them under the *Freedom of Information Act 1992* ('the FOI Act'). The complainants are identified in my decision only as complainant "K", complainant "L" and complainants "F", as they have been in previous decisions of the Information Commissioner, in order to protect the identities of the children of "K" who are minors and wards of the State.

## BACKGROUND

2. Throughout the period of the agency's involvement with the family of "K", the agency has provided assistance and support to "K" in the management of her children and, on occasions, has been responsible for arranging and supervising the fostering of "K's" children. In 1990 the eldest child of "K" was first made a ward of the State for two years. The wardship of that child was extended on two occasions, in 1992 and 1994, for a period of two years on each occasion. In 1991, "K" entered into a relationship with "L" and subsequently entered into a "*de facto*" relationship and living arrangement with "L". In November 1994, three other children of "K" were apprehended by the agency and, in early 1995, those children also became wards of the State, to remain wards until each of them reaches the age of eighteen years.
3. As wards of the State, the children are under the care and control of the agency. The Court that made the order for wardship recommended that "K" be allowed access to the children only if the Director of the agency considers that to be in the best interests of the children. However, the Court also considered that there were genuine concerns about "L" having access to the children the subject of the wardship. Accordingly, the Court ordered that "L" was not to have access to the children under any circumstances.
4. On 8 November 1994, "K" applied to the agency for access to all written information about herself and her children. The agency provided access to some documents, but refused access to others. "K" applied for internal review of that decision. However, the agency failed to provide a decision on the application for internal review within the statutory period of 15 days and, on 12 April 1995, "K" sought external review by the Information Commissioner.
5. On 22 February 1995, "L" applied to the agency for access to all files containing information about himself. The agency refused him access to certain documents and he applied for internal review of that decision. Following receipt of the decision on internal review, on 19 June 1995 "L" sought external review by the Information Commissioner.

6. An access application was made to the agency on 15 March 1995 by the parents of "K". The parents, complainants "F", sought access to documents concerning themselves and, in particular, to a report prepared by the agency when the agency was assessing the suitability of "F" to become foster parents of their grandchildren. The agency provided "F" with access to edited copies of the documents requested by them. That decision was confirmed on internal review and, on 23 June 1995, "F" applied to the Information Commissioner for external review of that decision.

## **REVIEW BY THE INFORMATION COMMISSIONER**

7. The three complaints overlap to the extent that the files of the agency contain a number of documents that relate to more than one complaint. For the sake of expediency, and at the request of "K", the Information Commissioner received authorisation from all of the complainants to deal with these complaints together. After receiving these complaints, the Information Commissioner notified the agency of them, and exercised her powers under ss.75(1) and 72(1)(b) and sought the production to her of the originals of the documents in dispute together with the agency's FOI files maintained in respect of these matters. Those documents were produced on 19 July 1995.
8. The Information Commissioner was concerned at the manner in which the agency had dealt with the three access applications, including the failure to locate and to identify the documents in dispute between the parties. Those problems arose partly from the broad nature of the three access applications and the fact that there was an overlap between the documents within the ambit of the three access applications. Difficulties also arose from the fact that the agency did not describe only the documents in dispute in its notices of decision, but rather the agency referred only to folios from various documents.
9. As a result, it was not possible for this office to identify the documents to which those folios related so as to be able to determine the documents in dispute. Consequently, a substantial amount of time was spent by the agency and by this office in collating, identifying and describing the documents in a way that would facilitate the Information Commissioner's decision-making upon these complaints. Given the number of documents involved, the nature of the requests and the manner in which the agency had dealt with the requests, the Information Commissioner determined that it would be impracticable to deal with these complaints within 30 days.
10. Following receipt of these complaints, on 25 May 1995, two officers of this office met with "K" and "L" to discuss the issues arising from these complaints. In addition, throughout the course of the Information Commissioner dealing with these complaints, the complainants have sent more than 15 letters to this office making submissions regarding the manner in which their rights under the FOI Act are determined. Due to the volume and the nature of the correspondence from the complainants, on 30 November 1995, the Information Commissioner requested the complainants refrain from providing her with additional information

unless she requested them to do so, and on 22 December 1995, the Information Commissioner directed that all submissions from the complainants to the Information Commissioner in relation to the complaints before her be made in writing.

11. On 11 January 1996, the parties were provided with a revised schedule containing a list and a description of the disputed documents, which totalled 169 documents contained in 15 separate volumes and files. The parties were also advised in writing of the Information Commissioner's preliminary view in relation to those documents. After being informed of that preliminary view, the agency released further documents or parts of documents to the complainants and provided additional submissions in support of its claims for exemption under clauses 3(1), 5(1)(a), 5(1)(b), 5(1)(c), 6(1), 7 , 8(2), 11(1)(a) and 11(1)(b) of Schedule 1 to the FOI Act for the remainder. Although the complainants were invited to make a submission, nothing was received from any of them by the due date. On several occasions, the complainants requested to meet with the Information Commissioner. These requests were refused as the Information Commissioner had directed that all submissions were to be in writing, did not require oral submissions from the parties and did not consider such a meeting necessary or desirable.
12. I have examined and considered each of the documents remaining in dispute in this matter, the various additional documentation provided by the parties and the written submissions of each party. The documents remaining in dispute are listed in the schedule attached to my decision ('the schedule'). The exemption claims maintained by the agency following the parties having been informed of the Information Commissioner's preliminary view in this matter are also detailed in the schedule. My decision in respect of each document or part document for which exemption has been claimed is specified in the schedule. Each decision relates to that part of the document for which exemption is claimed except as otherwise indicated. My reasons follow.

## **THE EXEMPTIONS**

### **(a) Clause 3 - Personal information**

13. A significant amount of the material in the disputed documents is claimed by the agency to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Clause 3.

#### ***“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) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*

*(a) the person;*

*(b) the person's position or functions as an officer; or*

*(c) things done by the person in the course of performing functions as an officer.*

(4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*

*(a) the person;*

*(b) the contract; or*

*(c) things done by the person in performing services under the contract.*

(5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*

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

14. In the Glossary in Schedule 2 to the FOI Act, “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.”*

15. Matter which is, *prima facie*, personal information about a person other than a complainant may be exempt from disclosure under clause 3(1), subject to the application of any of the limits to that sub-clause, including the limitation

provided for in clause 3(6). Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest and, in accordance with s.102(3) of the FOI Act, the onus of establishing that is on the complainants. The Information Commissioner has previously expressed the view in a number of decisions that there is a strong public interest in the protection of personal privacy, and only a very strong public interest favouring disclosure will displace that interest. With respect, I agree with that view.

16. The access applications of the complainants included a request for access to personal information about themselves, as well as a request for access to information about the children of “K”. Personal information about the children of “K” is not personal information about the complainants and is, therefore, in relation to the complainants, personal information about third parties.
17. I have examined each of the documents and parts of documents for which the agency has claimed exemption under clause 3(1), as detailed in the schedule. The matter which the agency claims to be exempt under clause 3(1) includes references to a number of people other than the complainants, including the children of “K” and carers of those children; staff of non-governmental agencies who have been involved in the management of the family of the complainants; and people who have provided information to the agency about the complainants. Most of that matter I consider to be personal information, as defined in the FOI Act, about third parties and, accordingly, *prima facie* exempt under clause 3(1).

**(i) Claims of the agency under clause 3(1) not made out**

18. However, certain matter within some of the disputed documents which the agency claims is exempt under clause 3(1) is not, in my view, personal information of the type referred to in clause 3(1). The fact that a person provides information to the agency may result in certain matter about that person being contained in a document of the agency, such as the person's name or signature, which falls within the definition of personal information and which may be exempt matter under clause 3(1). However, the mere fact that a named individual is a source of information is not necessarily sufficient to make the information given “personal information” about the source. For example, a number of the documents in dispute disclose that an individual person employed by a non-government organisation involved with the on-going management of the welfare of “K’s” children has provided the agency with information about the family. While the name of that person and the fact that he or she provided information to the agency may be considered to be personal information about that person, the substance of the information given by that person is information about the family. The person who gave the information cannot, in my opinion, be identified from the information itself. Without more, such information cannot, in my view, be claimed to be exempt under clause 3(1) as being personal information about the officer of that organisation, because, in respect of the officer, it is not personal information as defined in the FOI Act. That matter, I have found not exempt under clause 3(1).

19. Further, some of the matter within the disputed documents for which the agency has claimed exemption under clause 3(1) as being personal information about the children is, in my view, personal information about the complainants and not about the children. It is not so intertwined with personal information about third parties that it cannot be disclosed without revealing personal information about third parties. Accordingly, I have found that that matter is not exempt under clause 3(1) of Schedule 1 to the FOI Act.
20. The matter for which exemption was claimed under clause 3, but which I have found is not exempt under clause 3, in Documents 6, 7, 8, 86 and 99 is personal information about one of the complainants and, in my view, is therefore not exempt under clause 3(1) by virtue of clause 3(2). Similarly, the matter in Document 161 which was claimed by the agency to be exempt under clause 3(1) but which I have found is not exempt under clause 3(1) is personal information about another of the complainants and for the same reasons is not, in my view, exempt.
21. The matter identified in the schedule in Document 15 which I have found not exempt under clause 3 is, in my opinion, personal information about a party other than the complainants, but it is personal information that has already been disclosed to the complainants in another document. In those circumstances, I do not consider that disclosure of that part of Document 15 would reveal personal information, because that information has already been revealed to the complainants.
22. The matter claimed to be, but which I find is not, exempt under clause 3 in Document 154 comprises personal information about one of the complainants. Those parts of the document also contain some personal information about the children of complainant 'K'. However, the particular matter is a record of events which took place in the presence of the complainant "K" and, therefore, in my view, disclosure of those parts of the document containing personal information about "K" which would also entail disclosure of some personal information about the children would not reveal personal information about the children, as it is already known to complainant "K". That matter is not, therefore exempt under clause 3.
23. The matter in Documents 69 and 116, folio 113 of Document 121, Document 122, Document 139 and Documents 140, 142, 145, 147 and 148 which the agency has claimed to be exempt under clause 3(1) but which I have not so found is, in my opinion, exempt under other clauses as detailed in the schedule. For the reasons given below in respect of the particular exemption, I have found those documents and parts of documents to be exempt under other clauses and it is not, therefore, necessary that I deal with the claims under clause 3. The matter contained in line 14 of Document 119 which was claimed by the agency to be exempt under clause 3 is not, in my view, personal information and is not therefore exempt under clause 3. It does, however, in my opinion, disclose a confidential communication between the agency and its legal adviser with reference to litigation and would, therefore, be privileged from production in

legal proceedings on the ground of legal professional privilege and is exempt under clause 7.

24. In Document 141, the matter contained in lines 1-4 inclusive, 12 and 13, 19 and 20-27 of folio 251 and line 3 of folio 252 is not, in my view, personal information that may attract the exemption provided by clause 3. It is either personal information about one of the complainants and, therefore, clause 3(2) operates to limit the exemption or it is personal information about an officer of an agency and, therefore, by virtue of clause 3(3) is not exempt. In addition, I am informed that lines 20-27 of folio 251 have already been released to the complainants. Lines 6-11 on folio 252 I have found to be exempt under clause 5(1)(b) and, therefore, need not consider the claim under clause 3.

## **(ii) Claims of the agency under clause 3(1) made out**

25. Of those documents that I consider contain personal information about third parties and, therefore, *prima facie* exempt under clause 3(1), some relate solely to third parties, and contain no information about the complainants. However, some of the documents which contain personal information about third parties also contain personal information about the complainants. Much of that information could not, in my view, be disclosed without also revealing personal information about third parties. The complainants have not provided anything that persuades me that disclosure of any of the matter in the documents which is personal information about third parties would, on balance, be in the public interest.

## **The public interest**

26. I accept that there is a public interest in each of the complainants being able to exercise his or her right of access under the FOI Act. In *Re "K and L" and Department of Family and Children's Services* (23 November 1995, unreported), at paragraph 20, the Information Commissioner considered that there may also be a public interest in the natural mother of a child who is under the care of the agency being informed of the manner in which the welfare of that child is managed by the agency. I agree with that view. However, in this instance, I am satisfied, as was the Information Commissioner in that previous instance, that "K" has been given access to general information about the management and welfare of her children and that the agency has arrangements in place to enable "K" both to have contact with her children and to be informed about decisions taken in respect of her children. I consider therefore that, in this instance, that public interest does not require disclosure of the disputed documents and parts of documents. In addition, I consider that public interest to have been satisfied to some extent by the disclosure by the agency already to "K" of a number of documents and edited documents from which certain personal information about third parties has been deleted.

27. In those circumstances, I do not consider that the public interest in any of the complainants obtaining access to the disputed documents outweighs the strong public interest that I consider there to be in the maintenance of the personal privacy of third parties, including the privacy of children who are wards of the State and their carers. With respect to personal information about the children of “K”, different considerations would be relevant in circumstances where the parent or parents seeking access to documents concerning their children were parents having the guardianship or care and custody of their children. However, in this case, the Director General of the agency is the legal guardian of the children and is responsible for their care.
28. In the case of documents which contain personal information about third parties, as well as personal information about the complainants, section 21(a) of the FOI Act requires that the fact that the matter is personal information about a complainant is to be considered as a factor in favour of disclosure for the purpose of making a decision as to whether disclosure is in the public interest. Following my examination of the disputed documents, I consider that it would not be possible to edit those parts of the documents so that only personal information about the complainants, and no personal information about third parties, were disclosed. I have taken into account, as a factor in favour of disclosure, that some of the information contained in those parts is personal information about the complainants. I nonetheless remain of the view, for the reasons given above, that it has not been established that the disclosure of personal information about third parties, which disclosure of that particular matter would necessarily entail would, on balance, be in the public interest.
29. I also consider that any public interest in the complainants having access to many of the disputed documents has been satisfied by the agency already having given the complainants access to edited copies of those disputed documents.
30. The agency has also relied on section 23(4) of the FOI Act to refuse access to matter concerning the children of “K”. Section 23(4) provides:

***“Refusal of access***

*23(4) If a document contains personal information about 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 children 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.”*

31. Although not an exemption in itself, that provision is, in my opinion, relevant to the limits on exemption provided by clause 3(2) (matter is not exempt under clause 3(1) if it is personal information about the access applicant) and clause 3(5) (matter is not exempt under clause 3(1) if the individual concerned consents to its disclosure).

32. There is no evidence before me that the children were consulted, as would normally be required by section 32 of the FOI Act if the agency were considering disclosing such information about them, as to their views in respect of disclosure of personal information about them. However, given the young children's ages (8, 9, 10 and 11), the circumstances that led to them becoming wards of the State as evidenced in the documents I have examined, and various other circumstances apparent from the documents, I accept that the agency, as the children's legal guardian, has formed the view that in the circumstances disclosure would not be in the children's best interests and that the children do not have the capacity to make that judgement, and I consider that view to be not unreasonable in this instance.

**(iii) Claims of agency varied**

33. In addition, I have found to be exempt under clause 3 certain other documents and parts of documents which were not claimed by the agency to be exempt under that clause. Those are identified in the schedule and comprise parts of folios 305 and 336 of Document 6, parts of folios 410, 411, 415 and 416 of Document 8, parts of Documents 9, 10, 18, 62, 63, 64, 65, 66, 68, 70, 96, 97, 101, 102, 106, 108, 109, 113, 135, 136, 165 and 166 and the whole of each of Documents 92, 95, 155 and 156. Those documents contain personal information about persons other than the complainants and who are not officers of agencies. That matter includes personal information about the children of "K" and a child of "L" with whom the agency has also been involved, personal details of persons who have given information to the agency concerning the family and personal information about persons who have been carers for the children or otherwise involved with the children. That matter is clearly *prima facie* personal information as defined in the FOI Act and, for the reasons given above, I am of the view that the complainants have not established that any of the limits on the exemption applies such that the matter is not exempt.

**(b) Clause 5(1)(a) - Impairment to lawful methods and procedures**

34. Clause 5(1)(a) provides:

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

*(a) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;"*

35. Clearly, the exemption in clause 5(1)(a) is directed at preventing the disclosure of matter that would result in the impairment of the effectiveness of the investigative methods or procedures of an agency: see the Information Commissioner's decision in *Re Sanfead and Medical Board of Western Australia* (15 November 1995, unreported). Therefore, in my view, in order to establish this exemption,

an agency must, firstly, identify the investigative methods or procedures employed by the agency which it is claimed may be impaired. Further, it must be shown that the disclosure of the disputed matter could reasonably be expected to impair the effectiveness of those methods or procedures.

36. The matter which the agency claims is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act is information that was provided to the agency in the course of its involvement in the management of "K's" family. The agency claims that it was provided with that information to assist in the detection and prevention of child maltreatment. The matter claimed to be so exempt does not, from my examination of the disputed documents, directly detail or refer to any methods or procedures for dealing with a contravention or possible contravention of the law, but rather is a summary of the results obtained through the use of what the agency claims are particular methods and procedures.
37. The agency submits that, as certain information regarding the complainants and their family is received in confidence, to disclose such matter would be detrimental to the agency's methods and procedures for detecting possible cases of child maltreatment, investigating allegations, or providing measures to prevent further maltreatment. However, no particular methods or procedures were identified and no explanation was proffered as to how those methods and procedures may be impaired by the disclosure of the disputed documents.
38. My examination of the documents for which the agency has claimed exemption under clause 5(1)(a) has not satisfied me that the exemption claimed applies to those documents. Clearly, the agency is responsible for the administration of the *Child Welfare Act 1947*, including the investigation of allegations made to it concerning child abuse, and ensuring the welfare of children generally. The agency's responsibility in that regard includes detecting and preventing inappropriate behaviours that may contribute to, or result in, the welfare of children being put at risk, and that may involve co-operating and liaising with other authorities such as the Police Force of Western Australia: see the Information Commissioner's comments in *Re "C" and Department for Community Development* (12 October 1994, unreported), at paragraphs 27 and 38-41.
39. However, in my view, it is not sufficient in order to satisfy the requirements of clause 5(1)(a) merely to establish that a document was created in the course of the agency's dealing with a contravention or possible contravention of the law, or that it contains a record of the results of the use of investigative methods or procedures by the agency. It must also be shown that disclosure of the documents could reasonably be expected to impair the particular method or procedure. Even if it were accepted - and it is not - that receiving and acting upon information concerning the welfare of, or possible offences against or relating to, children were, *per se*, a method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law, the agency has not established that disclosure of the disputed documents could reasonably be expected to impair that process. The agency has not even suggested how that process may be impaired.

40. There may an argument that the agency's method of investigation would be impaired because, if it were to become known that information given to the agency in confidence may be disclosed to the person complained about, then the future supply of that kind of information to the agency would be prejudiced and that would result in impairment to its usual method of investigating such matters. However, there is nothing before me in the way of probative material that goes towards establishing that there are real and substantial grounds for expecting that people in positions of responsibility involving the care of children could reasonably be expected to be less likely to pass on information concerning suspected maltreatment of children, if it were to become known that such information may be disclosed.
41. In the absence of any material from the agency to support its claim that some method or procedure of the agency's might be impaired by the disclosure of the disputed documents, I consider that the agency's claims for exemption based upon clause 5(1)(a) cannot be sustained. Accordingly, as indicated in the schedule, I have found that the disputed documents for which that exemption is claimed do not contain any matter which is exempt under clause 5(1)(a) of Schedule 1 to the FOI Act.

**(c) Clause 5(1)(b) - Revealing an investigation**

42. Clause 5(1)(b) provides:

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

*(b) reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;”*

43. The scope of the exemption and the meaning of the words “reveal the investigation” in clause 5(1)(b) of Schedule 1 to the FOI Act arose for consideration by the Supreme Court of Western Australia in *Manly v Ministry of Premier and Cabinet* (15 June 1995, unreported). Owen J said, at page 25:

*“I think the clause is aimed at the specifics of the investigation, and not at the mere fact that there is or has been an investigation...A document is not exempt from disclosure simply because it would reveal the fact of an investigation.*

*I also think that it would be wrong to test the coverage of the clause by looking at the document in isolation. It must be considered in the light of the surrounding circumstances and in view of what else is known to the parties and the public...The exemption applies if disclosure of that document would reveal the investigation. There must be something in the document which, when looked at in the light of the surrounding*



*circumstances, would tend to show something about the content of the investigation. If that material is already in the public arena then it could not properly be said that the disclosure of the document would reveal the investigation.”*

44. The agency claims that certain matter within the disputed documents is exempt under clause 5(1)(b). That matter primarily involves various file notes and memoranda concerning one of the children of “K”. The agency claims that this matter is exempt because it reveals the investigation to determine whether there had been a contravention of the law under the *Child Welfare Act 1947*.
45. I am satisfied that some of the matter in the disputed documents for which the agency has claimed exemption under clause 5(1)(b) relates to an investigation by the agency or the Police Force of Western Australia of a contravention or possible contravention of the law, being an investigation into the circumstances surrounding the temporary disappearance of a child, and an investigation into certain possible offences under the *Criminal Code Act 1913*. Further, I am of the view that the limit on that exemption does not apply.
46. Accordingly, I find that certain matter which is identified in the schedule - in documents 115-119, 135 and 141 - is exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Although I do not consider that I can describe the content of those documents without breaching my statutory obligation not to reveal exempt matter, I am satisfied that those documents and parts of documents, if disclosed, could reasonably be expected to reveal something about the content of an investigation into a contravention or possible contravention of the law.
47. However, the agency has also claimed that other matter in the disputed documents, including some information relating to the disappearance of the child, is exempt under clause 5(1)(b). Following my examination of those documents, I am not persuaded that disclosure of that matter could reasonably be expected to reveal to the complainants the substance of an investigation of the kind referred to in clause 5(1)(b). That is matter that is already within the knowledge of the complainants, and matter which refers to issues which are administrative in nature, or which simply does not reveal the substance of any investigation conducted by the agency or by the police. Accordingly, I am not satisfied that the remainder of the matter, as detailed in the schedule, for which the agency claims exemption under clause 5(1)(b) is so exempt, and I have found that it is not.

**(d) Clause 5(1)(c) - Confidential sources of information**

48. 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;"

49. The application of the exemption in clause 5(1)(c) to documents of the agency was considered in the Information Commissioner's decision in *Re C and Department for Community Development* (12 October 1994, unreported). For a document to be exempt under clause 5(1)(c), there are three requirements that must be established. They are that the source of the information to the agency must be confidential; the information must relate to the administration or enforcement of the law; and disclosure could reasonably be expected to enable the existence or identity of that source to be discovered.
50. The matter which the agency claims is exempt from disclosure under clause 5(1)(c) of Schedule 1 to the FOI Act is matter which is a record of the sources and the substance of information provided to the agency relating to the complainants' family and the welfare of "K's" children, which information is contained in file notes, memoranda and reports recording information obtained from officers of non-governmental agencies and private individuals who have been involved in the management of the complainants' family. The agency claims that the information was received from a number of sources and individuals whose identities would not be known to the public at large or to the complainants, and that it relates to the agency's functions in the administration of the provisions of the *Child Welfare Act 1947* in respect of the children of "K".
51. The agency submits that it relies on people to provide it with confidential information in relation to the alleged maltreatment of children. The agency further submits that it is imperative that those sources of information are not identified, in order to ensure that allegations concerning the maltreatment of children are reported to the authorities and to protect informants from possible adverse family reactions. The agency claims that, as there are no mandatory reporting obligations, the agency must protect such sources of information to ensure that there will be a future supply of information of this kind.
52. Despite those submissions, the agency has not provided me with any specific evidence in support of the claims that each source is confidential. The agency has, in effect, made a class claim for exemption of all matter the disclosure of which could, in the view of the agency, reasonably be expected to reveal the existence or identity of a source of information to the agency. However, in my view, something more is required to establish that confidentiality attaches to the existence or identity of each source.
53. Further, in some cases, the matter which the agency claims is exempt under clause 5(1)(c) is the substance of information provided to it by a particular source. As I have said, in my view, the information provided to the agency by a source is not protected under clause 5(1)(c) unless it can be established that, because of the nature of the information, disclosure of that information could reasonably be expected to enable the existence or identity of a confidential source to be discovered.

54. Following my examination of the documents containing matter for which the agency has claimed exemption under clause 5(1)(c), I am not persuaded that its disclosure would enable the existence or the identity of a confidential source of information to the agency to be discovered. I accept that the complainants are aware that the sources which the agency is trying to protect have been in contact with the agency. However, what the complainants may not know is the nature or the extent of the information provided to the agency by each source. In my view, that is not sufficient for the matter to attract the exemption provided for by clause 5(1)(c).
55. Accordingly, I am not satisfied that the disclosure of any of the matter which the agency claims is exempt under clause 5(1)(c) could reasonably be expected to enable the identity of a confidential source of information to the agency to be discovered. Although the substance of the information may be of the type considered by the agency to be confidential, I do not consider that the matter is of the kind to which the exemption in clause 5(1)(c) is directed and, accordingly, I have found that it is not exempt under that clause.

**(f) Clause 6 - Deliberative processes**

56. Clause 6, in so far as is relevant, provides:

*“(1) Matter is exempt matter if its disclosure -*

*(a) would reveal -*

*(i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or*

*(ii) any consultation or deliberation that has taken place,*

*in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency;*

*and*

*(b) would, on balance, be contrary to the public interest.”*

57. To establish an exemption under clause 6(1), it must be demonstrated, firstly, that a document contains matter of the type referred to in clause 6(1)(a) and, secondly, that its disclosure would, on balance, be contrary to the public interest. Under s.102(1) of the FOI Act, the agency bears the onus of establishing that its decision was justified and, accordingly, that disclosure of such matter would, on balance, be contrary to the public interest.
58. The documents for which the agency claims exemption under clause 6(1) are documents that relate to the general and ongoing decisions made by the agency

regarding the welfare of the complainants' family. In addition, some of the matter relates more specifically to decisions concerning the placement and care of "K's" children, and the strategy for assisting "K" in the management of her family. Further, some of the matter relates to decisions made by the agency concerning how to deal with allegations of abuse.

59. It is not sufficient, in my view, to claim that all of the documents relating to the agency's dealings with the complainants and their family can be said to form part of the deliberative processes of the agency. I consider that the deliberative processes of the agency in this case are more limited. To satisfy the requirements of clause 6(1)(a), in my opinion, evidence is required which demonstrates that the matter relates to particular decisions made regarding the management of the family, or to the consideration of the appropriate action to be taken by the agency at a particular time to ensure the welfare of the children.
60. Accordingly, I am not persuaded that matter within the documents which simply records the daily activities of the agency with respect to this family can be said to form part of the deliberative processes of the agency, so as to be matter of the kind referred to in clause 6(1)(a). In my view, matter that relates to the normal administrative functions of the agency must be distinguished from its deliberative processes. Therefore, I do not consider that such matter can be exempt under clause 6(1). However, I accept that some of the disputed matter consists of opinions, advice and recommendations that have been obtained, or consultation or deliberation that has taken place in the course of, or for the purpose of, specific decisions being made by the agency relating to the wardship of the children, or the procedures and strategies for the management of the family, or in determining how to deal with specific allegations of abuse, and that is matter of the kind referred to in clause 6(1)(a).

### **The public interest**

61. The agency submits that while the public has a general right of access to information held by government agencies, the public interest in the protection of the deliberative processes of an agency, and the need to protect the ability of the agency to perform its duties, as well as the public interest in protecting the privacy of individuals and non-government organisations involved in the deliberative processes of the agency, outweighs the public interest in the public's general right of access.
62. The Information Commissioner has previously recognised that there is a public interest in ensuring that the agency is able to perform its functions, and that the deliberative processes of the agency are protected, particularly in instances when those processes are current or have not concluded. However, in my view, that public interest will not outweigh all others in every instance. In my opinion, there are a number of public interests that must be considered and balanced in this matter. I do not consider that the agency has identified or properly considered all of those interests.

63. Clearly there is a public interest in people - in this case, the complainants - being able to exercise their rights of access under the FOI Act. In this instance, the information in the documents for which exemption has been claimed relates to the complainants and their family. That is a factor in favour of disclosure when considering whether or not it is contrary to the public interest for the matter to be disclosed.
64. I also recognise that there is also a public interest in ensuring that the rights of parents are not unduly infringed or compromised by government agencies without good cause, and there is a public interest in a natural parent whose children are in the care of the agency knowing about the welfare of those children. In addition, I accept that there is a public interest in the agency providing practical assistance, guidance and support to parents who need such intervention.
65. Based on the material before me, I accept that the agency has established procedures to keep "K" informed of the welfare and progress of her children. Those procedures include the arranging of regular meetings and briefings between "K" and the agency. Whether or not "K" chooses to avail herself of that facility is a separate issue, and not one for me. In my view, the existence of that system addresses the public interest in the complainants being kept informed by the agency of the manner in which the agency is caring for the children.
66. On the other hand, I recognise that there is a public interest in the agency being able to become involved in the management of a family which requires its intervention and being able to act so as to ensure the protection of the welfare of any children who require assistance. Further, I consider that there is a public interest in the agency being able to perform its functions as guardian of children who are wards of the State without undue influence or interference. I also recognise that there is a public interest in the agency being able to detect, prevent and deal with allegations of child abuse.
67. I also accept that the agency relies upon a wide range of information provided by numerous sources in order to ensure that the agency is adequately informed when making decisions in the course of its involvement in the management of families. In my view, the effective operation of the agency in respect of certain matters requires that it protect from disclosure deliberations that take place within the agency when such decisions are being made.
68. Having balanced those competing public interests, in my view, the document numbered 48 and parts of Documents 68, 69, 93, 94, 164 and 165 in the schedule contain matter of the kind referred to in clause 6(1)(a), the disclosure of which would be, on balance, contrary to the public interest. Accordingly, I find that those documents are exempt under clause 6(1) of Schedule 1 to the FOI Act.
69. However, in my view, a number of the documents for which the agency claims exemption under clause 6(1), and which I consider contain matter of the type referred to in clause 6(1)(a) contain matter which is general procedural and administrative information only, or which already within the knowledge of the complainants. With respect to that matter, I consider that the public interest

factors in favour of disclosure are not outweighed by those against disclosure. Accordingly, I do not consider that the requirements of clause 6(1)(b) have been met with respect to that matter, and it is not exempt under clause 6(1).

**(g) Clause 7 - Legal professional privilege**

70. Clause 7 provides:

*“(1) Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.”*

71. Legal professional privilege applies to, *inter alia*, any confidential communication between a client and his or her professional legal adviser acting in a professional capacity and with a view to obtaining or giving legal advice or assistance: *Grant v Downs* (1976) 135 CLR 674; *Baker v Campbell* (1983) 153 CLR 52. A claim for privilege in such cases is not limited in the case of such communications to communications which have been made for the purpose of existing or contemplated litigation. Further, an agency is entitled to claim privilege for communications between its various legal advisers; for communications between the legal advisers and third parties if made for the purpose of existing or contemplated litigation, and communications between an agency and third parties if made for the purpose of obtaining information to be submitted to the client’s legal advisers for the purpose of existing or anticipated litigation: *Trade Practices Commission v Sterling* (1979) 36 FLR 244.
72. Legal professional privilege may be claimed for advice obtained by the agency from salaried legal officers who are employed within the agency as legal advisers, where the legal advice is given within the professional relationship between the legal officer and the agency, and the advice is independent in character: *Attorney-General (NT) v Kearney* (1985) 158 CLR 54.
73. In my view, some of the matter in the disputed documents is clearly a record of confidential communications between the agency and its legal advisers. That would be privileged from production in legal proceedings on the ground of legal professional privilege and therefore is, *prima facie*, exempt under clause 7. Further, some of the matter is a record of communications between legal officers of the agency and legal advisers briefed to represent the agency in the application for wardship of the children, as well as a record of communications between the legal advisers and third parties for the sole purpose of the litigation. In my view, that is also matter which is exempt under clause 7.
74. Accordingly, as there is no “public interest test” attached to the exemption in clause 7, I have found that Documents 107, 140, 142, 147 and 148 and parts of Documents 116, 120, 121, 122, 126, 132, 135, 139, 145 and 165 as described in the schedule contain matter which is exempt under clause 7 of Schedule 1 to the FOI Act.

**(h) Clause 8(2) - Confidential communications**

75. Although the agency claims that a number of the disputed documents are exempt under clause 8(2) of Schedule 1 to the FOI Act, on the information before me, I consider that the requirements to establish that exemption have been satisfied only in respect of matter within documents 6 and 72 as described in the attached schedule. Clause 8, so far as is relevant, provides:

*“(2) Matter is exempt matter if its disclosure -*

*(a) would reveal information of a confidential nature obtained in confidence; and*

*(b) could reasonably be expected to prejudice the future supply of information of that kind to the Government or to an agency.*

***Limits on exemption***

*(3)...*

*(4) Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest.”*

76. To satisfy the requirements of clause 8(2), an agency must not only establish that the information contained in a document is confidential in nature and obtained in confidence, but also that disclosure of that information could reasonably be expected to prejudice the future supply of information of that kind to the agency. If those elements are established, consideration must then be given to whether clause 8(4) operates to limit the exemption. That is, matter is not exempt under sub-clause (2) if its disclosure would, on balance, be in the public interest.

77. The matter that the agency claims is exempt under clause 8(2) is primarily information provided by officers of non-governmental agencies which have been involved in the management of “K’s” family, including organisations responsible for the care of the children, as well as information provided to the agency by medical practitioners involved in the treatment of “K” and her children. The agency claims that this information has been provided in order to inform and assist the agency in the management of the family. Further, some of the matter is information provided by private individuals to the agency in relation to allegations of abuse or possible abuse of the children.

78. The agency submits that the matter for which exemption is claimed under clause 8(2) is information that was provided with either an express or implied understanding of confidentiality and that, if such information were released, it could reasonably be expected that such information would not be supplied in the future. The agency claims that, as there is no mandatory reporting requirement for such information, it relies upon voluntary information to be provided to it regarding possible child maltreatment. Further, the agency submits that, when balancing the public interest, the need to protect the privacy of individuals,

confidential communications to the agency, and the ability of the agency, other organisations and individuals to perform their duties outweighs the general right of access to documents by the public.

### Consideration of the agency's claims

79. Following my examination of the disputed documents, I am not persuaded that the matter claimed to be exempt under clause 8(2), save for matter in Documents 6 and 72 in the schedule, is so exempt. I note that some of the matter claimed by the agency to be exempt under clause 8(2) is matter which is within the knowledge of some or all of the complainants. Even if I were satisfied that the requirements of clause 8(2)(a) had been met, I am not persuaded that the agency has established that the future supply of information of that kind to the agency could reasonably be expected to be prejudiced if that matter is disclosed.
80. While I accept that the agency requires access to information from various sources, it has made only general assertions that the private individuals and the non-governmental organisations that have provided information to the agency in the course of the agency's dealings with the complainants' family are not going to do so in the future if this matter is disclosed to the complainants. Nothing is offered in support of those assertions. I refer, in this regard, to the decision of the Supreme Court in *Manly v Ministry of Premier and Cabinet* (15 June 1995, unreported). In that decision, in respect of the similar requirement in clause 4, Owen J said, at page 44:
- “...it is not sufficient for the original decision-maker to proffer the view. It must be supported in some way. The support does not have to amount to proof on the balance of probabilities. Nonetheless, it must be persuasive in the sense that it is based on real and substantial grounds and must commend itself as the opinion of a reasonable decision-maker”.*
81. The agency claims that one of the non-governmental organisations involved with the care of “K’s” children which has provided information to the agency has advised the agency that, if the organisation is identified as a source of information, or if information provided to the agency in confidence is released, it would impact on the physical and emotional safety of the staff of the organisation. The agency claims that the organisation needs to be able to carry out its duties without fear of harassment by the parents and the families of children in their care, and disclosure of these documents could reasonably be expected to result in such harassment. The organisation stopped short, however, of claiming that disclosure would have the effect of it refusing to supply such information to the agency in the future.
82. I do not accept, on the evidence before me, that the agency has established that the disclosure of the disputed matter could reasonably be expected to have the claimed effect. I accept that the complainants are aware of the identities of the non-governmental organisations, including the organisation referred to, involved in the management of the family and the care of the children. Further, I consider



that the documents containing information provided by that organisation to the agency are primarily a record of events occurring in the presence of one or more of the complainants. Accordingly, I am not persuaded, on the evidence before me, that any harassment of the staff of the organisation by the complainants could reasonably be expected to occur as a result of the disclosure of this matter.

83. Further, in the case of information provided to the agency by non-governmental organisations whose functions and duties include caring for and ensuring the welfare of children, I consider that it is part of the function and responsibilities of such organisations to liaise with the agency and provide information regarding those children in appropriate circumstances. Accordingly, I do not accept the agency's claims that the future supply to the agency of information of that kind from non-governmental agencies provided in the course of the performance of their functions could reasonably be expected to be prejudiced by disclosure.
84. The agency has also claimed that information provided to the agency by private medical practitioners involved with the complainants' family is exempt under clause 8(2). The agency submits that such information was obtained in confidence and, if it is released, could reasonably be expected to prejudice the future supply of such information.
85. One of the medical practitioners who has provided such information to the agency advised my office that "K" is aware that the practitioner has provided information to the agency, although "K" may not be aware of the precise nature of the information provided. The medical practitioner advised that information was provided to the agency in order to assist in protecting the welfare of "K's" children in circumstances where the practitioner considered this appropriate. The medical practitioner did not suggest that disclosure of such information would prejudice the future supply of such information to the agency.
86. Subsequent to that advice, however, and after being shown by the agency the relevant parts of the documents, that practitioner contacted this office and expressed some concern at the manner in which the agency had recorded the information provided by that practitioner. The concern was that the records do not reflect accurately the information given. The practitioner indicated that disclosure of those records may cause that practitioner to be "...*strongly inclined in the future to withhold [sic] such information...*"
87. I am not persuaded, however, that disclosure of those parts of the documents could reasonably be expected to prejudice the future supply to the agency of matter of that kind. Rather, it may affect the form in which it is given and the manner in which it is recorded. In my opinion, that effect accords with the object of the FOI Act to ensure that personal information held by government agencies is accurate, complete and not misleading, and is in keeping with what I understand to be one of the intended consequences of the operation of the legislation, being an improvement in the standard of record keeping by agencies.
88. Accordingly, I do not consider that agency has established the requirements of clause 8(2)(b) with respect to this matter. In any event, I consider that there is a

strong public interest in a complainant being advised of matter held by an agency which has been provided to the agency by a private medical practitioner who is treating that complainant. Therefore, with respect to the matter provided to the agency by that medical practitioner, I do not consider that the elements required to establish an exemption under clause 8(2) have been met.

89. The only matter within the disputed documents which I consider may be exempt under clause 8(2) is matter identified in the schedule within the documents numbered 6 and 72. That matter is advice provided by a medical practitioner who was not involved in the treatment of the complainants or their family. However, advice was given to the agency based on his assessment of treatment provided by a colleague. In circumstances where a medical practitioner is not involved in the treatment of the complainants, and provides information to the agency regarding the welfare of children when there is no mandatory obligation to do so and where that medical practitioner has no direct interest in, or responsibility for, the welfare of the children or the family, I am satisfied that the advice provided can be said to be of a confidential nature and obtained by the agency in confidence.
90. Further, I accept that in those particular circumstances the future supply of such information to the agency may be prejudiced if this matter is disclosed (see also the decision of the Information Commissioner in *Re Lawless and Medical Board of Western Australia and Medical Practitioner "X"* (6 July 1995, unreported)). I consider that the public interest in the agency being able to continue to obtain information of that kind from medical practitioners to assist in the protection of the welfare of children outweighs the public interest in favour of the complainants having access to that information. Accordingly, as indicated in the schedule, I have found that some matter in Documents 6 and 72 is exempt from disclosure under clause 8(2) of Schedule 1 to the FOI Act.

(i) **Clause 11 - Effective operations of agencies**

91. Clause 11, so far as is relevant provides:

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

*(a) impair the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency;*

*(b) prevent the objects of any test, examination or audit conducted by an agency from being attained;*

*(c) ...*

*(d)...*

***Limit on exemptions***

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

92. The Information Commissioner discussed the application of the exemptions in clauses 11(1)(a) and 11(1)(b) in her decision in *Re Simonsen and Edith Cowan University* (13 July 1994, unreported). The agency claims exemption under clauses 11(1)(a) and 11(1)(b) for matter which records the results of an assessment undertaken by the agency to assess the suitability of the complainants “F” as foster parents to the children of “K”. Although parts of the document have been disclosed to “F”, the matter to which access has been refused consists of the factors on which the review and evaluation of the responses of the subjects of the assessment is based, as well as details of the assessor’s review of “F”.

93. From my examination of the document, I am satisfied that the requirements to establish an exemption under clause 11(1)(b) have been met. I am satisfied that Document 169 on the schedule records the results of an examination undertaken by the agency in the course of its function of assessing the suitability of persons applying to be foster parents. The object of that test is clearly to properly assess the suitability of applicants to act as foster parents for children in need - and, in this particular instance, to assess the suitability of “F” to act as foster parents for their grandchildren - in order to ensure, so far as is possible, that such children are placed in the most suitable environment.

94. I consider that there are real and substantial grounds for expecting that disclosure of the factors considered by the agency in the evaluation process may enable responses provided in the assessment of the suitability of a person to become a foster carer in the future to be tailored to produce a response that is favourable to the subject being assessed, rather than producing an accurate response from which decisions about the placement of children can confidently be taken.

95. In my view, disclosure to the complainants of the matter claimed to be exempt could reasonably be expected to reduce the reliability of any future assessment of “F”, as “F” could reasonably be expected to be in the position of being able to provide the responses necessary to achieve the outcome they desire, rather than providing a true picture of their suitability or otherwise as foster parents. Further, the objects of the test could reasonably be expected to be defeated in respect of any other potential foster carers who had prior access to the information deleted from the document. As no conditions can be attached to the use of a document to which access has been afforded under the FOI Act, disclosure to the complainants is, in effect, disclosure to the world. In those circumstances, I consider that disclosure may jeopardise the reliability of the results obtained from the assessment and hence the attainment of the objects of the test could reasonably be expected to be prevented.
96. None of the complainants provided any material to discharge the onus on them under s.102(3) of the FOI Act, to persuade me that disclosure would, on balance, be in the public interest. Accordingly, as I am satisfied that there is a *prima facie* claim for exemption under clause 11(1)(b), in the absence of any material to persuade me that there is a countervailing public interest in disclosure of the document, I find the matter deleted from Document 169 to be exempt under clause 11(1)(b) of Schedule 1 to the FOI Act. As a result, I need not consider the applicability of the exemption in clause 11(1)(a).

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