

**G AND F&C SERVICES**

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

**File Ref: 94153  
Decision Ref: D04595**

Participants:

**G**  
Complainant  
  
- and -  
  
**Department of Family and Children's Services  
(formerly the Department for Community  
Development)**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - clause 3 - personal information - case notes - agency forms - information provided by third parties - personal information about third parties - personal information about complainant - public interest factors for and against disclosure of personal information.

FREEDOM OF INFORMATION - clause 5(1)(b) - information provided by third parties - interpretation of clause 5(1)(b) - reveal an investigation - fact or substance of investigation - limitation in clause 5(4) - public interest.

*Freedom of Information Act 1992 (WA)* ss. 21, 68(1), 74(1), 75(1); Schedule 1 clauses 3(1), 5(1)(a), 5(1)(b), 5(1)(c), 5(1)(e), 5(4), 6(1), 8(2); Glossary in Schedule 2.

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

## DECISION

The decision of the agency is confirmed. Those parts of the disputed documents described in the schedule attached to this decision consist of matter that is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, and, further, Document M is exempt under clause 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

25th October 1995

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Department of Family and Children's Services ('the agency'), formerly the Department for Community Development, to refuse 'G' ('the complainant') access to certain documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 7 December 1994, solicitors for the complainant applied to the agency for access under the FOI Act, to files and papers relating to any allegations of child sexual abuse by the complainant against the complainant's child. As there was some urgency associated with that access application, my office negotiated an abridgment of time with the agency and access was granted to copies of certain documents from which exempt matter had been deleted.
3. On 4 January 1995, an internal review was carried out by the agency in relation to four documents considered to be those required urgently by the complainant as they related to a matter then before the court. Following that internal review, one document was released in full to the complainant and a further four documents were released with exempt matter deleted. Solicitors for the complainant then applied to my office for external review of the agency's decision concerning the four documents to which edited access had been granted.
4. However, shortly after that application for external review had been lodged with my office, the agency provided a notice of decision in relation to the remaining documents that were the subject of the original access application. A further 15 documents were released and access was granted to edited copies of the remaining 63 documents. Access was refused to the matter deleted from the documents on the basis that that matter was exempt matter under one or more of clauses 3(1), 5(1)(a), 5(1)(b), 5(1)(c), 5(1)(e), 6(1) and clause 8(2) of Schedule 1 to the FOI Act.
5. On 12 January 1995, the complainant sought external review by the Information Commissioner of the agency's decision to refuse access to those parts of the documents on the ground that the matter deleted from the documents was exempt under those various clauses of Schedule 1 to the FOI Act.

### REVIEW BY THE INFORMATION COMMISSIONER

6. On 18 January 1995, in accordance with my statutory obligation under s.68(1) of the FOI Act, I notified the agency that I had formally accepted the complaint and, in accordance with my power under s.75(1) of the FOI Act, I obtained the original copies of the documents in dispute. On 9 February 1995, a meeting was held between officers of the agency and a member of my staff to discuss the

agency's claims for exemption. Following that meeting, and as a result of further disclosures of documents to the complainant during court proceedings, the number of disputed documents was reduced to 16 documents, comprising 20 folios. A schedule describing those documents and the exemptions claimed by the agency was provided to the complainant on 21 March 1995.

7. After examining the documents in dispute and after considering the initial submissions of the parties, on 4 September 1995, the complainant and agency were advised of my preliminary view of the claims for exemption, and the reasons for that view. It was my preliminary view that certain parts of the disputed documents which the agency had deleted from 11 of those documents contained personal information about third parties that was, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. However, it was also my preliminary view that four of the documents were not, on the information then before me, exempt as claimed by the agency. Further, it was also my preliminary view that one document, Document M, was, *prima facie*, exempt under clause 5(1)(b) of Schedule 1 to the FOI Act, notwithstanding that the agency did not claim exemption for that document under that clause. After receiving my preliminary view, on 7 September 1995, the agency abandoned its claims for exemption for 4 documents and released copies of those documents to the complainant.
8. Although the complainant was given the opportunity to reconsider the complaint in light of my preliminary view, and to respond to that preliminary view if necessary, no further submissions were received. Therefore, this decision relates to those parts of the 11 documents which are claimed by the agency to be exempt under clause 3(1), and to the 1 document, Document M, which, in my preliminary view, may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

## THE DISPUTED DOCUMENTS

9. The documents remaining in dispute between the parties are identified and described below using the same reference letter of the alphabet in the schedule of documents provided to the complainant.

Document	Description	Exemption
A	Agency form recording the reporting of a complaint.	3(1)
B	Case notes dated 1.11.94.	3(1)
C	Case notes dated 11.11.94.	3(1)
D	Case notes dated 16.11.94.	3(1)
F	Case notes dated 29.11.94.	3(1)
G	Case notes dated 5.12.94.	3(1)

H	Case file summary dated 6.12.94.	3(1)
I	Case notes dated 8.12.94.	3(1)
J	Case notes dated 13.12.94 and 14.12.94.	3(1)
K	Case notes dated 15.12.94.	3(1)
L	Facsimile cover sheet dated 22.12.94 sent to the police Child Abuse Unit.	3(1)
M	Statement by third party dated 1.12.94	3(1), 5(1)(b)

## THE EXEMPTIONS

### (a) Clause 3 - Personal information

10. The agency claims that the matter deleted from Documents A, B, C, D, F, G, H, I, J, K and L and the whole of Document M is exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3 so far as is relevant, provides:

#### "3. *Personal information*

##### *Exemption*

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

##### *Limits on exemption*

- (2)...
- (3)...
- (4)...
- (5)...

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

11. 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*

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- (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."*
12. In my view, paragraphs (a) and (b) of the definition quoted in paragraph 10 above suggest that disclosure of matter must reveal something more about an individual than his or her name to attract the exemption in clause 3(1). I have previously expressed the view that the purpose of the exemption in clause 3 is to protect the privacy of individuals, the exemption being a recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause.
  13. I am satisfied, from my examination of the disputed documents that the parts of those documents to which access has been denied under clause 3(1) of Schedule 1 to the FOI Act, contain personal information about third parties other than the complainant. I am also satisfied that Document M contains personal information about the complainant and third parties. However, I am unable to describe the nature of that personal information in any detail, without breaching my duty under s.74(1) of the FOI Act not to disclose exempt matter. In my view, the personal information in the disputed documents is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
  14. The onus of persuading me that the disclosure of matter that is otherwise exempt under clause 3(1) would, on balance, be in the public interest, lies with the complainant. As explained earlier in paragraph 8 above, the complainant did not provide me with any submissions on that point. Some of the matter deleted from Documents G and H also consists of personal information about the complainant, and pursuant to s.21 of the FOI Act, that fact is a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed.
  15. In balancing the competing interests, namely, the complainant's right of access under the FOI Act and the right of third parties to their privacy, I consider the latter right should prevail. Where Documents G and H contain personal information about the complainant, that personal information comprises only a minor part of the information contained in those documents and it is so inextricably entwined with the personal information of the other third parties that it cannot readily be separated from matter that is, *prima facie*, exempt matter under clause 3(1). Taking into account the minor amount of information and the significant number of other documents which have already been disclosed to the complainant, in my view, the personal information about the complainant in Documents G and H to which access has been denied, is minimal.
  16. Therefore, I find the matter specified in the schedule to this decision and which the agency has deleted from the Documents A, B, C, D, F, G, H, I, J, K and L, is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. However, as I find that the whole of Document M is exempt under clause 5(1)(b) of Schedule 1

to the FOI Act, for the reasons given in paragraphs 18-20 below, it is unnecessary for me to consider the agency's claims under clause 3(1) with respect to that document.

**(b) Clause 5(1)(b)**

17. The complainant and the agency were advised that it was my preliminary view that Document M may be exempt clause 5(1)(b) of Schedule 1 to the FOI Act. Clause 5(1)(b) provides:

**"5. Law Enforcement, public safety and property security**

***Exemptions***

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

*(a)...*

*(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;"*

18. In my view, clause 5(1)(b) is intended to protect the public interest in law enforcement and other regulatory bodies being able to effectively carry out their functions without interested observers or possible suspects knowing in advance what those inquiries are likely to be. Further, 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 Western Australian Supreme Court in *Manly v Ministry of Premier and Cabinet* (15 June 1995, unreported). Owen J said, at p.25 of the judgment:

*"I think the clause is aimed at the specifics of an 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. It must reveal something about the content of the 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."*

19. In some instances, the contents of the documents themselves can provide real and substantial grounds for expecting that disclosure might have this effect and the documents thus may, *prima facie*, be exempt from disclosure under clause 5(1)(b) of Schedule 1 to the FOI Act.
  
20. From my examination of Document M, I am satisfied that the contents of that document, if disclosed, could reasonably be expected to reveal something about the content of an investigation, namely, allegations of child sexual abuse by the complainant. Although the complainant is aware, generally, of the nature of the allegations that have been made, to my knowledge the complainant is not aware of some of the information contained in Document M which, if disclosed, in my view, would tend to reveal something about the substance of the investigation conducted by the agency and the Police Force of Western Australia that is not already known to the complainant. In the circumstances of this complaint, I am also satisfied that Document M is not a document of a kind referred to clause 5(4) and there is no scope for a consideration of public interest factors for and against disclosure. Therefore, I find that document to be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

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**Schedule of Exempt Matter**

<b>Document</b>	<b>Date</b>	<b>Description of exempt matter</b>
A	12-10-94	paragraph 2 - under the heading "Comments:", line 3 - last two words paragraph 2 - line 4 - all text between "that" and "some", inclusive
B	1-11-94	paragraph 3 - first 4 lines
C	11-11-94	folio 62 - paragraph 5 - all text folio 62 - paragraph 6 - line 1, first six words folio 63 - paragraph 3 - all text
D	16-11-94	paragraph 1 - line 3, all text after "said" to the end of that sentence.
F	29-11-94	paragraph 1 - line 3, all text
G	5-12-94	paragraph 1 - all text between "from" in line 1 and "she" in line 5, inclusive paragraph 1 - line 6, all text after "her" to the end of that paragraph paragraph 3 - all text
H	6-12-94	paragraph 1 - line 1, all text from "who" to the end of that sentence
I	8-12-94	paragraph 1 - all text from "who" to the end of that sentence
J	13-12-94	paragraph 4 - all text from "who" to the end of that sentence
K	15-12-94	paragraph 2 - line 2 - all text between "from" and "requesting", inclusive paragraph 2 - line 3- all text between "procedures" and "is", inclusive
L	22-12-94	Under the heading "Subject", line 13 - the initials and the name