

K & L AND F&C SERVICES

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

**File Ref: 95156
Decision Ref: D05595**

Participants:

**K and L
Complainants**

- and -

**Department of Family and Children's
Services
Respondent**

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - access to edited copies - documents related to management of child by agency - clause 3(1) - personal information about third parties - public interest factors for and against disclosure of personal information - amendment of personal information.

Freedom of Information Act 1992 (WA) ss.21, 45, 72(1)(b), 75(1), 102(3); Schedule 1 clause 3;
Schedule 2 Glossary.

Child Welfare Act 1947.

DECISION

The decision of the agency is confirmed. The matter deleted from the requested documents is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

23rd November 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') to refuse "K" and "L" ('the complainants'), access to certain documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. The requested documents concern the agency's responsibilities under the *Child Welfare Act 1947*, including the care and protection of children in need. In this instance, the eldest child of "K" was first made a ward of the State for two years in 1990. The wardship of that child has been extended on two occasions, in 1992 and 1994, for a period of two years on each occasion.
3. In 1991, "K" entered into a defacto 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 until each of them reaches the age of eighteen years. 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 recognised that there were genuine concerns about "L" having access to the children the subject of the wardship. Accordingly, the Court ordered that he was not to have access to the children under any circumstances.
4. The complainants have made a number of access applications under the FOI Act to the agency and to other agencies. As a result, the agency made arrangements to enable the complainants to have informal access to relevant files relating to themselves. During an inspection of the agency's files on 14 July 1995, pursuant to that informal arrangement, the complainants were denied access to five documents. Subsequently, on 20 July 1995, the complainants requested internal review of the agency's decision to deny them access to those documents. The requested documents relate to the eldest child of "K".
5. The agency treated the request of 20 July 1995 as an access application under the FOI Act. On 3 August 1995, the Manager of the agency's Fremantle District Office, Ms P. Bagdonavicius, granted the complainants access to edited copies of the five documents, with matter claimed to be exempt under clause 3(1) of Schedule 1 to the FOI Act deleted from those documents.
6. On 22 August 1995, the complainants applied to the agency for internal review of that decision. On 1 September 1995, Mr J. Booth, Director, Special Field Services Directorate of the agency, confirmed the initial decision that the matter deleted from the documents is exempt under clause 3(1). On 3 September 1995, the complainants applied to the Information Commissioner for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 11 September 1995, I informed the agency I had received and accepted the complaint from the complainants. Pursuant to my powers under s.75(1) and s.72(1)(b) of the FOI Act, I required the production to me of the originals of the documents in dispute, together with the file maintained by the agency in respect of the complainants' access application. Those documents were delivered to my office on 19 September 1995.
8. I examined those documents and considered the submissions of the parties and I formed the preliminary view that the matter deleted from the documents was exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The parties were informed of my preliminary view and reasons for that view on 20 October 1995. In response to my preliminary view, the complainants provided a further submission for my consideration, and raised additional issues concerning their other access applications lodged with the agency and with other agencies. However, in respect of this complaint, the only issue for my determination is the exempt status or otherwise of the matter deleted from the five documents that are the subject of this complaint. I have not identified the complainants in my decision or these reasons in order to protect the identity of the children.

THE DISPUTED DOCUMENTS

9. The five documents in dispute relate to the agency's responsibilities for the on-going welfare and management of the eldest child as legal guardian of that child. The documents are described as follows:

Document	Folio	Description
1	63	Cash Payment Voucher.
2	65	Cash Payment Voucher.
3	68	Subsidy Review Form, dated 24 May 1995.
4	128-129	Internal memorandum to Senior Casework Supervisor from Social Worker, dated 19 June 1995.
5	131-134	Case Notes on child, dated 28 June 1995.

THE EXEMPTION

10. 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-*

(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. 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. The matter for which the agency claims exemption under clause 3(1) of Schedule 1 to the FOI Act relates to people who are currently caring for the child in question. Documents 1, 2 and 3 relate to payments made to those people. The matter deleted from Documents 1 and 2 consists of the name and address of a person who has provided respite care to the child. The matter deleted from Document 3 is the name, residential address and postal address of the foster carer of the child.

14. I am satisfied, from my examination of Documents 1, 2 and 3 that the matter deleted from those documents is personal information about third parties that is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The exemption provided by clause 3(1) is subject to a number of limitations. In the circumstances of this complaint, the only relevant limitation is that in clause 3(6), which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The onus of persuading me that disclosure of that matter would, on balance, be in the public interest, lies on the complainants pursuant to s.102(3) of the FOI Act.
15. The complainants submit that they are entitled to have access to personal information about themselves and about the child. They also submit that the documents should not be withheld because they have reason to believe that inaccurate, false and spiteful information is being recorded by the agency against them without their knowledge and they wish to be able to correct those allegations.
16. Section 21 of the FOI Act provides that the fact that information is personal information about an access applicant must be considered as a factor in favour of disclosure for the purposes of making a decision as to whether it is in the public interest for the matter to be disclosed. The fact that Documents 1, 2 and 3 incidentally concern a child of "K" does not, by virtue of that fact alone, mean that the documents or the deleted matter is personal information, as defined in the FOI Act, about either or both of the complainants. I am satisfied that the matter deleted from Documents 1, 2 and 3 quite clearly is not personal information about either of the complainants. Therefore, the public interest factor enshrined in s.21 of the FOI Act does not apply in considering where the balance of the public interest lies in relation to the matter deleted from Documents 1, 2 and 3.
17. I recognise that the FOI Act provides a mechanism in Part 3 for the amendment of personal information. Section 45(1) gives a person the right to apply to an agency for the amendment of personal information about that person in a document of the agency if the information is, *inter alia*, inaccurate or misleading. However, there is no right under the FOI Act to correct any inaccuracies in information held by an agency that is personal to someone else. Accordingly, as I am satisfied that the matter deleted from Documents 1, 2 and 3 is not personal information about either or both of the complainants, and no other public interest in the disclosure of those documents has been identified or is apparent, I do not consider that there is any public interest in the complainants having access to the deleted matter to entitle them to apply for the amendment of that information.
18. I recognise a public interest in maintaining the personal privacy of third parties. I also recognise that there is a public interest in the complainants being able to exercise their rights of access under the FOI Act. In my view, on the evidence before me, that latter interest is not sufficient to outweigh the right to privacy in this instance. Accordingly, I find that the matter deleted from Documents 1, 2 and 3 is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

19. Document 4 is an internal memorandum of the agency containing a brief history of the child in question. The matter deleted from that document contains information and opinions about the foster carer and the child. I am satisfied that that information is, *prima facie*, exempt matter under clause 3(1).
20. I recognise that there may 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. “K” has been given access to general information within Document 4 concerning the care of the child. In my view, the disclosure of that information adequately addresses the public interest, if there is one, in a natural mother knowing about the welfare and care of her child. That public interest does not, therefore, require disclosure of the deleted matter.
21. I consider the public interest in maintaining the privacy of third parties is particularly strong and, on this occasion, that public interest is not outweighed by any countervailing public interest. Accordingly, I do not consider that disclosure of the matter deleted from Document 4 would, on balance, be in the public interest and I find that it is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.
22. Document 5 contains case notes about the child. The matter deleted from that document consists of information about the foster carer, and includes a reference to other children of “K”. In my view, that information is personal information about third parties that is, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. For similar reasons to those in relation in Document 4, I find the matter deleted from Document 5 is exempt under clause 3(1) of Schedule 1 to the FOI Act.
