

T AND FAMILY/CHILDREN

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 96162

DECISION No: D06396

PARTIES: "T"

Complainant

Department for Family and Children's Services

Respondent

No. of documents in dispute: 2

Exemption clause(s) : 3(1)

By letter dated 31 July 1996, "T" (the complainant) lodged an application with the Department for Family and Children's Services ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of the agency's file relating to herself, her husband and her daughter compiled in September 1983. In this decision I have decided not to identify the complainant in order to protect her privacy and that of her husband and daughter.

The agency identified 2 documents as falling within the ambit of the complainant's access application. On 15 August 1996, the agency denied the complainant access to one document and granted access to an edited copy of the other and claimed that the matter to which access had been refused is exempt matter under clauses 3(1), 5(1)(c) and 8(2) of Schedule 1 to the FOI Act. By letter dated 26 August 1996, the complainant sought internal review of the agency's initial decision and, on 9 September 1996, the agency decided to vary its initial decision in respect of the document to which access had been denied. The internal reviewer granted the complainant access to an edited copy of that document and confirmed the agency's initial decision to grant edited access to the other document. The agency maintained its exemption claims in respect of the remaining matter to which access was refused.

On 5 November 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision to deny her access to parts of the disputed documents.

Pursuant to the provisions of the FOI Act, I obtained copies of the disputed documents from the agency. On 22 November 1996, after examining the disputed documents and considering the submissions of the parties, I provided the parties with my preliminary view of this complaint in writing, including reasons for that view. It was my preliminary view that the matter deleted from the disputed documents is matter which is, *prima facie*, exempt matter under clause 3(1). As I was of the preliminary view that the disputed matter is exempt matter under clause 3(1), I considered that it was unnecessary at that stage to deal with the claims for exemption under clauses 5(1)(c) and 8(2). The complainant responded to my preliminary view with a further submission. However, the material provided by the complainant has not dissuaded me from my preliminary view that the matter deleted from the disputed documents is exempt matter under clause 3(1). A summary of my reasons provided to the parties follows.

The disputed documents

There are two documents in dispute in this complaint. Document 1 is dated 6 September 1983 and is a handwritten advisory interview sheet completed by an officer of the agency. Document 2 is dated 25 January 1984 and consists of 4 pages of typed case notes. The complainant's husband has been convicted of sexual offences against the complainant's daughter and is currently serving a prison sentence for those offences. The matter deleted from Document 1 and Document 2 concerns, among other things, allegations relating to the complainant's husband and their daughter.

The Exemption - Clause 3(1) (Personal information)

Clause 3, so far as is relevant provides:

“Exemption

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

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.”

I have examined the matter deleted from the disputed documents. I am satisfied for reasons I have given the parties in writing that that matter is personal information about third parties as defined in the FOI Act. In my view, that matter is, *prima facie*, exempt matter under clause 3(1).

Limits on exemption

Clause 3(1) is subject to certain limitations. In my view, the only limits which may be relevant in this instance are those in sub-clauses 3(5) and 3(6). Pursuant to clause 3(5), matter is not exempt matter under clause 3(1) if the access applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant. Subclause 3(6) also limits the exemption in clause 3(1) and provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the onus is on the complainant to establish that disclosure of personal information about third parties would, on balance, be in the public interest.

Although the complainant obtained the consent of her husband to the disclosure to her of personal information about him, her daughter gave written advice to the agency clearly objecting to the disclosure of personal information about her to the complainant. Further, the deleted matter consists of personal information about other third parties and there is no evidence that those parties have consented to the disclosure of personal information about them.

The complainant submits that “...[i]t is always in the public interest if someone has been given an inappropriate jail sentence, and...that all parties get the appropriate sentence...”. I am informed by the complainant that she wishes to be given access to full copies of the disputed documents so that she can see that justice will be done. However, she has not indicated how access to the matter deleted from the disputed documents might assist her in that purpose and I am not persuaded that the public interest would be satisfied by its disclosure.

I recognise that there is a public interest in protecting the privacy of third parties. However, I also recognise that there is a public interest in the complainant being able to exercise her right of access under the FOI Act and to be given access to personal information about her. In this case, I consider that public interest has been satisfied by the agency providing the complainant with access to edited copies of the disputed documents.

Taking into account the personal and sensitive nature of the information to which access has been refused, I am not persuaded that the public interest in the complainant being able to exercise her right of access outweighs the public interest in protecting the privacy of third parties. I find that the matter to which access has been denied is exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

In view of that finding, I need not consider the agency’s claims for exemption under clauses 5(1)(c) and 8(2).

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

4 December 1996