

**Decision D0202014 – Published in note form only**

***Re ‘G’ and Child and Adolescent Health Service [2014] WAICmr 20***

**Date of Decision: 31 October 2014**

***Freedom of Information Act 1992: section 23(4)***

On 1 April 2014 ‘G’ (**the complainant**) applied to the Child and Adolescent Health Service (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to certain documents created by the Child and Adolescent Mental Health Service (**CAMHS**) in relation to the complainant’s 15 year old child. To protect their privacy, neither the complainant nor the complainant’s child has been identified in this note.

The agency refused the complainant access to the requested documents under section 23(4) of the FOI Act on the basis that their disclosure was not in the best interests of the child. The agency advised that the requested documents had been reviewed by clinicians at the CAMHS who considered that it would not be in the child’s best interests for confidential information divulged by the child in therapy to be disclosed. On 15 August 2014 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

Following receipt of the complaint, the Commissioner obtained the disputed documents from the agency together with the FOI file maintained by the agency in respect of the complainant’s access application. The Commissioner’s office has also made further inquiries with the agency.

Section 23(4) of the FOI Act provides that if a document contains personal information and 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 child 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.

The Commissioner considers that, in reviewing an agency’s decision to refuse access in accordance with section 23(4) of the FOI Act, it is his role to decide whether, in the circumstances of the particular case, the use of section 23(4) was justified. The Commissioner considers that he must be satisfied about four issues, namely that the requested documents contain personal information about a child who has not turned 16; that the decision-maker, at the relevant time, held the view that giving access would not be in the best interests of the child; that the decision-maker, at the relevant time, held the view that the child does not have the capacity to appreciate the circumstances and make a mature judgement as to what might be in his or her best interests; and that the view of the decision-maker on the above issues was held on reasonable grounds: see *Re ‘M’ and Child and Adolescent Health Service [2009] WAICmr 16*.

In this case, after considering all the material before him, including the disputed documents and the further information provided by the agency, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. As the Commissioner was, on the information before him, satisfied about the four issues described above, it was his

preliminary view that the agency's decision to refuse access to the disputed documents under section 23(4) of the FOI Act was justified.

The complainant was invited to reconsider whether she wished to pursue the complaint or to make further submissions. The complainant subsequently made further submissions in support of her claim that disclosure of the disputed documents would be in the best interests of the child.

The Commissioner reviewed all of the information before him, including the complainant's further submissions, and was not dissuaded from his preliminary view. Accordingly, the Commissioner confirmed the agency's decision to refuse access to the disputed documents under section 23(4) of the FOI Act.