

## KARLSSON 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:** F1401998

**DECISION No:** D0011999

**PARTIES:** Tony Mikael KARLSSON

Complainant

**DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES** Respondent

**No. of documents in dispute:** 21

**Exemption clause(s):** Clause 3(1); Clause 7

On 16 July 1998, Mr Karlsson ('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 documents concerning his various contacts with the agency.

Initially, the agency identified 26 documents within the ambit of his access application and granted the complainant full access to 3 documents and access to edited copies of 23 documents from which certain matter had been deleted. The agency claimed that the deleted material was exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainant failed to collect the documents to which access had been granted. Even though he had not seen the documents the agency had decided to give him, in a letter dated 7 September 1998, the complainant sought internal review of the agency's initial decision to grant him access to edited copies of 8 documents. The internal review was conducted by the agency and, by letter dated 14 September 1998, the internal reviewer confirmed the agency's initial decision to grant access to edited copies of the 8 documents. The complainant then collected the documents to which access had been granted.

On 16 September 1998, the complainant wrote to the agency requesting an internal review be conducted in respect of 16 other documents the subject of the initial decision, together with a review of any further documents created after 28 July 1998. Subsequently, the agency informed the complainant that it would grant him access to additional information in one document, but otherwise the agency confirmed its earlier decision that he would be granted access to edited copies only of the requested documents. By letter dated 1 October 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

#### **Review by the Information Commissioner**

Inquiries were made on my behalf into this complaint and various meetings and telephone discussions were held with the parties in an attempt to resolve the complaint by conciliation. For the sake of expediency, the agency's advice to the complainant following his letter to it dated 16 September 1998, was treated by my office as an addendum to the internal review decision made on 14 September 1998. In the course of dealing with this complaint, my office identified a further 5 documents and the agency granted the complainant access to those documents. The complainant also withdrew that part of his complaint relating to some of the remaining documents. Twenty-one documents remain in dispute.

On 16 December 1998, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my detailed reasons. It was my preliminary view that the matter deleted from 20 documents, edited copies of which had been given to the complainant, was exempt under clause 3(1) of Schedule 1 to the FOI Act, and that one document would be privileged from production in legal proceedings and it was therefore exempt under clause 7.

Although the complainant indicated to my office that he wished to make a written submission in response to my preliminary view, he did not do so within the time specified, nor has he done so to date. However, I have considered his views as expressed to a member of my staff by telephone. Whilst I am satisfied that he has been given ample

opportunity to place relevant material before me for consideration, I am not dissuaded from my preliminary view. A summary of my reasons follows.

### **Clause 7- Legal professional privilege**

Clause 7 provides that matter is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege. Legal professional privilege applies to, amongst other things, any confidential communication between a client (or an agent of the client) and his or her professional legal adviser acting in a professional capacity (including an agent of the legal adviser) if made for the sole purpose of giving or receiving legal advice or for use in existing or anticipated legal proceedings: *Grant v Downs* (1976) 135 CLR 674.

The document claimed to be exempt under clause 7 consists of 2 folios of a large document. Those 2 folios are the only folios identified by the agency as containing matter within the scope of the access application. Having examined the document concerned in light of the information before me, I am satisfied that it was clearly prepared for the sole purpose of submission to the agency's legal adviser for the purpose of ongoing litigation involving the parties and, therefore, falls within the criteria provided in order to claim privilege for such a document. Accordingly, I find that document is exempt under clause 7 of Schedule 1 to the FOI Act and confirm the agency's decision in respect of it.

### **Clause 3- Personal information**

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The definition of "personal information" in the Glossary makes it clear that any information or opinion about a person from which that person can be identified is, *prima facie*, exempt matter under clause 3(1).

The complainant sought access to specific information about himself held in various documents, including case notes and reported summaries of incidents. Case notes are documents created by the agency to briefly record telephone discussions, personal interviews with, and incidents involving, clients of the agency. Case notes are usually recorded in date-sequential order on a client file. In order to give the complainant access to the documents requested by him, the agency decided that it was practicable to delete exempt matter, specifically information about people other than the complainant, and matter not within the scope of the access application.

I have examined the deleted matter. I am satisfied the deleted matter consists either of information outside the ambit of the access application, or personal information about individuals other than the complainant that is *prima facie* exempt matter under clause 3(1). A small amount of personal information about the complainant has also been deleted. However, that matter is so inextricably entwined with personal information about other people that it is not practicable to give the complainant access to it. Clause 3(1) is subject to the limits on exemption provided by clauses 3(3)-3(5). In the circumstances, I am satisfied that none of those limits applies. Clause 3(1) is also subject to the limit on exemption in clause 3(6) which provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

### **Public interest**

In my view, there is a strong public interest in maintaining personal privacy. I also consider that there is a public interest in persons being able to exercise their rights of access under the FOI Act and a public interest in an access applicant being given access to documents of an agency which contain personal information about that person. I further recognise that there is a public interest in the accountability of government agencies in respect of the powers exercised on behalf of the community at large by those agencies, and a public interest in a person knowing what information appears about him or her on government files and what allegations have been made about him or her and recorded on government files. The public interest reasons that weigh in favour of disclosure must be balanced against the public interest in maintaining the privacy of third parties.

I am satisfied that the complainant has been given access to personal information about himself. I am also satisfied that the disclosure of the deleted matter on this occasion would not assist to make the agency more accountable for the exercise of its statutory powers and functions. In this instance, I am not persuaded that disclosure of the disputed documents would be in the public interest. On balance, I consider the maintenance of individual privacy to outweigh the public interest in the complainant having access to personal information about third parties. Accordingly, I find the matter in dispute is exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to that matter.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
21 January 1999

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