

Decision D0152003 - Published in note form only

Re “AA” and King Edward Memorial and Princess Margaret Hospitals [2003]

WAICmr 15

Date of Decision: 6 May 2003

Freedom of Information Act 1992; Schedule 1, clause 3(1)

The complainant is a prisoner who was convicted of sexual assault of his children, the oldest of whom is 10 years. Following his conviction, the children were committed to the care of the Department for Community Development until each attains the age of 18 years.

The complainant sought access under the FOI Act to the medical records of his children. The agency refused access and claimed that the requested documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainant lodged a complaint with the Information Commissioner and submitted that the records were needed to facilitate his appeal to the High Court against his conviction. The Information Commissioner was satisfied that disclosure of the requested documents would reveal personal information about the children and that the documents were, on their face, exempt under clause 3(1).

Pursuant to clause 3(6), the Information Commissioner took into consideration the fact that the complainant was no longer the legal guardian of the children, the circumstances in which the children became wards of the State, their tender years, their continuing right to privacy and the fact that the Medical Director of the Child Protection Unit did not consider that it is in the best interests of the children for their medical records to be released.

The Information Commissioner also considered and weighed the fact that, in any appeal against his conviction to the High Court, the Court may, if necessary, require the requested documents to be produced to the Court. In the balancing process, the Information Commissioner gave more weight to the public interest in maintaining the privacy of the children and found the documents exempt under clause 3(1).