

C AND DCD

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

**File Ref: 94019
Decision Ref: D01894**

Participants:

C
Applicants

- and -

**Department for Community
Development**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - clause 3(1) - refusal of access - file notes of telephone conversations - personal information about third parties - personal information about applicants - public interest factors for and against disclosure - third parties desire for privacy - identity of third parties claimed to be known by applicants - public interest in applicants obtaining access to information about them - section 21 - identity of confidential sources of information - documents can not be edited to remove exempt matter.

FREEDOM OF INFORMATION - clause 5(1)(a) - refusal of access - confidential agency forms - impair the effectiveness of agency's method and procedures for investigation - 5(1)(b) - records of interview - information provided by third parties - reveal an investigation - fact or substance of investigation - section 31 - 5(1)(c) - existence or identity of a confidential source of information - investigation of care and protection matters - confidentiality of sources - prejudice future supply of information - identity of sources claimed to be known to applicants - nature of information at time provided - public interest in protecting the effective functioning of agency - whether false information protected - limitations in clause 5(4) - public interest - agency acting on behalf of wider community - applicants' right of access - protection of confidential sources.

FREEDOM OF INFORMATION - clause 8(2) - confidential communications - prejudice future supply - public interest.

FREEDOM OF INFORMATION - section 70 - procedure to be adopted - reasonable opportunity to make submissions.

FREEDOM OF INFORMATION - section 74(1) - Information Commissioner required to avoid disclosure of exempt matter - identity of applicants - general description of information about third parties.

FREEDOM OF INFORMATION - section 78 - interpretation of term "public interest" - requested referral of question to Supreme Court.

Freedom of Information Act 1992 (WA) ss. 13(1)(b); 21; 30; 31; 68(1); 70(3); 70(4); 74; 75(1); 76(4); 78(1); 78(2); Schedule 1 clauses 3(1), 5, 8(2), 11(1).

Freedom of Information Act 1982 (C'wlth) s. 37(1)(b).

Freedom of Information Act 1982 (Vic) s. 31(1)(c); 35(1)(c); 50(4); Part 5.

Child Welfare Act 1947 (WA) Section 6.

Re Mickelberg and Australian Federal Police (1984) 6 ALN N176.

Re Manly and Ministry of the Premier and Cabinet (Information Commissioner (WA), 16 September 1994, unreported).

D v National Society for the Prevention of Cruelty to Children (1978) AC 171.

McKenzie v Secretary to Department of Social Security (1986) 65 ALR 645

Re Richardson and Commissioner for Corporate Affairs (1987) 2 VAR 51.

Dr P T McEniery and The Medical Board of Queensland (Information Commissioner (QLD), 28 February 1994, unreported).

Re Sinclair v Secretary to Department of Social Security (Q85/47-16 October 1985).

R v Lewes Justices; Ex parte, Secretary of State for Home Department (1973) AC 388.

Re Croom and the Accident Compensation Commission (1989) 3 VAR 441.

Re Sutcliff and the Victoria Police (No. 1) (1989) 3 VAR.

DECISION

The decision of the agency is varied. The following matter is not exempt:

- the deleted matter on folio 12A of Document A;
- the deleted parts of Document C, other than those parts identified in paragraph 72 of my reasons for this decision;
- those parts of Document D identified in paragraph 73 of my reasons for this decision.

Otherwise, all the documents or parts of documents to which access has been refused are exempt, for the reasons given.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

12th October 1994.

REASONS FOR DECISION

BACKGROUND

1. This is an application for a review by the Information Commissioner arising out of a decision of the Department for Community Development ('the agency') to refuse Mr and Mrs C ('the applicants'), access to certain documents requested by the applicants, being the agency's information, held in whatever form including microfiche, written, on computer or recorded in the agency's system in any other manner, relating to the applicants' family.
2. On 9 December 1993 the applicants sought to exercise their rights of access under the FOI Act and applied for access to documents of the agency relating to their family's file because, they claimed, they had been told by a third party that the agency had conducted an investigation into an allegation of possible sexual abuse of their family. Some time after the agency's receipt of the access application, the applicants attended a meeting at the Rockingham office of the agency where the documents indicate that officers of the agency confirmed that an investigation had taken place but that the file was closed and the matter assessed as unsubstantiated. No further information was provided to the applicants other than a computer printout of the agency's record of the status of the file.
3. On 21 January 1994, Mr D Hubble, the Acting Manager of the Rockingham District Office of the agency (the Acting Manager) refused the applicants access to the requested documents. In the notice of decision, the Acting Manager advised the applicants that the agency considered the documents to be exempt under clauses 3(1), 5(1)(a), 5(1)(b) and 5(1)(c) and 8(2) of Schedule 1 to the FOI Act.
4. On 1 February 1994 the applicants sought internal review of the Acting Manager's decision. The agency's records indicate that the application for internal review was not received until 7 February 1994. On 18 February 1994, Mr K. Stotter, the Acting Director, South Metropolitan Region, confirmed the decision of the Acting Manager and maintained the claims for exemption for all documents. The applicants were also advised that various third parties identified in the documents also objected to their release. Subsequently, on 23 February 1994 the applicants sought external review by the Information Commissioner of the agency's decision of 18 February 1994.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 2 March 1994, in accordance with the requirements of section 68(1) of the FOI Act, I advised the agency that I had accepted this complaint for review and I sought production of the documents in dispute in accordance with my authority under section 75(1) of the FOI Act. I considered it necessary to view

the documents in order to decide whether the agency's claims for exemption were valid. I also required the production of the agency's FOI file maintained in this matter. The documents and the agency's FOI file were delivered to my office on 4 March 1994.

6. On 30 March 1994, following examination of the disputed documents and associated documentation, I sought additional information from the agency as the notice of decision provided to the applicants pursuant to section 13(1)(b) of the FOI Act did not comply with section 30 of the FOI Act and did not provide sufficient particulars for me to deal with the complaint. I therefore requested the agency to provide me with further reasons to justify the claim that all of the documents were exempt. Specifically, I requested from the agency, in relation to each document, the material findings of fact on which each claim for exemption was based and, where the exemption claimed was limited by a "public interest test", the public interest factors considered by the agency.
7. Having conducted a preliminary examination of the disputed documents and associated documentation, I formed the view that, due to the nature of the information and the complexity of the issues involved, it was impracticable for me to finalise this matter before the expiry of the 30 day period. On 30 March 1994, the applicants were advised of this fact and that I was not prepared to make a decision on their complaint without the benefit of all the information which I considered necessary to decide the matter, and without affording all interested parties the opportunity to address me fully on the matter.
8. Subsequently, the agency provided some additional information, including a detailed schedule of the documents in dispute, the exemptions claimed and the reasons for the claims. This included additional claims for exemption under clauses 5(1)(e) and 11(1)(a) and (b). The applicants were provided with a copy of the schedule edited by the agency so as not to disclose exempt matter, detailing the exemptions claimed, and the additional reasons for the exemptions claimed. The applicants responded to this by providing me with a detailed response to the claims of the agency. On 18 May 1994, discussions were held between my office and the agency in an attempt to conciliate the matter. As a result of those discussions the applicants were given full or partial access to 10 documents.
9. On 31 May 1994 the applicants were advised that it was my preliminary view that the deleted parts of the edited documents to which access had been provided and the remaining documents to which access had been denied may be exempt under one or more of clauses 5(1)(a), (b), (c) and 8(2) of the FOI Act. The applicants were invited to re-consider their complaint in light of this preliminary view. However, the applicants advised one of my officers by telephone that they did not accept my preliminary view and requested a meeting to discuss the matter. At this stage of the review I did not consider oral submissions were necessary or desirable but I was prepared to accept further written submissions. On 13 June 1994, I received a letter from solicitors representing the applicants containing submissions which addressed each of the

exemptions claimed and which discussed the public interest factors which the applicants contended may apply.

10. Also contained in the letter of 13 June 1994, from the solicitors for the applicants, was a suggestion that I "...consider issuing a reference under section 78(1) of the Act to the Supreme Court to provide some guidelines for the interpretation of the term 'public interest' in the Act." Subsequent to this, the applicants suggested on a number of occasions, by way of telephone conversations with my staff, that I refer to the Supreme Court any question of law with which I was having difficulty. The applicants did not request any particular question of law to be referred, other than the question of the meaning of the term "the public interest". On a number of occasions verbally by one of my officers, and by letter dated 1 September 1994, the applicants were advised that I did not consider it necessary to refer any question to the Supreme Court in this instance (see paragraph 83 below).
11. The applicants lodged another written submission on 8 August 1994 and, in an attempt to further conciliate this matter, discussions occurred between my office and the agency which resulted in the release of a further eight documents, either in full or in part. However, the applicants expressed their dissatisfaction with the length of time taken to deal with this complaint, the apparent vacillation of the agency and the extent of the concessions achieved. In the applicants' view, they were entitled to full access to all documents and they did not appear to accept the legitimacy of any of the exemptions claimed. The applicants informed my office that they wished to pursue their complaint to a formal decision as soon as possible.
12. On 7 September 1994, after negotiations between the parties had reached their limit, the documents remaining in dispute and the final exemptions claimed by the agency were listed and identified on a schedule. No new exemptions were claimed by the agency and a number had been abandoned. Both the applicants and the agency were provided with this schedule, together with my preliminary view, and the reasons for my preliminary view, in relation to the exemptions claimed for each document. The applicants were also provided with a summary of the submissions made to me by the agency. I considered that it was not possible to provide the applicants with the full text of the agency's submissions to me without breaching the provisions of s.74 of the FOI Act. The applicants were also informed of my preliminary view that some of the disputed documents may be exempt under clauses of Schedule 1 that had not been claimed by the agency, and those documents and clauses were specified, because s.76(4) of the FOI Act provides that if it is established that a document is an exempt document I do not have power to make a decision to the effect that access is to be given to the document.
13. Although the applicants had previously made extensive submissions in respect of the exemptions claimed and maintained by the agency, they were invited to make any further submissions they wished to make in respect of all these matters. The agency was invited to reconsider some of its exemption claims in light of my preliminary view and to either withdraw those claims or, if it wished

to maintain those claims, to provide additional evidence in support of them. The parties were informed that those final submissions were to be in writing delivered to my office by 4pm on 16 September 1994. The parties were further informed that those submissions would then be exchanged between the parties and, unless an alternative negotiated position was agreed between the parties, I would proceed to a formal decision. The parties were informed by letter of the procedure to be adopted.

14. On 12 September 1994, the agency sought an extension of time until 23 September 1994 to make its submission. The agency was advised that such an extension was not acceptable. On the same day, 12 September 1994, Mrs C advised my office by letter that the applicants were not prepared to make a final submission until they were advised that my office was in receipt of the final submission from the agency and the exemptions claimed and that no reference to any other party would be made prior to the final submission and that they would be given adequate time to allow their legal representatives to prepare submissions. The applicants were informed that they had already been provided with a detailed summary of the final position of the agency and the final exemptions claimed, together with the agency's submissions in support of those claims and my preliminary view. They were advised that the procedure I had directed would be followed. I granted to both parties an extension to midday on 20 September 1994 only, and both parties were advised that no further extensions would be granted.
15. On 19 September 1994 the agency informed me that, in light of my preliminary view, a number of the exemptions claimed had been withdrawn and edited copies of some and full copies of some documents would be provided to the applicants. The agency provided no additional evidence in support of the exemption claims it maintained. On 20 September 1994, some time after the deadline for final submissions had passed, Mr C contacted my office by telephone, requesting a further extension of time. He was granted an extension until midday the following day. Approximately ten minutes before that deadline, a solicitor on behalf of the applicants telephoned my office seeking yet another extension. No further extension was granted.
16. Section 70(3) of the FOI Act requires that I must ensure that the parties to a complaint are given a reasonable opportunity to make submissions to me. I consider that in this matter both parties were afforded ample opportunity to make submissions to me. Both parties did make a number of submissions to me. The applicants, in particular, made a number of very detailed submissions. After being advised in some detail of my preliminary view on the final documents that remained in dispute and the exemptions claimed for those documents, both parties were afforded an opportunity to respond and raise any final matters they wished to raise. As I am empowered to do by section 70(4) of the FOI Act, I directed the procedure to be followed for the giving of final submissions in this matter. The applicants chose not to follow that procedure. It is not acceptable, without good cause, to seek an extension of time after the deadline for submissions has passed. I consider that the applicants were

afforded a more than reasonable opportunity to make their final submission and they chose not to avail themselves of that opportunity.

17. The agency's letter detailing the additional information that it was prepared to release to the applicants was forwarded to the applicants and the applicants were invited to respond to any matter raised by the agency in that letter only. A response was subsequently received from solicitors on behalf of the applicants, containing a number of additional submissions and I have taken those submissions into account in reaching my decision on this complaint.

18. Although my office had attempted to conciliate this complaint a formal decision has been necessary. In providing written reasons for my decision, I am required under s.74(2) to avoid the disclosure of exempt matter. Some of the disputed documents contain personal information relating to third parties as well as sensitive personal information about the applicants. For this reason, and at the specific request of the applicants, I have avoided identifying the applicants by name. It is also necessary for me to discuss some of the documents and the exemptions claimed in general terms only, so that the privacy of the applicants and other third parties is maintained and section 74 is not breached.

THE DISPUTED DOCUMENTS

19. Following the negotiations between my office and the agency, the applicants had received full access to 5 documents, being folios 1A, 13, 13A, 13B and 17. Access was provided to edited copies of 19 documents being folios 2, 2A, 12, 12A, 14, 16, 18, 20, 22, 34, 36, and 38-45. The remaining documents sought to which access has been denied either in full or in part are described as follows:

DOCUMENT	DESCRIPTION	FOLIO	EXEMPTION CLAIMED
A	8 Page Child Protection Allegation Form, dated 15/7/93. * Page 8 of the same form (folio 1A) has been released in full.	1	5(1)(a)
		2	5(1)(a)
		2A	5(1)(c)
		11	5(1)(c); 8(2)
		11A	5(1)(a)
		12	5(1)(c)
B	Notes of case by Social Worker, dated 9/7/93.	12A	5(1)(a)
		3 - 10	5(1)(c); 8(2)
C	File note by Social Worker, dated 13/7/93 in relation to a phone call from Children's Service Officer.	14	5(1)(a); 5(1)(c)

D	Notes from discussion with team staff responsible for investigating this matter by Senior Social Worker and Team Leader dated 13/7/93.	15	5(1)(a); 5(1)(c)
E	Case notes by Social Worker, dated 20/7/93 and 21/7/93.	16	5(1)(c)
F	Page one of Child Protection Information System form, dated 26/8/93. * Page two of the same form (Folio 17) has been released in full.	18	5(1)(c)
G	Undated, unauthored field notes from an interview, including details of information from third parties.	19A & 19B	5(1)(b); 5(1)(c); 8(2)
H	Record of interview incorporating notes from folios 19A and 19B by Social Worker, dated 23/7/93.	20-22	5(1)(b); 5(1)(c); 8(2)
I	File note of telephone conversation with third party by Social Worker, dated 29/7/93.	23	3(1)
J	Notes from an interview by Social Worker, including details of information from third parties, dated 28/7/93.	24-33	5(1)(b); 5(1)(c); 8(2)
K	Case notes by Social Worker, dated 30/7/93, in relation to conversations with two third parties.	34	5(1)(c); 8(2)
L	Case notes by Social Worker, dated 30/7/93 in relation to conversation with a third parties.	35	3(1)
M	Record of interview based on notes from folios 24 to 33 by Social Worker, dated 2/8/93.	36-38	5(1)(b); 5(1)(c); 8(2)
N	Case notes by Social Worker, dated 13/8/93, 17/8/93 and 31/8/93 in relation to conversations with third parties.	39	3(1)
O	Case summary report by Social Worker dated 24/8/93.	40 & 41	5(1)(b); 5(1)(c); 8(2)
P	File note by Field Officer, dated 8/12/93.	42	5(1)(c)

Q	Case summary report by Social Worker dated 24/8/93 incorporating details as set out in Document O, with additions.	43-45	5(1)(b); 5(1)(c); 8(2)
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The entries under the heading "exemption claimed" in the above table indicate the exemption claims maintained by the agency following my preliminary view being communicated to the parties.

THE EXEMPTIONS

(a) Clause 3 - Personal Information

20. There are three documents which are claimed to be exempt under Clause 3(1) of Schedule 1 to the FOI Act. Clause 3 (Personal information) provides as follows:

"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."*

21. In the Glossary in 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."*

22. The purpose of this exemption is to protect the privacy of third parties. Document I (folio 23), Document L (folio 35) and Document N (folio 39) consist of file notes of conversations with third parties. From my examination

of those documents, it is apparent that each third party is identifiable by name and other details which, in my opinion, are personal information about each of those parties. The documents also contain personal information about the applicants. Having examined the documents and considered their context in terms of subsequent events which, in my view, I cannot detail without breaching the provisions of s.74 of the FOI Act, I am of the opinion that disclosure of any of the matter contained in them would disclose the identities of third parties and, therefore, they cannot be edited to remove the exempt matter.

23. I recognize that there is a public interest in a person being given access to documents of an agency which contain personal information about that person. That public interest is recognized and enshrined in s.21 of the FOI Act. However, I consider that there is a strong public interest in maintaining an individual's privacy and this is also enshrined in the FOI Act. In my view, there have been no compelling arguments or material provided by the applicants which would warrant tilting the balance in favour of disclosure of those documents.
24. The third parties concerned have expressed to the agency a desire that their privacy should be respected - and have confirmed this on a number of occasions to the agency which, in turn, has confirmed it to me - and I consider that the balance of public interest requires that this should be so. The applicants claim to know the identity of each of the third parties concerned and argue that these documents should be disclosed in full for this reason. They claim to have gleaned this information from other documents in their possession and from a conversation with a person they claim revealed herself as a source of information to the agency. I am not in a position to comment one way or the other on the accuracy or otherwise of the beliefs of the applicants. However, it is one thing to suspect or believe something and altogether another to have that suspicion or belief confirmed in writing from an agency's documents. I am not persuaded by what the applicants believe that this information, which is *prima facie* exempt, should be disclosed. In my opinion, on balance, the public interest in protecting individual privacy outweighs any public interest in the disclosure of this information to the applicants and I find that those folios are exempt under clause 3.
25. In addition, for reasons I cannot detail without breaching section 74, I consider that disclosure of documents I, L and N would enable the identity of a confidential source of information in relation to the enforcement or the administration of the law to be discovered and, for the reasons given at paragraphs 43-76 below, I find that they are also exempt under clause 5(1)(c) of the FOI Act.

(b) Clause 5 - Law enforcement, public safety and property security

26. Exemptions were claimed under various sub-clauses of clause 5(1) for all remaining documents. Clause 5 exempts documents from disclosure where it could reasonably be expected that disclosure would have one or more of the

effects described in the various sub-clauses to this exemption. Clause 5(1) in so far as it relates to this complaint provides as follows:

"Exemptions

- (1) *Matter is exempt matter if its disclosure could reasonably be expected to -*
- (a) *impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;*
 - (b) *reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;*
 - (c) *enable the existence, or non-existence, or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be discovered;"*

27. The agency submitted that one of its central functions and responsibilities is to investigate matters reported to it. Those investigations touch on such sensitive issues as alleged child sexual and physical abuse. The agency told me that it usually conducts a two stage inquiry consisting of a preliminary investigation and assessment of the complaint and then a more formal investigation takes place in circumstances where the agency considers this is warranted. The preliminary assessment may dispose of the matter if the complaint cannot be substantiated. The agency said that the confidentiality of its sources of information and the substance of information provided must be protected to ensure its continued capacity to encourage the reporting to it of care and protection matters. The agency further claimed that, if it were generally known that the agency released this information, people would be reluctant to report matters to the agency for investigation and that this would have a major and detrimental impact upon the effectiveness of the agency.

(i) Clause 5(1)(a)

28. The exemption in clause 5(1)(a) is directed at investigative methods or procedures : *Re Mickelberg and Australian Federal Police* (1984) 6 ALN N176 cited in *Re Manly and Ministry of the Premier and Cabinet* (Information Commissioner (WA), 16 September 1994, unreported). This exemption was claimed to be relevant to four pages (folios 1 and 11A, part of folio 2 and one entry on folio 12A) of Document A and Documents C and D.

29. Folios 1, 2, 11A and 12A consist of various pages from agency forms which are completed by officers of the agency in the ordinary course of their inquiries into such matters referred to them as occurred in this instance. The agency claims that disclosure of these documents would impair the effectiveness of its procedures because it would give persons interviewed the opportunity to tailor

their answers to questions and their behaviour at interview so that a true account of the matter queried may not be forthcoming.

30. In their submission dated 10 June 1994 in response to the agency's claims, and subsequently in their submission of 23 September 1994, solicitors for the applicants disputed the claim for exemption based on this clause. They reasoned that, since the agency had told the applicants the matter was closed, there was no investigation that could be compromised by the disclosure of this information. The applicants are, of course, at a disadvantage in that they have not seen the documents in dispute. They have no knowledge of the use to which the disputed documents are put by the agency. However, from my examination of those documents and, taking into account the functions of the agency and the sensitive and serious nature of the information which is received from time to time, I am satisfied that disclosure of folios 1 and 11A and the deleted part of folio 2 could reasonably be expected to impair the effectiveness of investigative methods or procedures employed by the agency, for the reason given by the agency, and I find that they are exempt under clause 5(1)(a).
31. In my opinion, while folio 12A may reveal something of the method of investigation adopted by the agency, that is revealed in that part of the document to which access has already been granted. The only matter for which exemption is claimed is the entry of a two digit code relating to the nature of the possible harm to be investigated. In my view, that matter reveals little of the method or procedures adopted by the agency and it has not been established that those methods or procedures could reasonably be expected to be impaired by its disclosure. Therefore, I find that the deleted matter on folio 12A is not exempt under clause 5(1)(a).
32. Documents C and D (folios 14 and 15) consist of file notes recording telephone conversations, made by officers of the agency during the course of their inquiries. The applicants have already been given access to an edited copy of Document C. Disclosure of the deleted parts of Document C and of Document D would, in my view, reveal some information relating to the agency's procedures and methods of investigation. Having examined the documents and taken into account the agency's submissions, I am of the view that, although disclosure of that matter may reveal something of the method or procedure adopted by the agency for investigating a possible contravention of the law, I am not satisfied that disclosure could reasonably be expected to impair the effectiveness of that method or procedure. Accordingly, I find that Document D and the deleted parts of Document C are not exempt under clause 5(1)(a). However, exemption is also claimed for those documents under clause 5(1)(c) and those claims are dealt with at paragraphs 72 and 73 below.

(ii) Clause 5(1)(b)

33. Matter is exempt matter under clause 5(1)(b) if its disclosure could reasonably be expected to "reveal" an investigation in a particular instance, whether or not any prosecution or disciplinary charges have resulted. In my view, this clause is designed to protect from disclosure information that would disclose the

- substance of an investigation. Solicitors for the applicant submitted that the agency had already revealed the fact that there was an investigation and, therefore, the exemption did not apply. There are many law enforcement documents of various types which, by their very nature, if disclosed, would reveal the fact that an investigation had taken place or was currently underway. Many of these documents may be routine and quite innocuous and, therefore, are able to be disclosed without compromising the work of the particular investigative or regulatory body. However, the exemption may be claimed if the particular agency considers it necessary to protect from disclosure its investigation. If exemption is claimed under clause 5(1)(b), the very claiming of that exemption reveals the fact of an investigation. In my opinion, if it is the very fact that there is or has been an investigation that is sought to be protected, then the provisions of s.31 may be applied to deny disclosure of that fact. For this reason, I am of the view that clause 5(1)(b) is directed at the substance rather than the fact of an investigation.
34. The agency claimed clause 5(1)(b) applied to Documents G, H, J, M, O and Q. Document G (folios 19A & B) consists of hand-written file notes made by an officer of the agency. Document H (folios 20-22) consists of typed versions of those notes. Disclosure of Document G and those parts of Document H for which exemption is claimed would, in my opinion, reveal the substance of a record of interview conducted in relation to the preliminary investigation concerning the applicants' children. Having examined those documents and considered the submissions of the agency and the applicants, I am satisfied that disclosure of those records of interview would reveal the substance of an investigation of a possible contravention of the law and I find that they are exempt under clause 5(1)(b).
35. Document J (folios 24-33) also consists of hand written notes of an interview. Document M (folios 36-38) consists of the typed version of those notes. An edited copy of Document M has been given to the applicants. The information in those documents was provided by a third party. From my examination of the documents and taking into account the submissions of the agency and the applicants, I am also satisfied that disclosure of any more of those documents would reveal the substance of an investigation into a possible contravention of the law. I find that Document J and the deleted parts of Document M are exempt under clause 5(1)(b).
36. Document O (folios 40 and 41) is a case summary prepared by an officer of the agency, containing details of the information referred and the subsequent investigation by the agency. Document Q (folios 43-45) is a copy of that document with four additional paragraphs, being the last three paragraphs on the second page of Document Q and the first paragraph on the third page of that document. During the course of this review, the agency provided the applicants with access to edited copies of both documents and, on a subsequent occasion, to further parts of the deleted material. The agency claims that disclosure of the remaining deleted parts of this document would reveal significant details about the investigation and that it is, therefore, exempt from disclosure under clause 5(1)(b). From my examination of the edited material,

taken in context, and based on the submission of the agency, I am satisfied that disclosure of the remaining matter which has been deleted would reveal details about an investigation into a possible contravention of the law. Therefore, I find that this matter is also exempt from disclosure under clause 5(1)(b).

(iii) Clause 5(1)(c)

37. The agency claims exemption under clause 5(1)(c) of Schedule 1 to the FOI Act for the following documents: three pages (folios 2A, 11 and 12) of Document A; Documents B (folios 3-10), D (folio 15), G (folios 19A and B) and J (folios 24-33); and the deleted parts of Documents C (folio 14), E (folio 16), F (folio 18), H (folios 20-22), K (folio 34), M (folios 36-38), O (folios 40 & 41), P (folio 42) and Q (folios 43-45). As I have already found Documents G and J and the deleted parts of Documents H, M, O and Q to be exempt for other reasons, it is not necessary that I deal with this claim in respect of those documents, and I do not do so.
38. The agency claimed that those documents were exempt because disclosure would enable the existence or identity of a confidential source of information to be discovered. In its submissions to me the agency claimed that it has a statutory obligation, under the *Child Welfare Act 1947* (the Act) for the care and protection of children. The preamble to the Act states that it is an Act to "*consolidate and amend the law relating to the protection, guidance and maintenance of children in need of care and protection, for the control and treatment of children offending against the law and for other purposes connected therewith*". Section 6 of the Act imposes a duty upon the Director General of the agency, under the direction of the Minister, to carry into operation the provisions of the Act so far as the execution of the Act is not expressly committed to any other person.
39. The agency also claimed that the investigation of care and protection matters is one of the central functions and responsibilities of the agency and that, in the course of investigating or assessing reports of possible instances of child maltreatment, a risk assessment is undertaken in each case based on the information provided to the agency.
40. The agency claimed that it relied upon maltreatment of children being identified and reported by people in the community and, in particular, professional groups within the community, including doctors, nurses, school staff and child care workers. The agency encourages the identification of child maltreatment and claims that this requires ensuring confidentiality of the source of information provided about allegations of suspected maltreatment. The agency claims that because it encourages the identification of possible child maltreatment, it must ensure the confidentiality of the sources of information and the identity of a source of information is not revealed without consent. The agency stated that the identity of persons or agencies who provide information to it are not revealed unless permission is given by those persons.

41. Finally, the agency claimed that its confidentiality policy is well known throughout the community and by professional groups within the community and that, if the agency's reputation for confidentiality were eroded, the future reporting of care and protection matters to the agency would be prejudiced, as would the agency's ability to encourage people to continue reporting suspected child maltreatment. The agency claims that it is fundamental to the carrying out of its statutory responsibilities that the identity of people who provide information to the agency about possible or suspected child maltreatment should not be disclosed.
42. The applicants were informed about the agency's claims about its statutory obligations and about the agency's policies and procedures. The applicants have not disputed that the agency solicits information from the public nor that the agency has a statutory responsibility for the welfare of children, particularly of young children at risk of maltreatment by adults. The applicants have not provided any evidence to me rebutting those claims of the agency.
43. For a document to be exempt under clause 5(1)(c) there are three requirements that the agency must establish. Firstly, the source of information to the agency must be confidential. Secondly, the information given must relate to the enforcement or the administration of the law. Thirdly, it must be shown that disclosure could reasonably be expected to enable the existence or identity of that source to be discovered. The agency is responsible for the administration of the *Child Welfare Act 1947* and for the enforcement of its provisions.
44. From my examination of folios 2A, 11 and 12 of Document A and of Document B and the deleted parts of Documents E, F and K, and a consideration of the agency's submissions I am satisfied that the requirements of clause 5(1)(c) have been established. The agency informed me that all of the informants object to their identities being disclosed to the applicants. All of the informants are non-agency personnel who gave their information on the understanding that it was given and received in confidence. I am also satisfied on this point because of the nature of the information, and the fact that there is no legal obligation upon the particular informants to provide the agency with information of that kind. The nature of the information also convinces me that it relates to the enforcement or administration of the law, namely, the law that deals with the agency's responsibilities for child protection in Western Australia. Further, an examination of a copy of the agency's intake procedures, provided to me by the applicants, confirms that officers of the agency are to identify themselves to a telephone caller reporting suspicions or allegations of child abuse, attempt to gain the consent of the reporter being acknowledged as the source of the complaint and informing the reporter that the information is given in confidence and although the information may need to be referred elsewhere, his/her identity will remain anonymous if he/she so desires. The agency has confirmed that this extract is from the agency manual - "Child Protection - A Guide to Practice".
45. It was submitted by and on behalf of the applicants that the sources of information to the agency in this matter could not be confidential because their

- identities are already known to the applicants. I reject that argument for the reasons given at paragraph 24 above.
46. It was further submitted on behalf of the applicants that the relationship between the informant and the agency cannot be said to be confidential in circumstances in which a person makes an allegation of fact knowing that at some future time after investigation there may be a criminal trial and that person may be called as a witness for the prosecution. It was submitted that the time to assess the nature of the relationship is at the time the information is given and not with the benefit of hindsight once it has been determined that there is no basis for criminal charges.
47. I reject that argument. In my opinion the possibility that a confidential source of confidential information may, at some time in the future, lose its confidentiality does not render that source and the information he or she provides any less confidential at the time the information is provided. I am reinforced in that view by the decision of the House of Lords in *D v National Society for the Prevention of Cruelty to Children* (1978) AC 171, the factual background of which was very similar to the matter before me.
48. In that case, the mother of an infant child aged about 14 months sought, among other things, an order that the National Society for the Prevention of Cruelty to Children (the NSPCC) disclose to her all documents in its custody, possession or power relating to an NSPCC investigation of a complaint received about the alleged maltreatment of the infant by the mother, and the complainant's identity. The mother and father of the infant said the allegations made against them to the NSPCC were completely unfounded and they brought an action against the NSPCC for failing to check that the complaint was made *bona fide* and not maliciously.
49. The NSPCC refused discovery of the documents in its possession which could reveal the identity of their informant claiming the public interest in maintaining the confidentiality of information given to the NSPCC so that it may take steps to promote the welfare of a child. I consider that the judgment of the House of Lords in that matter is of particular relevance to the complaint before me.
50. The NSPCC was a voluntary organisation, founded in 1889 and incorporated by royal charter in 1895. The purposes of the NSPCC are similar to the agency's statutory obligations. The purposes of the NSPCC were to prevent the public and private wrongs of children and the corruption of their morals, to take action for the enforcement of laws for the protection of children, to provide and maintain an organisation for the obtainment of those objects and to do such other lawful things as are incidental or conducive to the attainment of those objects.
51. The claims of the NSPCC were similar to the submissions of the agency in the matter before me. The NSPCC invited the help of the general public in telling its officers about any child whom a member of the public knew may be suffering because of misfortune, ignorance, neglect or ill-treatment. The NSPCC said

that it was dependent upon its receiving prompt information of suspected child abuse and that the principal sources of such information were neighbours of the child's family, and doctors, school teachers, health visitors and the like who would continue to be neighbours or to maintain the same relationship with the suspected person after the matter had been investigated and dealt with by the Society. The Director of the NSPCC gave evidence that without an effective promise of confidentiality, neighbours and others would be very hesitant to pass on to the NSPCC information about suspected child abuse.

52. In its judgment, the House of Lords noted that the fact that information is communicated by one person to another in confidence is not in itself a sufficient ground from protecting from disclosure in a Court of law the nature of the information or the identity of the informant, if either of those matters would assist the Court to ascertain facts which are relevant to an issue upon which the Court was adjudicating.
53. In that case, Lord Diplock said (at p.218-9) "*The public interest which the NSPCC relied upon as obliging it to withhold from the plaintiff and from the Court itself material that could disclose the identity of the society's informant is analogous to the public interest that is protected by the well established rule of law that the identity of police informers may not be disclosed in a civil action, whether by the process of discovery or by oral evidence, at a trial.*".
54. The House of Lords decided that an immunity from disclosure of an informant's identity in civil proceedings, similar to that which the law allowed to police informers, should be extended to those who gave information about neglect or ill-treatment of children to a local authority or to the NSPCC. That is, the identity of the informer might not be disclosed, whether by discovery, interrogatories or questions at trial, the public interests served by protecting the anonymity of both classes of informants being analogous. In addition, the House of Lords said that the public interest to be protected in such matters is the effective functioning of an organisation authorised under an Act of Parliament to bring legal proceedings for the welfare of children. In my view, it is the protection of, *inter alia*, that public interest that is enshrined in clause 5(1)(c) of Schedule 1 to the FOI Act.

False Information

55. However, the House of Lords also recognised that the application of this principle can lead to a perceived sense of injustice, of the kind expressed by the applicants in the matter before me. In that case, Lord Simon said (at p.233): "*I cannot leave this particular class of relevant evidence withheld from the court without noting, in view of an argument for the respondent, that the rule can operate to the advantage of the untruthful or malicious or revengeful or self-interested, or even demented police informant, as much as one who brings information from a high minded sense of civic duty. Experience seems to have shown that though the resulting immunity from disclosure can be abused, the balance of public advantage lies in generally respecting it.*".

56. In their various submissions to me, the applicants have said, among other things, that they believe that they have been criminally defamed by third parties who have made unfounded, malicious allegations against them and that such persons should not be protected. They are anxious to know who it was who made the allegations to the agency.
57. It is clear from my examination of the relevant authorities that it has been accepted in Australia that the public interest in ensuring the free flow of information to investigative and regulatory authorities may well require that a person who knowingly provides false information should be permitted to hide behind the same shield of anonymity as the informer who honestly but mistakenly believes that information concerning a person requires investigation by the relevant authorities.
58. It has been accepted by Muirhead J of the Federal Court of Australia in *McKenzie v Secretary to Department of Social Security* (1986) 65 ALR 645 and by the Victorian AAT in *Re Richardson and Commissioner for Corporate Affairs* (1987) 2 VAR 51 and by the Information Commissioner of Queensland in *Dr P T McEniery and The Medical Board of Queensland* Decision No. 94002 (unreported) that the Commonwealth, Victorian and Queensland equivalents of the clause 5(1)(c) of Schedule 1 to the FOI Act are not concerned with whether the confidential source of information supplies information which is false or erroneous.
59. In *McKenzie v Secretary to Department of Social Security* (1986) 65 ALR 645, a case concerning a claim by an agency that a document was exempt under section 37(1)(b) of the Commonwealth *Freedom of Information Act 1982*, the equivalent provision to clause 5(1)(c) of the WA FOI Act, the Federal Court considered the matter where deliberately false information was provided to the Department of Social Security which, at the time of receiving the information, did not know whether it was true or false. After the Department conducted its inquiries it determined there was no substance to the information provided.
60. However, the applicant in that matter, Ms McKenzie, sought access to a copy of the letter concerned. Muirhead J concluded that even deliberately false information, albeit malicious, coming into the hands of a Department, which did not know at the time of receipt whether the information was true or false, is nevertheless at the time fairly labelled as "information". The applicant had argued at the time when the document lost all credibility its author could not still be regarded as a "confidential source of information" in relation to the enforcement or administration of the law. Muirhead J did not accept that information can no longer be regarded as "information" and an author can no longer be regarded as a confidential source of information once a Department concludes that the information has no truth or validity.
61. Muirhead J concluded that information prompting an administrative inquiry is still properly classified as information in the hands of a Department, be it true or false. Muirhead J referred to the judgment of the Hon J B K Williams in *Re*

Sinclair v Secretary to Department of Social Security (Q85/47-16 October 1985) who considered the origins of section 37(1)(b) of the Commonwealth FOI Act which gives statutory recognition to pre-existing common-law principals enunciated in cases such as *R v Lewes Justices, Ex parte Secretary of State for Home Department* (1973) AC 388 and *D v National Society for Prevention of Cruelty to Children* (1978) AC 171. Muirhead J noted that those cases emphasised that the confidentiality traditionally given to informers may operate to the advantage of the untruthful or malicious, but that nevertheless the immunity may be necessary when balanced by the public advantage.

62. In *Re Richardson and Commissioner for Corporate Affairs* (1987) 2 VAR 51 the Victorian AAT found that "information" for the purposes of section 31(1)(c), the equivalent in the Victorian FOI Act to clause 5(1)(c) of the FOI Act, is not confined to facts as distinct from false or erroneous information.
63. In *Re Richardson*, the applicant believed the information supplied to the Victorian Commissioner of Corporate Affairs was false and supplied with malicious intent. He wished to take legal action to dissuade the person from continuing to spread false rumours. The applicant argued that it could not be in the public interest to protect the source of false information but rather it is in the public interest to protect persons, like himself, from having false accusations made against him. The applicant argued that section 31(1)(c) of the Victorian FOI Act did not apply in his case as malicious fabrications could not be said to be "information" which relates only to a fact or facts, and that a lie cannot fall within the definition of information. Therefore, he argued, the exemption in section 31(1)(c) was not applicable.
64. The Victorian AAT said that the submissions of the applicant might appear attractive when one considers only those who maliciously supply false information which they know to be untrue. However, in the case of the person who, in good faith, supplies information which is subsequently found on investigation to be inaccurate or mistaken, the difficulty inherent in the applicant's submission became apparent. The Victorian AAT said that the legislation is clearly designed to protect the identity of informers and does not differentiate between the good, the bad or the indifferent. The legislation relates to the provision of information in a documentary form in the hands of Government agencies but is not concerned with the veracity of the information contained in a document except under Part 5 of the Victorian FOI Act which provides for the amendment of inaccurate personal records.
65. In *Re Richardson* the Victorian AAT said that if it were established that information in a document was false, and an agency was proceeding as if it were true, then the document might be released pursuant to section 50(4) of the Victorian FOI Act in the public interest, as it may be appropriate for an applicant to know the precise nature of the information upon which the agency was erroneously or improperly acting. However, in that matter, it was clear from the evidence that the agency knew the information provided was false and the agency was not acting upon the basis that the information was true.

66. In *Re Croom and the Accident Compensation Commission* (1989) 3 VAR 441 the Appeal Division of the Victorian Supreme Court said that the heart of the exemption contained in section 35(1)(c) of the Victorian FOI Act is the protection of the informer, not the subject matter of the communication. In *Re Sutcliff and the Victoria Police (No. 1)* (1989) 3 VAR the Victorian AAT said that the Victorian FOI Act is not concerned with the veracity of the information contained in a document and, therefore, in some instances a malicious person who gave false information to an agency could be protected at the expense of an innocent person.
67. Despite the applicants' claims, no evidence has been put before me by the applicants which would establish that they have been criminally defamed nor that the information received by the agency is false or malicious. Neither has it been established by the applicants that the agency was acting upon that false or malicious information to the detriment of the applicants. Further, even if it were so established, it could go only to a consideration of whether, on balance, it would be in the public interest to disclose the matter in the documents. For the reasons given at paragraphs 74-76 below, I do not consider that question arises in respect of the documents for which exemption under clause 5(1)(c) is claimed. By way of comment, it is not clear, from any of the evidence before me, that any allegation, of the kind the applicants believe was made against them, was made. It appears that certain information which may have indicated the possibility of some form of child abuse, sexual abuse being only one of those possibilities, was referred to the agency. It is not clear that any allegation that child abuse had occurred, or was suspected, was ever made.
68. It is possible that terminology used by the agency in its forms and correspondence may have contributed to the applicants' belief that an allegation of child abuse had been made. The agency apparently refers to any reference of information to it as an "allegation". When such information is received, the agency conducts preliminary inquiries to determine the veracity of the information received, and whether further investigation is warranted.
69. However, an examination of the evidence before me has established that the agency received information ("an allegation" in the language of the agency) and initiated preliminary investigations to establish the veracity of that information, before determining whether to proceed further with the matter. In the final analysis, the agency concluded from its preliminary inquiries that the information was insufficient to establish a basis upon which the agency would institute a full investigation. Accordingly, the agency decided not to pursue the issue and closed its file on the matter.
70. The applicants believe that the FOI Act establishes that they have a right of access to all the information held by the agency, including the names of the agency's informants. However, the general right of access created by the FOI Act is subject to and in accordance with the provisions of the FOI Act, which provides exemption from disclosure in some circumstances.

Findings

71. I accept that disclosure of folios 2A, 11 and 12 of Document A, Document B and the deleted parts of Documents E, F and K could reasonably be expected to reveal the identity of confidential sources of information in relation to the enforcement or administration of the law, as contemplated by clause 5(1)(c). Because of the nature of the information in those documents, I do not consider that deleting the names of the confidential sources would be sufficient to protect their identities. I consider that disclosure of any part of them could reasonably be expected to enable the identities of the informants to be discovered and I find that those documents and parts of documents are all exempt under clause 5(1)(c).
72. Exemption under clause 5(1)(c) is claimed for the deleted parts of Document C. I have inspected that document and taken into account the submissions of the parties and I consider that some, but not all, of the deleted matter in that document, if disclosed, could reasonably be expected to enable the identity of several confidential sources of information in relation to the enforcement or administration of the law to be discovered. Therefore, I find that the following parts of Document C are exempt under clause 5(1)(c):
- all the words between the words "*contacted by*" in line 3 of paragraph 1 and the words "*stating that*" in line 4 of paragraph 1;
 - the first two words of line 5 and the first four words of line 6 in paragraph 1;
 - the last two words of line 1, all of line 2 and the first two words of line 3 in paragraph 2;
 - the first two words of line 3 of the second last paragraph;
 - the first seven words of line 4 of the second last paragraph;
 - all of the last paragraph.
73. Having inspected Document D and taken into account the submissions of the parties, I am satisfied that disclosure of that document, other than the heading, the date at the top of the page, and the names of the officers of the agency - being the two names appearing in the top left hand corner and the final name appearing on the page - could reasonably be expected to enable the identity of confidential sources of information to the agency to be discovered. Therefore, other than those parts, I find that document to be exempt under clause 5(1)(c).

The Public Interest

74. In their submission of 23 September 1994, solicitors for the applicants urged me to take into account certain matters "*...when assessing the exemptions and weighing up the public policy and public interest considerations...*" in respect of the agency's claims for exemption under clause 5(1)(a) and clause 5(1)(c). The exemptions in clause 5 are made out on establishing that disclosure could reasonably be expected to have one or more of the effects described in sub-clause (1)(a)-(h).

75. In clause 5 of Schedule 1 to the FOI Act, in my opinion, the Parliament has balanced concerns for safety and security and the proper functioning of government agencies against the general right of access, by requiring that there be reasonable grounds for expecting a certain harm or a certain effect will result if certain matter is disclosed. If it is established that that expectation is reasonable, then and only then, will the limitations in sub-clause 5(4) arise for consideration. Whether disclosure would, on balance, be in the public interest arises for consideration only in respect of matter of a kind described in clause 5(4)(a)(i), (ii) or (iii). In my opinion, the disputed documents do not contain matter of the kind described in part (i), (ii) or (iii) of clause 5(4)(a) and, therefore, the question of whether disclosure would, on balance, be in the public interest does not arise.
76. The Western Australian FOI Act does not have any equivalent to section 50(4) of the Victorian FOI Act which empowers the external reviewer (the Victorian Administrative Appeals Tribunal) to decide that access should be granted to an exempt document if the Tribunal is of the opinion that the public interest requires that access to the documents should be granted. On the contrary, I am specifically prohibited, by section 76(4) of the FOI Act, from making a decision to the effect that access is to be given to a document which it has been established is exempt. I am satisfied that none of the limitations provided by clause 5(4) applies to any of the documents found to be exempt under clause 5(1)(a), (b) or (c) and that the claim for exemption for these documents is established by the evidence before me.

(c) Clause 8(2) - Confidential Communications

77. Clause 8(2) was claimed as a basis for exemption of one page (folio 11) of Document A, Documents B, G and J, and the deleted parts of Documents H, K, M, O and Q. Some of these documents have been found to be exempt under other clauses. Ordinarily it would not be necessary to consider the claims for exemption under clause 8(2). However, as the agency presented arguments on this point and the applicant also provided detailed submissions in response, I make the following observations.
78. As I have said, at paragraph 27 above, the agency informed me that, in the course of investigating information brought to its attention which may indicate possible child abuse, it conducts a two-staged inquiry. The first stage involves a preliminary investigation and assessment of the substance of the complaint. The second stage involves a more formal investigation if the agency considers that the evidence gathered during the preliminary stage warrants this course of action. A great deal of information may be obtained by the agency from a variety of sources. The agency claims that the nature of the information is such that the agency operates on the basis of confidentiality.
79. From my examination of all of the documents, and from the evidence of the agency, I am satisfied that they contain information that was given and received in confidence. I am also satisfied that it is reasonable to expect that information of this kind may not be provided in future to the agency, unless it remains confidential. I am also persuaded of this in view of the absence of any statutory obligation or requirement on the general public to provide such information. I am also of the view that it is reasonable to expect that the agency's ability to obtain such information would be affected by the disclosure of these folios because people will be less likely to provide the details necessary for the agency to make a considered judgement of the veracity of the information received. I accept that if this occurred it would prejudice the agency's present ability in this regard.
80. Therefore, on the material before me, I would also be prepared to find that the agency has satisfied both parts (a) and (b) of clause 8(2). If that were the case, the public interest test would determine the exempt status or otherwise of these folios. I consider it appropriate that I make some observations on this point.
81. The applicants are clearly distressed by the fact that a matter involving their children was referred to the agency and that this resulted in an investigation, albeit an investigation that only reached the first stage of proceedings. The agency concluded that the matter did not require further investigation and informed the applicants accordingly. I consider there is a public interest in people who find themselves in the position in which the applicants found themselves being informed of the nature of any allegations made against them and the result of the agency's investigations. It is also enshrined in s.21 of the FOI Act itself that where the information in an agency's documents is personal information about the applicants, this is a factor in favour of disclosure to be weighed in any balancing of where the public interest lies. However, I consider

that, in this case, that public interest has now been met by the provision of documents to the applicants during the course of review by my office. Many of these documents were released only after protracted negotiations between my staff with those of the agency.

82. I also recognise that there is a public interest in State and local government agencies being able to effectively carry out their functions and the business of government on behalf of the wider community. In my view, the public interest in the agency being able to receive information in confidence, and to act on that information on behalf of everyone in the community, outweighs the public interest in the applicants' rights of access under the FOI Act.

Reference to the Supreme Court

83. Finally, as indicated in paragraph 11 above, it was requested on behalf of the applicants, and by the applicants personally, that I refer to the Supreme Court the question of the interpretation of the term "public interest" and any other legal question with which I may be having difficulty. Section 78(1) of the FOI Act provides a discretion for me to refer to the Supreme Court any question of law that arises in the course of dealing with a complaint. I may do so on my own initiative or at the request of a party to a complaint (section 78(2)). In the course of dealing with this complaint I did not consider it necessary to exercise that discretion. The only identified question of law that the applicants' requested I refer was the question of the meaning of the term "the public interest". I consider that there is ample guidance available in decisions of the superior Courts in this and other jurisdictions as to the relevant considerations to be taken into account when considering the public interest.

The term "public interest" is not defined in the FOI Act, nor is it defined in any comparable FOI legislation. However, it is analagous to the concept of "crown privilege" or "public interest immunity" which arises when courts are required to decide whether official documents of governments are to be produced in court. In FOI legislation, consideration of the public interest requires the application of a balancing test so that any number of relevant public interests may be weighed one against the other. When an exemption in the FOI Act is limited by a "public interest test", in my view that involves the exercise of a judgement as to where the balance lies.
