

## DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

**Decision title and citation: *Re "C" and DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES [2000] WAICmr 19***

**COMPLAINT No:** F2221999

**DECISION No:** D0192000

**PARTIES:** "C"

Complainant

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

**No. of documents in dispute:** 4

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

Mr "C" ('the complainant') and his wife are involved in a custody dispute. His wife has care and control of the two children of the marriage. On 2 September 1999, an application was made to the agency on behalf of the complainant for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents containing information about Mr "C" and the two children of the marriage.

In a notice of decision dated 11 October 1999, the agency informed the complainant that 13 documents, described as contact logs recording discussions between the agency and a third party, had been found. The agency granted the complainant access in full to 11 documents, but refused access to 2 others on the ground that those two documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

On 4 November 1999, the complainant applied to the agency for internal review. On 11 November 1999, the internal reviewer confirmed the initial decision to refuse access to 2 documents on the ground that those documents are exempt under clause 3(1). On 17 November 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

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

After receiving this complaint, I obtained the disputed documents from the agency. My Investigations Officer made further inquiries with the parties to determine whether this complaint could be resolved by conciliation. However, attempts at conciliation were unsuccessful.

On 2 February 2000, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the disputed documents may be exempt under clause 3(1). The complainant did not withdraw his complaint. Subsequently, the agency located 2 additional contact logs containing similar information. I am not dissuaded from my preliminary view that the 2 documents, described in my letter dated 2 February 2000 to the parties, are exempt for the reasons given in that matter. For similar reasons, I am of the view that the 2 additional documents subsequently found by the agency are also exempt. A summary of my reasons follows.

### **The disputed documents**

There are 4 documents in dispute in this matter. They are computer generated documents entitled "Contacts – Operational Log" dated between 6 August 1999 and 13 August 1999. The documents record telephone contacts between 2 third parties and officers of the agency, including the substance of each call, its time, date and duration and various actions taken by the agency and by the caller.

### **The exemption – Clause 3(1)**

Clause 3(1) provides that matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead). The term personal information is defined in such a way as to make it clear that any information or opinion, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion falls within the terms of the exemption in clause 3(1).

In my view the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom personal information may be contained in documents held by State and local government agencies.

I have examined the disputed documents. Those documents contain information about individuals other than the complainant. The information includes names, an address, telephone number, and other matter of a personal and sensitive nature. I consider that that information, on its face, is exempt matter under clause 3(1). There is also a limited amount of personal information about the complainant in the disputed documents. However, the personal information about the complainant is so entwined with personal information about other people that it could not be disclosed to the complainant without also disclosing to him the personal information about other people.

### **Limit on exemption**

Clause 3(1) is subject to the limits on exemption in clause 3(2)-(6). However, having examined the disputed documents, I am of the view that the only limit that might apply is the limit in clause 3(6) which provides that matter is not exempt under clause 3(1) if disclosure would, on balance, be in the public interest. Under s. 102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of personal information about third parties to him would be in the public interest.

### **Public Interest**

The term "public interest" is not defined in the FOI Act, nor is it a term that is easily defined. Clearly, the complainant has a personal interest in the disclosure of information about his family or himself. However, the public interest is not primarily concerned with the personal interests of a particular access applicant. Rather, the question is whether disclosure of the information would be of some benefit to the public generally, that is, whether it would be of benefit to the public for the information in the disputed documents to be disclosed. Determining whether or not disclosure would be in the public interest involves identifying the public interests for and against disclosure, weighing them and deciding where the balance lies.

I recognise that there is a strong public interest in maintaining personal privacy and consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information. I also consider that there is a very clear public interest in the protection of children and, to that end, in maintaining the agency's ability to obtain information from a wide variety of sources to enable it to perform its statutory functions involving the welfare of children.

Balanced against those public interests, I consider that there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act. I recognise a public interest in people being informed of information about them which is held by government agencies and in being able to have access to that information and to correct it if it is inaccurate, incomplete, out of date or misleading. I also recognise a public interest in parents being able to access information concerning the welfare of their children.

The complainant submits that it is in the public interest for the documents to be disclosed to him so that he can state a true case to the Family Court. He also submits that disclosure would help the agency to understand the personal trauma caused by comments attributed to its officers. The complainant submits that it is in the public interest for allegations made against people to be disclosed to the people concerned so that those people can defend themselves and the real offenders can be caught.

I recognise that there is a public interest in people being informed of allegations made against them and in being given the opportunity to respond to those allegations. In the circumstances of this matter, I am of the opinion that, to a large extent, that public interest, and others I have recognised favouring disclosure, have been satisfied, as far as the agency can do so, by the disclosure to the complainant of the documents to which access has already been granted.

In balancing the competing public interests, and based on the material before me, I am not persuaded that the public interests against disclosure are outweighed by any public interest in the disclosure of personal information about other individuals in this instance. Accordingly, I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to those documents.

**B. KEIGHLEY-GERARDY**  
INFORMATION COMMISSIONER

28 March 2000