

Q AND GUARDIANSHIP

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 96040

DECISION No: D02596

PARTIES: "Q"

Complainants

Guardianship and Administration Board

Respondent

No. of documents in dispute: 7

Exemption clause(s) : 3(1)

On 10 January 1996, the complainants lodged an application with the Guardianship and Administration Board ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents of the agency relating to their adult autistic son. I have decided not to identify the complainants in this decision in order to protect their privacy and the privacy of their son. On 23 February 1996, the agency transferred part of the access application to the office of the Public Guardian. In respect of the remaining parts of the access application, the agency determined that the requested documents contained personal information relating to an intellectually handicapped person. Pursuant to s.23(5) of the FOI Act, the agency decided that access would not be in the best interests of that person. The agency also refused access on the ground that the requested documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

The complainants sought internal review of that decision. Following internal review, the agency granted the complainants access to edited copies of some documents and confirmed its initial decision that some of the requested documents are exempt under clause 3(1). The complainants were also informed of their right, as parties to a proceeding before the agency, to inspect documents pursuant to s.112(2) of the *Guardianship and Administration Act 1990* ('the Act'). On 18 March 1996, the complainants sought external review by the Information Commissioner.

I obtained copies of the disputed documents from the agency together with a schedule listing and describing all documents found by the agency to be within the ambit of the complainants' access application. After examining those documents and the material before me, I informed the parties that it was my view that 50 documents on the agency's schedule consisted of documents which the complainants were able to inspect under s.112(2) of the Act. Accordingly, it was my view that s.6(b) of the FOI Act applied to those documents and, pursuant to s.67(1)(a), I decided to stop dealing with the complaint insofar as it concerned those documents. In respect of 7 remaining documents, it was my preliminary view that those documents are, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. The parties were informed of my detailed reasons for that view and the findings on material questions of fact underlying those reasons. Although invited to make further submissions, nothing further was received from the complainants.

The Documents in Dispute

There are 7 documents in dispute between the parties. Those documents have been described on a schedule provided to the complainants. The disputed documents consist of medical reports, psychological reports and assessments of the complainants' son, and other professional advice obtained by the agency for the purpose of its proceedings.

The Exemption - clause 3(1)

Clause 3, so far as is relevant provides:

"Exemption

(1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

Limits on exemption

...

(6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*

In the Glossary in Schedule 2 to the FOI Act, "personal information" is defined to mean:

"...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."*

I have examined the disputed documents and I am satisfied that they contain personal information about a third party, the complainants' son. In my view, those documents are, *prima facie*, exempt documents under clause 3(1). Pursuant to s.102(3) of the FOI Act, the complainants bear the onus of persuading me that disclosure of those documents would, on balance, be in the public interest. As I have said before, no submissions were received from the complainants after I had informed them of preliminary view on their complaint.

The public interest

I recognise that there is a public interest in persons being able to exercise their right of access under the FOI Act. I also recognise that there is a public interest in the accountability of State and local government agencies and in ensuring that accountability through access to documents. Balanced against those interests, in my view, is a strong public interest in the protection of personal privacy. I consider the latter public interest to be have considerable weight in circumstances where an individual may not be able to determine what is in his or her best interests.

I also consider there to be a public interest generally in maintaining the capacity of a person or body having the guardianship of a child or of an intellectually handicapped person to make decisions concerning the welfare of that person. I have also taken into account the fact that the Public Guardian is the legal guardian of the son and that agency has expressed the view, in light of his intellectual capacity, that disclosure of the documents would not be in his best interests.

Accordingly, in balancing the competing interests, I consider that the public interest in protecting the personal privacy of the complainants' adult son outweighs any other public interest. I confirm the decision of the agency and find the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16th May 1996