

## Q AND PUBLIC GUARDIAN

### OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

**COMPLAINT No:** 96039

**DECISION No:** D02696

**PARTIES:** "Q"

Complainants

**Public Guardian**

Respondent

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

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

The background to this complaint is essentially the same as that described in my decision in *Re "Q" and Guardianship and Administration Board* (16 May 1996, unreported). For similar reasons I have decided not to identify the complainants in this decision. On 10 January 1996, the complainants lodged identical access applications with the Guardianship and Administration Board ('the Board') and with the Public Guardian ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to their adult autistic son. Pursuant to s.15(1) of the FOI Act, the Board transferred part of the application it had received to the agency with the result that the agency treated the application it had received and the application partially transferred as one application.

The agency located and identified 88 documents as being within the ambit of the access applications. Of those documents, 67 were determined to be documents which the complainants were entitled to inspect pursuant to s.112(2) of the *Guardianship and Administration Act 1990* ('the Act'). The agency decided that the remaining 21 documents contain personal information relating to an intellectually handicapped person. The agency, the legal guardian of the complainants' son, decided that it was not in the best interests of that person for the complainants to be granted access to those documents. On 18 March 1996, the complainant sought external review by the Information Commissioner.

I obtained copies of the disputed documents from the agency, together with a schedule listing and describing those documents found by the agency to be within the scope of the access application and the application partially transferred by the Board. After examining those documents and considering the material before me, the parties were informed that it was my view that s.6(b) of the FOI Act applies to 67 documents and that, pursuant to s.67(1)(a), I had decided to stop dealing with the complaint insofar as it concerned those documents. The parties were also informed of my preliminary view that the remainder are, *prima facie*, exempt under clause 3(1) of Schedule 1 to the FOI Act. That is, it was my preliminary view that the decision of the agency was justified. The parties were informed of my detailed reasons for that view and the findings on material questions of fact underlying those reasons. Although the complainants were provided with the opportunity to make additional submissions, no further submissions were received by my office.

#### **The Documents in Dispute**

There are 21 documents remaining in dispute between the parties. Those documents consist of medical reports, psychological reports and the reports of other professional persons who have conducted clinical assessments of the complainants' son for the purpose of the agency performing its statutory obligations.

#### **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 on that point.

**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 of considerable weight in the circumstances of this complaint, as it did in my decision in *Re "Q"*.

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 that the agency is the legal guardian of the son and has expressed the view that, in light of the intellectual capacity of the son, disclosure of the documents would not be in his best interests.

Therefore, 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 that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

16th May 1996