

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re "G" and Department for Family and Children's Services* [2000] WAICmr 52

COMPLAINT No: F1582000

DECISION No: D0522000

PARTIES: "G"

Complainant

DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES Respondent

No. of documents in dispute: Not identified by agency

Relevant Section: s.23(2); clause 5(1)(b)

The complainant's daughter is a ward of the State and the Director General of the Department for Family and Children's Services ('the agency') is her legal guardian. In 1997, the agency suspended contact visits between the child and the complainant because an allegation was made that the child had been sexually abused. The agency referred the matter to the Police Child Abuse Unit and the police interviewed the complainant.

On 3 April 2000, the complainant made an application to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to an interview with his daughter concerning the allegation of sexual abuse and any related medical document.

Without identifying the documents and without specifying the reason why matter in any particular document was claimed to be exempt, the agency refused access under s.23(2) of the FOI Act because the agency considered that it was apparent, from the nature of the documents described in the access application, that all of the documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. In addition, the agency refused access under s.23(4) because the requested documents contain personal information about a child under 16 years who lacked the capacity to make a mature judgment about what might be in his or her best interests.

An internal review of the decision was conducted and confirmed the initial decision to refuse access. On 4 September 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the information Commissioner

I obtained various documents from the agency. On 6 October 2000, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that that the documents described in the complainant's access application are exempt under clause 5(1)(b) and, therefore, the decision of the agency to refuse access to those documents under s.23(2) of the FOI Act was justified. The complainant responded, but made no further submissions and I am not dissuaded from my preliminary view, the reasons for which are summarised below.

Refusal of access – Section 23(2) of the FOI Act

Section 23(2) of the FOI Act provides:

"23. (2) *The agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if –*

- (a) *it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and*
- (b) *there is no obligation under section 24 to give access to an edited copy of any of the documents.”*

When an agency relies on s.23(2) to refuse access, the first question I must determine is whether it is apparent from the nature of the documents described in the complainant’s access application that they are all exempt. The terms “exempt document” and “exempt matter” are defined in the Glossary in the FOI Act. An exempt document is one that contains exempt matter. Exempt matter means matter that is exempt under any of the exemption clauses in Schedule 1 to the FOI Act.

Clause 5(1)(b) provides that matter is exempt matter if its disclosure could reasonably be expected to 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.

Documents which reveal the fact of a particular investigation of a particular incident involving certain people will be exempt under clause 5(1)(b): *Police Force of Western Australia v Kelly and Smith* (1997) 17 WAR 9 at p13.

The documents requested by the complainant from the agency are those relating to the allegation of child abuse and the subsequent inquiries made into that allegation by the agency and the police. In my view, taking into account the nature of the requested documents, I consider that those documents would all be exempt under clause 5(1)(b).

Although certain information is clearly already known by the complainant, Anderson J made it clear in *Kelly’s* case that that does not affect the question of whether or not matter is exempt under clause 5(1)(b). At pages 10 and 11, His Honour said:

“I do not think that it could have been intended that exemption should depend on how much the applicant already knows or claims to know of the matter...[clause] 5(1)(b) is not limited to new revelations but covers all matter that of itself reveals the things referred to, without regard for what other material might also reveal those things, or when that other material became known, and without regard to the actual state of knowledge that the applicant may have on the subject or the stage that the investigation has reached.”

Given the nature of the requested documents as described in the access application, I do not consider that the agency is obliged under s.24 of the FOI Act to give the complainant access to edited copies.

Accordingly, for the reasons set out in my letter of 6 October 2000 to the parties, I find that documents of the kind described in the complainant’s access application are exempt under clause 5(1)(b) and confirm the decision of the agency to refuse access to documents of that kind under s.23(2) of the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
18 October 2000