

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

**File Ref: F0821999
Decision Ref: D0441999**

Participants: **Talit Mahmood Ahmad Paul**
Complainant

- and -

**Department for Family and Children's
Services**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – internal practices review report – clause 3(1) – personal information about access applicant – personal information about third parties – access to edited copies of documents – deletion of personal information about third parties – public interest factors for and against disclosure – public interest in maintaining privacy of third parties.

Freedom of Information Act 1992 (WA) s.102(3); Schedule 1 clauses 3(1), 3(6), 5(1)(b) and 5(1)(c).

DECISION

The decision of the agency is confirmed to the extent that all of the matter deleted from the document is exempt under clause 3(1) of Schedule 1 of the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

8 December 1999

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Department for Family and Children's Services ('the agency') to refuse Mr Paul ('the complainant') access to a document requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. I understand that, since 1997, the complainant has been involved in a dispute with the agency about the manner in which it dealt with certain complaints made about him relating to his family. In particular, over the past 2 years he has expressed his dissatisfaction about those matters to certain senior officers in the agency, and to the relevant Minister and the State Ombudsman.
3. Consequently, the agency decided to review his case and, in March 1999, a senior officer of the agency met with the complainant and a representative of the relevant Minister for that purpose. On 7 April 1999, the reviewer provided her report to the Executive Director, Country Services of the agency.
4. On 29 April 1999, the complainant made an application to the agency seeking access to a copy of the reviewer's report under the FOI Act. The agency decided to give the complainant access to an edited copy of the requested document and claimed that the matter deleted from that document is exempt under various clauses of Schedule 1 to the FOI Act.
5. On 24 May 1999, the complainant sought internal review of the agency's decision and claimed that it was his understanding that he would be given a copy of the reviewer's report. Further, the complainant informed the agency that he considered the decision to refuse him access to an unedited copy of the report was a breach of that agreement by the agency. However, the internal reviewer in the agency confirmed the initial decision of the agency. On 10 July 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

6. I obtained the disputed document from the agency. A member of my staff made inquiries into the nature of the alleged agreement between the agency and the complainant about access to the disputed document. However, the recollections of the relevant officers of the agency about this issue differ from those of the complainant. The agency informed me that it gave the complainant certain assurances as to the manner in which the review would be conducted, but no undertakings were given concerning access to the reviewer's report.

7. In the course of my dealing with this complaint, the agency agreed to provide the complainant with access to an unedited copy of a 7-page attachment to the report and that document was made available to him. However, the agency maintained its claims for exemption for the balance of the report. Inquiries were also made to determine whether this complaint could be resolved by conciliation between the parties, but conciliation was not an option.
8. On 18 November 1999, 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 the matter to which access was refused may be exempt under clause 3(1) of Schedule 1 to the FOI Act, and parts may also be exempt under clause 5(1)(b).
9. The complainant responded to my preliminary view, but did not provide anything further of substance for my consideration.

THE DISPUTED DOCUMENT

10. The disputed document is a 12 page internal report dated 7 April 1999 (folios 372-383), together with one attachment of 12 pages (folios 360-371) entitled "CHRONOLOGY OF SIGNIFICANT EVENTS".

THE EXEMPTION

11. The agency claims that the matter deleted from the disputed document is exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, so far as is relevant, provides:

"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

...

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

12. In the Glossary to the FOI Act, the term "personal information" means:

"...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."*
13. I consider that the purpose of the exemption in clause 3 is to protect the privacy of third parties. That exemption is a recognition by Parliament of the fact that government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause. In my view, the definition of personal information in the Glossary makes it clear that any information or opinion about a person, from which that person can reasonably be identified, is exempt matter under clause 3(1).
14. I have examined the information to which access has been refused. In my view, that information consists of information about third parties, other than the complainant, including names, private facts, sensitive information, and other information that would clearly identify those third parties. Clause 3 is subject to the limits on exemption in sub-clauses (2)-(6). However, in the circumstances of this complaint, the only limit that might apply is the limit on exemption in clause 3(6) which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to s.102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure of personal information about third parties would be in the public interest.

Public interest

15. Although the complainant has been given the opportunity of making submissions in relation to this matter, nothing of substance has been received. Generally, I understand that the complainant's dissatisfaction with the agency is directed at, amongst other things, its apparent failure to provide him with access to a complete copy of the disputed document. He submits that he only participated in the review on the basis that the review be an open and accountable process. The complainant understood this to mean that he would receive a copy of the report.
16. It appears to me that the agency's review of the complainant's case consisted of an examination of records relating to the complainant and his family and the meeting with the complainant in March 1999. In essence, the task of the reviewer was to examine the agency's procedures as they related to the complainant and to provide advice to senior management on its practices in respect of this specific matter. I have been unable to find any evidence, either express or inferred, that it was the intention of the agency that the complainant should be given a copy of the disputed document. I do not doubt the complainant's claim that he only participated in the review on the basis of that understanding. However, it appears to me that his participation was limited to

the meeting he attended in March 1999, at which he was given the opportunity to comment on various processes of the agency. His involvement was not with a view to reopening the specific issues, even though it appears to me that he expected that to occur. For example, I understand that the reviewer did not question him; rather he was allowed to offer his version of the events and to dispute the facts as he saw them.

17. As no conditions (other than those imposed by other laws) can be attached to the use – including the further dissemination- of documents disclosed under the FOI Act, disclosure generally has to be considered as though it were disclosure to the world at large. Therefore, whether the complainant is entitled to be given access to an unedited copy of the disputed document depends on whether it is in the public interest to disclose, not merely to the complainant but to the world at large, personal information about third parties.
18. I recognise that there is a strong public interest in maintaining personal privacy. I consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance. I also recognise a public interest in the agency maintaining its ability to receive and act upon information relating to the discharge of its statutory duties on behalf of the public at large.
19. Balanced against those public interests, I also recognise that there is a public interest in the accountability of the agency for the discharge of its duties. There is also a public interest in a person such as the complainant being able to exercise his or her rights of access under the FOI Act and being informed of personal information about him held by the agency.
20. I am satisfied that the latter public interests have been satisfied, to a large extent, by the material to which the complainant has been given access. Although there is some personal information about the complainant contained in the deleted matter, it is so entwined with personal information about third parties that, in my opinion, it could not be disclosed without also disclosing personal information about third parties. In the circumstances of this complaint, I am not persuaded that the public interest in protecting personal privacy is outweighed by any other stronger countervailing public interest and the complainant has identified none to me.
21. Accordingly, I find that the disputed matter is exempt under clause 3(1) of Schedule 1 to the FOI Act. Although the agency also claimed that the matter deleted from folio 378 of the disputed document is exempt under clause 5(1)(c), in view of my finding that it is exempt under clause 3(1), I need not consider whether it is also exempt under clause 5(1)(b) or (c).
