



Decision D00142026 – Published in note form only

Re QF7 and Child and Adolescent Health Service [2026]

WAICmr 14

Date of Decision: 19 August 2026

Freedom of Information Act 1992 (WA): section 98(a)

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) found Child and Adolescent Health Service's (**agency**) decision to refuse to deal with an access application purportedly made on behalf of a child under section 98 of the *Freedom of Information Act 1992 (WA)* (**FOI Act**) was justified.
2. The Deputy Commissioner decided not to identify the complainant by name to protect their privacy in the circumstances of this matter.

Reasons

3. Section 98 of the FOI Act, as it then stood, provided:¹

Without limiting the ability of persons to make applications on behalf of other persons generally, an access application ... may be made –

- (a) on behalf of a child by the child's guardian or the person who has custody or care and control of the child;

Section 98(a) in the context of a mature child

4. The complainant submitted:
 - section 98 confers standing on a guardian or person with custody or care and control to make an application on behalf of a child. The provision does not impose a consent prerequisite; and
 - a mature child having the capacity to make their own application does not extinguish the standing of a parent who independently satisfies section 98.
5. The Deputy Commissioner considered the decision in *Re M and Department of Communities*² (**Re 'M'**) and agreed with the principles set out in that decision:
 - The FOI Act gives strong protection to individuals' personal information.

¹ Section 98 was amended on 1 July 2026. However, this access application was made prior to commencement of that amendment.

² [\[2023\] WAICmr 2](#).

- As children get older, they have an increasing right to be involved in decisions affecting them and the protection of their personal information.
 - Section 98(a), which allows a child's guardian or a person with custody or care and control of a child to make an application on the child's behalf, does not override those rights in every case. The power conferred by section 98 of the FOI Act is not unlimited.
 - Where a child is mature enough to have meaningful input into an application for access to their personal information, the broad wording of section 98 must be applied consistently with the Act's strong protection of personal information.
 - When one person (the agent) makes an access application on behalf of another (the principal), they are claiming to act on that person's behalf. For the purposes of section 98, an agency relationship exists only if the principal consents to the agent acting on their behalf, and the agent agrees to act in that capacity.
 - Where a child is sufficiently mature to consent to an access application being made on their behalf, or to make their own application, the child's consent is required to establish an agency relationship.
 - If there is no material to suggest the mature child has consented, no agency relationship exists. In those circumstances, the application has not been validly made on the child's behalf under section 98.
 - The relevant documents in *Re 'M'* contained sensitive personal information about children who were old enough to make their own access applications. It was therefore appropriate for the agency to satisfy itself the children consented to the complainant making the application on their behalf and understood the consequences of that consent.
6. The Deputy Commissioner found the complainant's submissions mischaracterised the operation of section 98. He observed section 98 is a permissive provision. It allows a guardian or person who has custody or care and control of a child to make an application on the child's behalf but does not operate to make an application valid in every case merely because the applicant falls within that category.
 7. The agency must be satisfied the application is genuinely made on behalf of the child, in circumstances where the child is mature enough. Whether the application is genuinely made on behalf of the mature child is a matter for the agency to assess in the circumstances.

A child's age may be a relevant factor in an agency's enquiries

8. In this case, the complainant did not obtain the consent of the child, who was 15 years old at the time, for personal reasons.
9. The complainant's initial submissions focused on the agency's assessment of the child's maturity, arguing the assessment, based on age, was inadequate to establish the child was sufficiently mature to consent to an application being made on their behalf.
10. The Deputy Commissioner disagreed and noted unless there are factors suggesting otherwise, a 15-year-old is generally mature enough to consent to a guardian acting on their behalf in relation to an access application.
11. In particular, the Deputy Commissioner drew on the following guidance:
 - Guidance from the Office of the Australian Information Commissioner states: '[i]f it's not practical for an organisation or agency to assess the capacity of individuals on a

case-by-case basis, as a general rule, an organisation or agency may assume an individual over the age of 15 has capacity, unless they're unsure'.³

- In discussing capacity, consent and mature minors, the Office of the Victorian Information Commissioner (**OVIC**) notes:⁴

Where the personal information concerns a child or young person, he or she may be able to exercise their rights under the [Privacy and Data Protection Act 2014 (Vic)] independently of a parent or guardian if he or she has sufficient understanding and intelligence to give valid consent (the 'Gillick competence'). The principle of 'Gillick competence' was stated in the English House of Lords in *Gillick v West Norfolk AHA* (1986) AC 112: 'A minor is, according to this principle, capable of giving informed consent when he or she "achieves a sufficient understanding or intelligence to enable him or her to understand fully what is proposed".'

- OVIC further states:

The European Union's General Data Protection Regulation ... provides an example of how other jurisdictions approach mature minor consent. Article 8 sets out the conditions applicable to a child's consent to the processing of their personal data in relation to information society services offered directly to a child. The default age at which a person is no longer considered a child is 16, however it allows that limit to be adjusted by member states anywhere between 13 and 16...

12. The guidance recognises a child's capacity to consent should be assessed based on their maturity rather than age alone. However, in circumstances where an agency is not able to deal directly with the child, it is justified in relying on the child's age as an indicator the child may have the capacity to consent, and in seeking evidence of such consent before accepting an application under section 98.
13. Ultimately, however, the Deputy Commissioner's decision did not need to rely on age alone. It became clear following the complainant's further submissions medical professionals had determined the child to be competent to make decisions about the disclosure of the child's medical records and the child did not consent to the disclosure.
14. In the absence of that consent, it was clear the complainant had not made a valid access application on behalf of the child pursuant to section 98.

Agency not required to substantiate capacity assessment or non-consent

15. The complainant also argued the agency was required to substantiate the factual basis, scope and reliability of the underlying capacity assessment in order to rely on section 98.
16. The Deputy Commissioner did not agree. While an agency must provide reasons sufficient to explain the basis for its decision, that does not necessarily require it to establish the correctness of the underlying capacity assessment made by medical professionals as a separate matter. The capacity assessment is not, in itself, the decision under consideration. Rather, it is a factual matter informing the agency's assessment of whether the application is genuinely being made "on behalf of" the child.
17. The Deputy Commissioner also noted a conceptual difficulty with requiring the agency to substantiate the capacity assessment. The material supporting the capacity assessment may itself contain the child's personal information. It would be circular to treat the complainant's asserted authority to obtain the child's personal information as giving rise to an entitlement to further personal information about the child for the purpose of establishing that authority.
18. This does not mean an agency's capacity determination cannot be scrutinised on review. The issue on review may include whether the agency had a proper basis for its decision and whether its reasons adequately explain the relevance of a child's capacity. It does not

³ <https://www.oaic.gov.au/privacy/your-privacy-rights/more-privacy-rights/children-and-young-people>.

⁴ https://ovic.vic.gov.au/book/key-concepts/#Elements_of_consent

follow, however, that an agency is required to prove the correctness of the underlying capacity assessment as a separate step.

Family Court Order did not mandate disclosure

19. The complainant submitted an Order of the Family Court of Australia (**Order**) authorised them to obtain information from healthcare providers, including documentary information where lawfully accessible.
20. The Deputy Commissioner reviewed the Order and concluded it set out the parents' responsibility for the child and, among other things, the things they (including the complainant) must do, must not do and may do. The language of the Order was permissive. The complainant was at liberty to contact and obtain any information required from any medical or health practitioner regarding the child. It also authorised the complainant to discuss the child's healthcare with treating medical practitioners. It did not, however, order or require medical practitioners or the agency to provide the complainant with information and documents.

Background

21. In January 2026, the complainant applied to the agency for access to medical records relating to their child over a certain period.
22. On the application form, the complainant indicated the application was:
 - made on behalf of the child and for information about the child; and
 - for "personal information" (no application fee was paid and therefore third-party information would fall outside the scope of the application).
23. Following an enquiry by the agency, in March 2026, the complainant indicated he did not agree to exclude staff names and position titles from the scope of the access application. As the agency was by that stage likely to refuse access to the documents in full, it did not seek payment of the application fee.
24. In April 2026, the agency decided to refuse access to the requested documents (**initial decision**). Although the reasons are somewhat unclear, it appears the agency accepted the application as made under section 98(a) but proceeded to apply the exemption in clause 3 of Schedule 1 to the FOI Act on the basis the requested documents related to the personal information of an individual other than the applicant.
25. The complainant then applied to the agency for internal review of the initial decision.
26. In May 2026, the agency "confirmed" the initial decision on internal review, although on the basis the access application was not validly made under section 98(a) of the FOI Act.
27. On 10 May 2026, the complainant applied to the Information Commissioner for external review of the agency's decision.
28. On 3 July 2026, the Deputy Commissioner wrote to the parties indicating he considered the only issue in dispute was the agency's decision to refuse to deal with the access application under section 98 of the FOI Act. The correspondence also set out to the parties the Deputy Commissioner's preliminary view of the matter, which was that the agency's decision was justified.
29. On 6 July 2026, the complainant made further submissions in response to the Deputy Commissioner's preliminary view. In particular, the submissions highlighted the agency had in fact relied on a capacity assessment and non-consent of the child in reaching its decision.