

'FMG' and Queensland Police Service

(S 176/98, 9 April 1999, Information Commissioner Albietz)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

1.- 4. These paragraphs deleted.

REASONS FOR DECISION

Background

5. On 24 April 1998, in dealing with an FOI access application to the Queensland Police Service (the QPS) by FMG, I found that audio tapes (and corresponding transcripts of interview) between the QPS and two of FMG's children (N and A) were exempt matter under s.44(1) of the FOI Act (see my decision in external review application no. S 69/97). In the circumstances of the case, I found that the matter in issue concerned the personal affairs of N, A, and their mother, and that disclosure to FMG would not, on balance, be in the public interest. I made that finding notwithstanding that FMG had supplied copies of consents signed by N, A, and their mother. I found that A, being 11 years of age, was not capable of having sufficient understanding of the issues and consequences of giving a consent, and that on the material available to me, it would not be proper to rely on the purported consent of N as significantly reducing the weight of the privacy interest attaching to the matter in issue which concerned his personal affairs.
6. On 29 July 1998, the QPS FOI Unit received separate applications apparently signed by N and A, each seeking access to the audio tape and transcript of their respective interviews. Although I accept that the application forms were signed by N and A, the details appear to have been written and/or completed by another person, presumably FMG. By letters dated 3 August 1998, Inspector S A Trappett of the QPS informed N and A of his decision to refuse access to the documents sought. On 11 August 1998, the QPS received a letter seeking internal review of both decisions which was unsigned but apparently sent by FMG "*on behalf of [his] natural children N ... and A*".
7. By letter dated 25 August 1998, after having had a telephone discussion with FMG, Inspector Trappett informed FMG that he had reconsidered his decision but again determined that the documents sought were exempt matter. On 28 September 1998, the QPS received an application for internal review, signed by FMG, N and A, and their mother. By letter dated 9 October 1998, Assistant Commissioner G J Williams wrote to FMG informing him of his decision to affirm Inspector Trappett's decision.

8. On 30 October 1998, I received an application signed by FMG, N and A, and their mother, seeking external review. It is not totally clear from the documents whether external review was sought in relation only to the application signed by N or in relation to both applications. However, in order to resolve the matter, I will deal with both applications in this external review.

External review process

9. By letter dated 9 February 1999, the Deputy Information Commissioner wrote to N and A expressing concern as to whether the documents signed by them were genuine, freely-made applications for documents to which they wished to obtain access. The Deputy Information Commissioner also indicated his preliminary view that the documents qualified for exemption, in any event, under exemption provisions other than s.44(1) of the FOI Act. The Deputy Information Commissioner invited N to lodge evidence or written submissions to persuade the Information Commissioner that his application was a genuine application made on his own behalf and in his own interests. He did not extend that invitation to A because (at 12 years of age) he considered her to be too young to be capable of making an application in her own right, without the benefit of independent advice.
10. In response, I received a two page submission from FMG dated 10 March 1999, which contained numerous attachments. Among the attachments was a handwritten note which I accept is in N's handwriting and signed by him. It read:

I, N, would like the tapes to show that ... voice is on them. Nobody forced me to get them.

Were the applications freely and genuinely made by N and A?

11. Bodies like the QPS and the Information Commissioner have a responsibility to be astute to protect the rights and interests of children, in situations where an adult may be seeking to manipulate a child's use of his/her legal rights for the adult's own purposes. I must be satisfied that a child applicant really wants to seek access to the relevant documents for himself/herself, and that the child is not just applying in response to pressure or influence exerted by a parent or another adult. I said at paragraph 16 of my decision dated 24 April 1998:

16. ... A good deal of caution is indicated in situations where 'consents' by minors to the disclosure of information concerning them are provided by an adult who is in a position to exert influence over the minors, and the interests of the adult in gaining access to the information may be at odds with legitimate privacy interests of the minors.

12. It is clear to me from the conduct of these matters to date that FMG is the driving force behind the access applications. Following my finding on 24 April 1998 that the documents in issue were exempt from disclosure to FMG under s.44(1) of the FOI Act

(notwithstanding that he had supplied signed consents by N and A), fresh access applications were lodged in the names of N and A. I consider that this was a gambit devised by FMG in an attempt to circumvent the legal grounds which prevented him obtaining access to the same documents in his previous application.

13. I have already referred to the fact that the access applications, although signed by the children, were prepared by another person. In addition, the application for internal review dated 11 August 1998 was written in FMG's name, although stated to be sent on behalf of the children, and both the application for internal review dated 19 September 1998 and the application for external review were signed by FMG, the children and their mother. FMG has also made all telephone contacts with both the QPS and my office in relation to the applications. In a telephone conversation with a member of my staff on 24 February 1999, FMG stated that his family was working together and that this was a concept that had not been understood. That entire conversation was conducted on the basis that FMG wanted access to the documents for use in potential legal proceedings. Further, FMG's letter dated 10 March 1999 nowhere purports to be written on behalf of N or A but uses a letterhead incorporating the names of all members of FMG's family. The substance of the letter is a defence of FMG's efforts over the last few years to pursue matters concerning the investigation. At one point he states:

That I have worked for ... years is obvious. That I have worked for all my family as one is just as visible. That I have worked tirelessly and relentlessly for all this time is clearly evident.

14. On the material available to me, I am not satisfied that N or A wish, or have ever wished, to obtain access to the documents in issue for themselves. Rather, the bulk of the material before me suggests that it is FMG who seeks to have access to the documents. I am loathe to discount the privacy interests which a child would otherwise be entitled to have considered under s.44(1) of the FOI Act, without being convinced that the child is freely making an application for his/her own purposes or interests. On the material before me, I am not satisfied that either of the initial access applications was a genuine application by N or A for his/her own benefit. If they, and the ensuing applications for review, can be regarded as valid applications at all (as to which I have significant doubts), then I consider that they must be taken to be applications by, or on behalf of, FMG.
15. I do not consider that the present applications take the matter any further than the point at which I gave my decision on 24 April 1998 (in application for review no. S 69/97). The new applications deal with the same documents that were in issue in the earlier application, which documents were found to be exempt from disclosure under s.44(1) of the FOI Act.

16. Section 77(1) of the FOI Act provides:

77.(1) The commissioner may decide not to review, or not to review further, a decision in relation to which an application has been made under section 73 if the

commissioner is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance.

17. I consider that the present application is vexatious, misconceived and lacking in substance. There has been no change in the circumstances since my decision dated 24 April 1998 which justifies further review of the status of the documents which FMG seeks. I have therefore decided not to proceed further with this external review.
18. Had it been appropriate to proceed to deal with this application for review, it would have been necessary to deal with the grounds for exemption discussed in the Deputy Information Commissioner's letter dated 9 February 1999. However, given my above findings, I do not propose to consider those issues.

DECISION

19. Under s.77(1) of the FOI Act, I decide not to review further the decision of Assistant Commissioner G J Williams on behalf of the QPS dated 9 October 1998.