

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 170 of 1993
(Decision No. 94031)

Participants:

"H"
Applicant

- and -

LEGAL AID OFFICE (QUEENSLAND)
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - applicant seeking information relating to an assessment of the merits of his opponent's legal aid application in a custody and access dispute - whether matter in issue concerns the personal affairs of a person under s.44(1) of the *Freedom of Information Act 1992 Qld* - whether disclosure of the information would, on balance, be in the public interest.

Freedom of Information Act 1992 Qld s.6, s.14, s.28, s.44(1), s.44(2), s.46(1)(b), s.88(2)

"B" and Brisbane North Regional Health Authority, Re (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported)

Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (Information Commissioner Qld, Decision No. 93002, 30 June 1993, now reported at (1993) 1 QAR 60)

Stewart and Department of Transport, Re (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported)

DECISION

I affirm that part of the decision under review (being the decision made on behalf of the respondent by Ms E Hayward, dated 10 August 1993) by which it was determined that the following matter in the respondent's File no. B90A00508 is exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld*:

- (a) page 8 of Part 2 of the File;
- (b) the matter on page 52 of Part 2 of the File which is reproduced from page 8;
- (c) the first sentence of the paragraph appearing under the heading "Assessment" on page 11 of Part 2 of the File; and
- (d) the address which appears after the word "address" on pages 20, 25 and 30 of Part 1, page 285 of Part 3, and page 148 of Part 4 of the File.

Date of Decision: 5 December 1994

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F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

"H"
Applicant

- and -

LEGAL AID OFFICE (QUEENSLAND)
Respondent

REASONS FOR DECISION

Background

1. The applicant seeks review of a decision by the Legal Aid Office (Queensland) (Legal Aid) to refuse him access to certain information contained on the applicant's legal aid files. That information relates to the applicant's application for legal aid in respect of a dispute between himself and the mother of his ex-nuptial son (the mother will be referred to in this decision as Ms X) concerning Ms X's rights of access to her son. The applicant applied for legal aid to enable him to bring legal proceedings to obtain legal custody of his son and also for an order for supervised access visits by Ms X. On the occasion in issue, the applicant was refused legal aid to seek the court orders he desired to obtain. On the other hand, Ms X applied for, and was granted, legal aid to apply to the court for a formal access order in respect of her son.
2. By letter dated 4 June 1993, the applicant requested access to all his files held by Legal Aid. In a decision dated 16 July 1993, Ms R Coxon of Legal Aid advised the applicant that one of his files had been destroyed, but that he was to have full access to all of the files still held by Legal Aid, with the exception of some matter which was claimed to be exempt under either s.44(1) or s.46(1)(b) of the *Freedom of Information Act 1992 Qld* (the FOI Act).
3. The applicant applied for internal review of Ms Coxon's decision. In his letter dated 25 July 1993, the applicant argued that:

Your excuse for this refusal is that the said documents contain information of a personal nature relating to the mother.

This excuse is obviously just a cover up for your real reason for refusing me access to those documents.

As well as other personal details of the mother the documents in question would also show exactly how much Legal Aid funding she was given during this case and it is this information that you do not want me to have access to as it would prove to be extremely embarrassing to certain, senior members of your department.

4. The internal review was undertaken on behalf of the respondent by Ms E Hayward, Reviewing Officer - Freedom of Information. By letter dated 10 August 1993, Ms Hayward informed the applicant of her decision to allow him access to a small amount of additional information on three of the documents in issue, but otherwise to confirm the earlier decision by Ms Coxon.
5. On 17 August 1993, the applicant applied to the Information Commissioner for external review of

Ms Hayward's decision. In his letter, the applicant again expressed his belief that the matter claimed to be exempt, if released, would show "the inconsistency in the amount of aid granted to myself as compared to the mother".

The External Review Process

6. This case was initially placed in abeyance for approximately 6 months at the applicant's request while he devoted his time to court proceedings in which he was involved. After the case was reactivated, a series of consultations occurred with the respondent, Ms X, and Ms Shanna Quinn, a professional social worker, who had undertaken a merit assessment report for Legal Aid in respect of the applications made by the applicant and Ms X for legal aid to pursue orders relating to custody and access. As a result of concessions made by Legal Aid and Ms X, the matter which had initially been claimed to be exempt under s.46(1)(b) of the FOI Act was released to the applicant. Further, certain other matter originally claimed to be exempt under s.44(1) of the FOI Act was also released to the applicant by Legal Aid, even though it was probably technically exempt matter. I note and appreciate the spirit of co-operation displayed by Legal Aid with a view to reducing the extent of the matter remaining in issue.

7. As a result, only the following matter in Legal Aid File no. B90A00508 remains in issue:

Ms X's residential address, which has been deleted from pages 20, 25 and 30 of Part 1, page 285 of Part 3, and page 148 of Part 4 of the File. These pages have otherwise been released to the applicant.

Pages 8 and 11 of Part 2 of the File, which are two pages of a merit assessment report dated 31 August 1991 by Ms Quinn. The matter in issue on page 11 comprises one sentence which involves Ms Quinn's assessment of Ms X. Page 8 records Ms Quinn's conclusions as to the merits of Ms X's application for legal aid and has been claimed to be entirely exempt;

Page 52 of Part 2 of the File is the second page of a three-page letter dated 20 November 1991 from Mr R Beer, Assistant Director-Assignments Division of Legal Aid, to Ms C Webster, the Electoral Secretary for the Premier, the Honourable Mr Wayne Goss. The matter in issue on page 52 reproduces the conclusions reached by Ms Quinn concerning Ms X's application for legal aid, i.e. it is identical to the matter in issue on page 8 of the same file, as referred to above.

8. By letter dated 8 August 1994, I communicated to the applicant my preliminary view that the matter which remained in issue at that time is exempt matter under s.44(1) of the FOI Act, and I set out reasons in support of that view. The applicant was invited, should he not accept those preliminary views, to put before me a written submission or evidence, or both, in support of his contention that the matter remaining in issue is not exempt under the FOI Act. By letter dated 23 August 1994, the applicant advised me that the preliminary views communicated to him were not accepted, and he provided written submissions in support of his contention that the matter in issue is not exempt matter under the FOI Act. A summary of those submissions is as follows:

It is in the public interest that the public be made aware of what the applicant terms the "unfair and discriminatory practice" by Legal Aid. It is the applicant's contention that Legal Aid has a policy of giving mothers full and continuous legal aid in custody disputes while not providing the fathers with equal amounts of aid.

The applicant seeks the release of the results of Ms X's application so that they may be compared with his own.

The results of Ms X's application cannot be characterised as her personal affairs.

Details such as Ms X's address are freely available to him.

The application of s.44 of the FOI Act to the matter in issue

9. Subsections 44(1) and (2) of the FOI Act provide as follows:

44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

(2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.

10. In my reasons for decision in *Re Stewart and Department of Transport* (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported), I identified the various provisions of the FOI Act which employ the term "personal affairs" and discussed in detail the meaning of the phrase "personal affairs of a person" (and the relevant variations thereof) as it appears in the FOI Act (see paragraphs 79-114 of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it relates to the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well-accepted core meaning which includes:

family and marital relationships;
 health or ill-health;
 relationships with and emotional ties to other people; and
 domestic responsibilities or financial obligations.

Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, based on a proper characterisation of the matter in question.

11. A finding that certain matter concerns the personal affairs of an individual is not itself decisive as to whether the matter is exempt under s.44(1) of the FOI Act. As pointed out at paragraph 179 of my reasons for decision in *Re "B" and Brisbane North Regional Health Authority* (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported), the public interest balancing test contained in s.44(1) is such that once an initial judgment is made that the matter concerns the personal affairs of a person, then it will have been established that there is a *prima facie* ground of justification in the public interest for non-disclosure of the matter, unless a further judgment is made that the *prima facie* ground is outweighed by other public interest considerations, such that disclosure of the matter in the document "would, on balance, be in the public interest".

Page 8

12. The matter recorded on page 8 comprises Ms Quinn's recommendation concerning the question of whether legal aid should be granted to Ms X, together with Ms Quinn's reasons for making her recommendation. That matter is properly to be characterised as information concerning:

Ms X's application for legal aid for the purposes of a custody and access dispute about an ex-nuptial child of Ms X and the applicant; and
the relationships between members of Ms X's family.
13. That part of the matter in issue which comprises information concerning Ms X's family relationships falls within the core meaning of the phrase "personal affairs". I am of the opinion that information concerning the seeking of legal aid by an individual for a family law matter is information which relates to the private aspects of a person's life and, indeed, also falls within the core meaning of the phrase "personal affairs of a person" as it is essentially information concerning an individual's family relationships. Accordingly, I am satisfied that page 8 concerns the personal affairs of Ms X for the purposes of s.44(1) of the FOI Act. I do not accept the applicant's submission that information concerning the results of Ms X's application for legal aid cannot be characterised as her personal affairs.
14. It is the applicant's contention that release of the details concerning Ms X's application for legal aid is in the public interest. He argues that it is in the public interest that the public be made aware of what he considers to be the "unfair and discriminatory" practices of Legal Aid.
15. I consider that there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government (see paragraph 55 of my decision in *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60) and that, in an appropriate case, this may justify giving an applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress.
16. However, in the present case, the applicant is under a misconception as to the nature of the details recorded on page 8 and the other folios in issue. In both his application for internal review and his letter requesting external review of Ms Hayward's decision of 17 August 1993, the applicant indicated that he wanted to compare the amount of aid he received to that received by Ms X. Further, in several telephone conversations with members of my staff, the applicant has stated that he wants to know the amount of funding (in dollar terms) received by Ms X from Legal Aid. None of the matter which has been deleted from the documents in issue reveals the amount of aid Ms X received from Legal Aid. Nor would I expect that information to be recorded on any of the documents which fall within the terms of the applicant's FOI access application, which was confined to the applicant's own files held by Legal Aid and not Ms X's files. On several occasions during the external review process, members of my staff explained this to the applicant.
17. Even if the matter in issue revealed the amount of aid received by Ms X, I am not satisfied there would be any public interest, of the kind noted at paragraph 15 above, in releasing page 8 to the applicant. The applicant has had access to all the documents held on his files which concern Legal Aid's decision on his application for legal aid. I would have thought that any assessment as to whether he has received fair treatment from Legal Aid may be made from those documents which relate to his own legal aid application. I doubt whether a person's interest in knowing the amount of legal aid received by another individual (albeit an opposing party) would enliven the public interest consideration identified in paragraph 15 above.
18. The applicant is not able to obtain assistance from s.6 of the FOI Act as the information recorded on

page 8 does not concern his personal affairs.

19. In this instance, I am not satisfied that there are any public interest considerations favouring disclosure which out-weigh the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1). I am satisfied that page 8 comprises exempt matter under s.44(1) of the FOI Act.

Page 52

20. As noted at paragraph 7 above, the matter in issue on page 52 is identical to matter in issue on page 8. I find the matter in issue on page 52 to be exempt matter under s.44(1) of the FOI Act for the same reasons given above in respect of page 8.

Page 11

21. Page 11 is the second page of Ms Quinn's merit assessment report. The matter remaining in issue on page 11 comprises the first sentence which appears under the heading "Assessment". That sentence records Ms Quinn's assessment of Ms X's personality, demeanour and her ability as a parent, in the context of a family law dispute over custody and access. I have no doubt that it can only properly be characterised as information concerning the personal affairs of Ms X, for the purposes of s.44(1) of the FOI Act.
22. Again, I am satisfied that there are no public interest considerations favouring disclosure of the matter deleted from page 11 which would outweigh the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1). Accordingly, I find that the first sentence which appears under the heading "Assessment" on page 11 comprises exempt matter under s.44(1) of the FOI Act.

Ms X's address - pages 20, 25, 30, 148 and 285

23. The only matter which remains in issue on pages 20, 25, 30, 148 and 285 is Ms X's residential address where it appears on each of those documents.
24. I considered the issue of whether an individual's name, residential address and telephone number concern their personal affairs for the purposes of the FOI Act at paragraphs 88-90 of my decision in *Re Stewart*. In particular, at paragraph 88, I stated that it was my opinion that the home address of an individual falls within the zone of domestic affairs which is central to the concept of "personal affairs".
25. Ms X's address appears on pages 20, 25, 30, 148 and 285 in conjunction with her name. Consistently with my comments in *Re Stewart*, I am satisfied that Ms X's residential address where it appears on pages 20, 25, 30, 148 and 285 comprises information concerning the personal affairs of Ms X.
26. The fact that Ms X's address may be known to the applicant, or readily available to the applicant, does not affect my task of determining whether that information is exempt under s.44(1) of the FOI Act. I think that a fact of that kind would be relevant, and ought to be taken into account by decision-makers in agencies, when exercising the discretions conferred on them by s.14 and s.28 of the FOI Act (which permit the disclosure to a particular applicant of information which is technically exempt matter under the FOI Act). Those discretions, however, are denied to me in a review under Part 5 of the FOI Act, by virtue of s.88(2) of the FOI Act.

27. I do not think it can be said that there are any public interest considerations favouring disclosure of

Ms X's residential address, which would outweigh the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1). Accordingly, I find that Ms X's address where it appears on pages 20, 25, 30, 148 and 285 is exempt matter under s.44(1) of the FOI Act.

Conclusion

28. During the course of this external review, some of the matter originally claimed to be exempt by Legal Aid was released to the applicant. The appropriate decision, therefore, is that I affirm that part of the decision under review by which it was determined that the following matter in Legal Aid File no. B90A00508 is exempt matter under s.44(1) of the FOI Act:
- (a) page 8 of Part 2 of the File;
 - (b) the matter on page 52 of Part 2 of the File which is reproduced from page 8;
 - (c) the first sentence of the paragraph appearing under the heading "Assessment" on page 11 of Part 2 of the File; and
 - (d) the address which appears after the word "address" on pages 20, 25 and 30 of Part 1, page 285 of Part 3, and page 148 of Part 4 of the File.

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