



## **Decision and Reasons for Decision**

---

**Application Number:** 210498

**Applicant:** RCD

**Respondent:** Department of Child Safety

**Decision Date:** 21 January 2009

**Catchwords:** **FREEDOM OF INFORMATION – section 44(1) – personal affairs of a person other than the applicant – putative grandfather**

### **Contents**

REASONS FOR DECISION .....	2
Summary .....	2
Background.....	2
Decision under review .....	2
Steps taken in the external review process .....	2
Matter in issue .....	3
Findings .....	3
<i>Section 44(1) of the FOI Act</i> .....	3
<i>Personal Affairs Question</i> .....	4
<i>Public Interest Question</i> .....	5
DECISION .....	12

## REASONS FOR DECISION

### Summary

1. For the reasons set out below, I find that the matter in issue in this review is exempt from disclosure under section 44(1) of the *Freedom of Information Act* 1992 (**FOI Act**).
2. The decision under review is affirmed.

### Background

3. By application received by the Department of Child Safety (**Department**) on 27 November 2007 (**FOI Application**), the applicant said:

*... I am interested in any means of following up any departmental information on my father or his carers ...*

4. By letter dated 6 February 2008 (**Original Decision**), Ms Helen Donovan of the Department advised the applicant that one relevant file had been located and she had decided to:
  - partially release two pages pursuant to the provisions of section 44(1) of the FOI Act; and
  - release two pages in full.
5. By letter received by the Department on 19 March 2008, the applicant applied for internal review of the Original Decision (**IR Application**) refusing access to the name of the applicant's putative grandfather which appeared on one page.
6. By letter dated 27 March 2008 (**IR Decision**), Ms Michelle Duckworth of the Department advised the applicant that she affirmed the Original Decision refusing access to the name of the applicant's putative grandfather on the basis that the information related to another person's personal affairs.
7. By letter received 29 April 2008, the applicant applied to the Office of the Information Commissioner (**Office**) for external review of the IR Decision (**ER Application**).

### Decision under review

8. The decision under review is the IR Decision of Ms Duckworth dated 27 March 2008, refusing access to the name of the applicant's putative grandfather on the basis that the information related to another person's personal affairs.

### Steps taken in the external review process

9. Following preliminary consideration of the matter in issue, this Office made enquiries to the Department seeking clarification regarding some of the subject matter in the documents identified as responding to the applicant's FOI Application. The Department clarified these issues.
10. By letter dated 5 December 2008, I notified the applicant of my preliminary view that the matter in issue in this review qualified for exemption from disclosure under section 44(1) of the FOI Act, and invited the applicant to make submissions in respect of this preliminary view.

11. The applicant provided submissions in response to this preliminary view on 7 January 2009 (**Further Submissions**).
12. In making this decision, I have taken the following into account:
  - the FOI Application and Original Decision
  - the IR Application and IR Decision
  - the ER Application
  - the Further Submissions
  - the matter in issue
  - relevant provisions of the FOI Act
  - relevant case law and previous decisions of this Office.

### **Matter in issue**

13. The matter in issue in this review consists of the name of the applicant's putative grandfather, which appears on one document of the Infant Life Protection file, which the Department identified as responsive to the applicant's FOI Application.

### **Findings**

14. Pursuant to section 21 of the FOI Act, a person has a legally enforceable right to be given access under the FOI Act to documents of an agency and official documents of a Minister. This right of access is subject to other provisions of the FOI Act, in particular, section 28 of the FOI Act, which provides that an agency may refuse access to exempt matter or an exempt document, and the provisions of Part 3, Division 2 of the FOI Act, which set out those exemption provisions.

### **Section 44(1) of the FOI Act**

15. Subsections 44(1) and (2) of the FOI Act provides:

#### ***Matter affecting personal affairs***

- (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.*

...

16. Section 44(1) of the FOI Act therefore requires me to consider the following questions in relation to the matter in issue:
  - does the matter in issue concern the personal affairs of a person (other than the applicant) (**Personal Affairs Question**)? If so, a public interest consideration favouring non-disclosure of the matter in issue is established
  - do the public interest considerations favouring disclosure of the matter in issue outweigh the public interest considerations favouring non-disclosure of the matter in issue (**Public Interest Question**)?

## **Personal Affairs Question**

### **What are personal affairs of a person?**

17. In *Stewart and Department of Transport (Stewart)*<sup>1</sup>, the Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' as it appears in the FOI Act. In particular, the Information Commissioner found that information concerns the 'personal affairs of a person' if it concerns 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 and emotional ties with other people
  - domestic responsibilities or financial obligations.
18. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

### **Characterisation of the information in question**

19. The matter in issue in this review consists of the name of the applicant's putative grandfather.
20. While a person's name in isolation does not ordinarily constitute information concerning that person's personal affairs,<sup>2</sup> disclosure of a person's name in the context in which it appears may disclose information concerning that person's personal affairs.<sup>3</sup>
21. As noted above, in *Stewart*, the Information Commissioner found that information about family relationships is personal affairs information.<sup>4</sup>
22. I have considered the matter in issue, in the context in which it appears, and I am satisfied that the matter in issue:
- can be characterised as the applicant's putative grandfather's personal affairs (that is, being named as the father of a child)
  - may be characterised as the personal affairs of other persons mentioned in the document.<sup>5</sup>

---

<sup>1</sup> (1993) 1 QAR 227.

<sup>2</sup> See paragraph 88 of *Stewart*.

<sup>3</sup> For instance, in *Commissioner of Police v District Court of New South Wales and Perrin* (1993) 31 NSWLR 606, Kirby P said at page 624 'In each case where the exemption is invoked, the decision-maker must consider whether disclosure of a name appearing in documents of the agency to which access is requested amounts to the 'personal affairs' of the person named. It is appropriate to go beyond the deleted words and to examine the document as a whole when considering whether the words disclose information concerning the personal affairs of the person named'. See also *Pearce and Queensland Rural Adjustment Authority; Various Landowners (Third Parties)* (1999) 5 QAR 242 at paragraphs 21 – 23.

<sup>4</sup> At paragraph 79.

<sup>5</sup> Including the applicant's father's personal affairs as the putative child of the applicant's putative grandfather.

23. In any case, I am satisfied that the matter in issue concerns the personal affairs of a person other than the applicant.

***Public Interest Question***

24. As I am satisfied that the matter in issue clearly concerns the personal affairs of a person other than the applicant, section 44(1) of the FOI Act requires me to determine whether there are sufficient public interest considerations favouring disclosure of the matter in issue to justify a finding that disclosure of the matter in issue would on balance, be in the public interest. This involves a weighing up of any public interest considerations favouring disclosure against public interest considerations favouring non-disclosure.
25. The way in which section 44(1) of the FOI Act is worded means that where information is determined to be information concerning the personal affairs of a person other than the applicant, the information is, prima facie, exempt from disclosure. Only if disclosure of the information would, on balance, be in the public interest is the information not exempt under section 44(1) of the FOI Act.
26. The 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one which is common to all members of the community, or a substantial segment of them, and for their benefit. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of an individual in a particular case.

**Public interest considerations that favour disclosing the matter in issue**

27. An applicant's reasons for seeking access to documents under the FOI Act are not usually relevant. However, they may assist in identifying public interest considerations favouring disclosure of the matter in issue. I have carefully considered the ER Application and the Further Submissions, on this basis.
28. I have summarised the applicant's submissions into the following points:
- citizens have a right to access information held by government
  - government is accountable for the performance of their functions
  - the applicant has a justifiable need to know the information
  - other members of the applicant's family have a need to know the name of the applicant's putative grandfather<sup>6</sup>
  - the sensitivity of the information has decreased with time
  - there is no other source of information.

29. I have considered each of these points.

***Access to information held by government***

30. In the ER Application the applicant submitted:

---

<sup>6</sup> For emotional and health reasons.

*The WA Supreme Court, Martin CJ judgement 20.3.08 (WASC39) concerning the WA State Administrative Tribunal and WA Newspapers breaks new ground in FOI decision making. The judgment emphasises the fundamental role of FOI in a democratic society.*

*Article 8 of the UN Convention ratified by Australia recognises broad rights of access to personal information in childcare decision making.*

...

*Adoption laws increasingly recognize the right of adopted children to know their primary carers.*

...

31. In the Further Submissions, the applicant submitted:

*I reiterate that Adoption, Redress and Mandatory reporting of Child Abuse which are rapidly developing areas al enshrine openness to significant family networks which the A/Commissioners decision does not take full account of. It sees no positive possibility for human growth in the divulging of the information.*

32. In summary, the applicant suggested that changing community and legal standards support disclosure of the applicant's putative grandfather's name. The applicant also raised Article 8 of the *Convention on the Rights of the Child* (**Article 8**) and the information access provisions of the *Adoption of Children Act 1964* (Qld) (**ACA**).

33. Article 8 provides that a State will respect the rights of a child to preserve his or her identity, including nationality, name and family relations as recognised by law without *unlawful* interference. I note that the issue of preservation of a child's identity usually arises either in the context of migration/detention or adoption.

34. With respect to the issue of adoption, I acknowledge the findings of the *National Inquiry into the Separation of Aboriginal Families* and I note the statement<sup>7</sup> by the Minister for Child Safety that "*the form and purpose of adoption has reflected society's values about families and the rights and interests of children at different times in history.*"

35. I acknowledge that the public interest in persons having access to information held by government is a general public interest consideration favouring disclosure of information. However, the Information Commissioner has stated that this public interest consideration carries less weight when it concerns personal information provided to government by a private individual rather than information held by government about government.<sup>8</sup>

36. I also note that the right to access information held by government under the FOI Act is subject to the application of the exemption provisions set out in Part 3, Division 2 of FOI Act.

37. Taking into account all of the information available to me, including Article 8 and the access to identifying information provisions in the ACA, I am satisfied that:

- there are no allegations of *unlawful interference* with a child's identity currently before me which would invoke Article 8
- as there was no adoption, the relevant provisions of the ACA have no application

---

<sup>7</sup> In *Future Adoption Laws for Queensland*.

<sup>8</sup> *CSX and Department of Child Safety* (Unreported, 21 December 2007) (**CSX**) at paragraph 44.

- the name of the applicant's putative grandfather is personal affairs information provided to government by an individual
- little weight should be afforded to this public interest consideration in the circumstances.

### **Accountability of government**

38. In the ER Application, the applicant submitted:

*There is evidence my father was abused while registered under the 1905 Infant Protection Act.*

*There is evidence my putative grandfather described in Ms Donovan's decision may have been indigenous. Pope John Paul II in his response to the Synod in Oceania, 'Ecclesia in Oceania' (2001) said 'whenever the truth has been suppressed by governments and their agencies wrongs need to be acknowledged'.*

*... The Queensland police failed in their duty to my father when they administered the act of 1905 concerning infant protection.*

39. The applicant submitted in both the FOI Application and ER Application that his putative grandfather may have been indigenous, and in his Further Submissions, indicated that his father indentified with indigenous people throughout his life (although acknowledged that there may be no evidence of his father's indigenous identity).

40. I have interpreted these submissions generally in support of the public interest in the accountability of government for the performance of its functions.

41. Taking into account all of the information available to me, I am satisfied that:

- in the context of the document in which the matter in issue appears, release of the name of the applicant's putative grandfather would not enhance the accountability of government
- little or no weight should be afforded to this public interest consideration in the circumstances.

### **Justifiable 'need to know'**

42. As noted above, a public interest consideration is generally one which is common to all members of (or a substantial segment of) the community, rather than matters that concern purely private or personal interests.

43. However, as the Information Commissioner noted in *KBN and Department of Families, Youth and Community Care (KBN)*:<sup>9</sup>

*... in an appropriate case, there may be a public interest in a particular applicant having access to information which affects or concerns that applicant to such a degree as to give rise to a justifiable 'need to know' which is more compelling than for other members of the public.*

44. In summary, the applicant submits in his ER Application and Further Submissions that:

---

<sup>9</sup> (1998) 4 QAR 422 at paragraph 56. I noted that the circumstances in *KBN* differed from those in the present review. In *KBN*, the matter in issue had been held to concern the personal affairs of both the putative father and the applicant. This is not the case here.

- his physical and emotional health and rehabilitation is adversely affected by the name of his putative grandfather being withheld
- his putative grandfather's deception had a significant negative impact on the applicant's father, and resulted in physical and emotional violence towards the applicant and other persons in the applicant's family
- this has affected the applicant significantly, including that he has experienced lifelong depression, and that his sense of identity has been affected
- any healing of the physical and emotional effects of this violence is prejudiced by the withholding of information about his putative grandfather.

45. I acknowledge the applicant's strong desire to access the name of his putative grandfather and his submission that the information affects him to a great extent.

46. Taking into account all of the information available to me, I am satisfied that:

- the applicant's interest in obtaining access to the matter in issue is more compelling than the interest of members of the general public
- the applicant's need to know the information constitutes a public interest consideration favouring disclosure of the matter in issue to the applicant
- the applicant's justifiable need to know must be weighed in the balance with other competing public interest considerations, and the privacy interests of the applicant's putative grandfather (and others mentioned in the relevant document)
- in other words, the weight which can be attributed to this public interest consideration favouring disclosure is limited somewhat by the fact that the name of the applicant's putative grandfather concerns the personal affairs of person/s other than the applicant<sup>10</sup>
- this public interest consideration should be attributed some weight in the circumstances.

***Extended family have a need to know***

47. In his FOI Application, the applicant said:

*My reason for enquiring is that the half-nephews and nieces ... cannot ascertain their health status through any kind of family history*

and in the ER Application submitted:

*The other putative grandchildren ... of my putative grandfather are affected in emotional and physical health life chances by not knowing the identity of their grandfather. They support any further appeal.*

48. In the applicant's Further Submissions, the applicant indicated that following receipt of my preliminary view letter, he consulted widely with persons he referred to as 'descendants of his putative grandfather', and referred to each of these members by name. The applicant went on to say:

*While they are not legally blood relatives they have been deeply affected by the circumstances of my father's birth. They have, like me sought throughout life to find the*

---

<sup>10</sup> In other words, the circumstances in this external review differ from those considered in the decisions of *KBN* and *CSX*. In those cases, the matter in issue also concerned the personal affairs of the FOI applicant.



*identity of my putative grandfather for the reasons I earlier outlined. Their identity has been spoiled like mine and my fathers.*

49. In considering a submission that a person may need identifying information to obtain relevant medical information, the Information Commissioner has stated that it 'would be a rare case' in which a consideration of this kind would warrant substantial weight in applying the public interest balancing test because in the absence of any confirmation of paternity, there is no proof of a biological relationship.<sup>11</sup>
50. Taking into account all of the information available to me, I am satisfied that:
- there is no evidence before me of a biological relationship between the persons the applicant refers to as the 'other putative grandchildren' and the person identified as the applicant's putative grandfather (the applicant acknowledges that this is the case)
  - in the absence of this evidence, the interest of the 'other putative grandchildren' does not constitute a public interest consideration warranting substantial weight
  - in the circumstances, little or no weight should be afforded to this public interest consideration.

***Sensitivity of information has decreased with time***

51. In the ER Application, the applicant submitted:

*There was a substantial mistake about my age in the judgment of Ms Duckworth.*

*No one could be adversely affected now after ninety three years by the information being released about my putative grandfather.*

52. In *KBN*, the Information Commissioner considered whether:

- the sensitivity of information could decrease with time
- the applicant's age had any bearing on the sensitivity of information.

53. Relevantly, the Information Commissioner noted:

- in a particular case, the age of the documents in issue may be a factor in determining the weight to be accorded to the public interest in safeguarding the privacy of personal affairs information, however, given the nature of the matter in issue (which in *KBN* was the name of the applicant's putative father) which had not been confirmed or acknowledged to be accurate, the sensitivity of that information had not diminished to any significant degree, despite the passage of time<sup>12</sup>
- the age of the applicant, did not to any significant degree, affect the continuing sensitivity of the matter in issue.<sup>13</sup>

54. Taking into account all of the information available to me, I am satisfied that this public interest consideration should be afforded little or no weight in the circumstances.

---

<sup>11</sup> *KBN* at paragraphs 60 – 61.

<sup>12</sup> See *KBN* at paragraphs 32 – 34. (In fact, the sensitivity of information may increase over time: *CSX* at paragraphs 70 – 72).

<sup>13</sup> See *KBN* at paragraphs 35 – 37.

### **No other source of information**

55. In his ER Application, the applicant submitted:

*I have made exhaustive enquiries over 40 years to establish the identity of my putative grandfather. I can't see how other means of finding the identity could be used (Duckworth op cit)*

56. The relevant part of the IR Decision to which the applicant referred states:

(c) *Department as the only source of information – the applicant has not stated whether or not the identity of the putative grandfather could be obtained from another source which would reduce the weight which would be attached to the interests of privacy of the putative father*

57. On the information available to me, it is evident that:

- this is an argument that goes *against* disclosure of the matter in issue
- if the name of the applicant's putative grandfather could be obtained from another source, the weight of the privacy interest in that name would be reduced (in particular, if the information was stated in a public record)<sup>14</sup>
- given the applicant's submission that the identity of his putative grandfather cannot be obtained from any other source, the public interest in preserving the privacy of the individual is not affected
- no weight should be attributed to this submission (as a public interest consideration favouring disclosure) in the circumstances.

### **Public interest considerations favouring non-disclosure**

#### ***The public interest in protecting personal privacy***

58. I am required to balance any public interest considerations favouring disclosure of the applicant's putative grandfather's name against the public interest considerations favouring non-disclosure of the information, including the inherent public interest in not disclosing information held by government which concerns the personal affairs of a person other than the FOI applicant.

59. As set out above, the relative weight accorded to the public interest in personal privacy depends on the particular circumstances of the case.

60. In external reviews involving applications for access to the putative name of an applicant's father (in the case of adoption), this Office has found that:

*Information regarding conception, pregnancy, infertility, parentage and family dynamics is very personal in most circumstances, particularly so in circumstances involving adoption. This is because:*

- (a) *information regarding adoption may include highly personal information regarding the circumstances that resulted in adoption, including for example, divorce, abandonment, widowhood, sexual assault, ex-nuptial birth, orphaned children and/or poverty*
- (b) *the circumstances above often were, and may remain, a source of apprehension, shame and/or social stigma.*<sup>15</sup>

---

<sup>14</sup> See *KBN* at paragraphs 44 – 45.

61. Although the matter in issue in this review does not concern circumstances of adoption, I am satisfied that many of the highly personal issues mentioned above may be relevant.
62. I also note that recent decisions of this Office suggest that with time, the sensitivity of such information may increase, rather than decrease, despite changing community attitudes.<sup>15</sup> This is even more likely to be the case where the putative father of a child is deceased (which is likely here, given the age of the information), as that person is unable to acknowledge or challenge his identification as the putative father.
63. Taking into account all of the information available to me, I am satisfied that:
- I have no evidence before me:
    - that the person named as the child's father in the Infant Life Protection file acknowledged paternity
    - of any independent confirmation of the veracity of the information concerning the person named as the child's father in the Infant Life Protection file
  - there is a strong privacy interest inherent in being named as the putative father of a child particularly in circumstances where there is no independent evidence, apart from that of the mother of the child, that the individual named is the child's father
  - in the circumstances, significant weight should be attributed to the public interest in maintaining the privacy interest in the matter in issue.

#### **Summary - public interest balancing test**

64. I have carefully weighed the public interest considerations which favour disclosure against those which favour non-disclosure of the matter in issue.
65. While I acknowledge in a preliminary sense that there are public interest considerations which favour disclosure, including that the applicant has expressed a strong need to know this information, I am satisfied that the public interest in protecting personal privacy significantly outweighs those public interest considerations which favour disclosure.
66. In his Further Submissions, in response to the preliminary view that the strong public interest consideration in protecting the privacy of the personal affairs information of others outweighed all other public interest considerations favouring non-disclosure of the information, the applicant said:

*We are at a loss to understand how the public interest is served by substantially ignoring the rights of the ... family who took responsibility for my father's care and assiduously protecting the rights of my putative grandfather's kith and kin ... [there] is no evidence of outstanding moral character which the law should assiduously protect over the rights of as family who cared as best they could in a situation not of their making ...*

---

<sup>15</sup> CSX at paragraph 56; *RKE and Department of Child Safety* (Unreported, 31 January 2008) at paragraph 66; and *RCP and Department of Child Safety* at paragraph 73 (Unreported, 31 January 2008).

<sup>16</sup> CSX at paragraphs 66 – 73.

67. The Further Submissions go on to assert that the preliminary view:

- protects the rights of his putative grandfather '*over the rights of the carers and their collaterals who never were compensated for what they did as they could have been had my putative grandfather cleared his name at the time of the events*'
- does not consider the applicant's rights.

68. I note that the public interest balancing test does not require an assessment of the applicant's relative merit to access the information, having regard to character or 'rights'. Rather, I am required to consider all public interest considerations which favour disclosure, and those that favour non-disclosure. I am satisfied that the public interest in protecting the privacy of the personal affairs information of a person other than the applicant, who in the circumstances of this case is the putative grandfather of the applicant, outweighs all public interest considerations which favour disclosure.

## **DECISION**

69. I find that the matter in issue in this review is exempt from disclosure under section 44(1) of the *Freedom of Information Act 1992* (Qld).

70. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

---

**F Henry**  
**Assistant Commissioner**

**Date: 21 January 2009**