

"RSL" and Department of Families, Youth & Community Care

(S 69/95; 22 December 1998, Information Commissioner)

(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. The applicant seeks review of a decision by the Department of Families, Youth and Community Care (the Department) under the FOI Act to refuse her access to matter in documents held by the Adoption Section of the Department relating to the adoption of the applicant's daughter, [N], and relating to [N's] adoptive parents. The Department contends that access to some documents should be refused under s.22(e) of the FOI Act, and that all of the matter in issue is exempt matter under s.44(1) of the FOI Act.
6. By letter dated 8 June 1994, the applicant applied to the Department for:

all copies of documents relating to the adoption, and any subsequent documents held by the Adoption Section... .

Some of the things that I require are how the parents specifically were chosen to have my daughter? What is the selection criteria for adopting parents? The date the child went to the parents, The date of the adoption order itself. Copy of the veto that my daughter signed.
7. By letter dated 13 July 1994, Ms Hughes of the Department informed the applicant that an Infant Life Protection record, and an Adoptions file, had been identified as falling within the terms of the access application. Ms Hughes decided to grant full access to the Infant Life Protection record. In relation to the Adoptions file, full access was granted to 32 folios. Access was refused to 18 folios and to parts of a further 6 folios, relying upon s.22(e) of the FOI Act as the ground for refusal.
8. By letter dated 8 August 1994, the applicant applied for internal review of Ms Hughes' decision, in accordance with s.52 of the FOI Act. That application was subsequently supported by a letter from her solicitors dated 18 November 1994. Apparently, a number of extensions of time were provided to the applicant to submit material through her solicitors. The solicitors' letter noted that the Department had not provided any basis of exemption for denying access to parts of six folios but, in the event that the Department sought to rely upon s.44(1) of the FOI Act, set out a number of arguments favouring disclosure of the deleted portions of those folios.
9. The internal review was conducted by Mr D A C Smith. In a decision dated 27 January 1995, Mr Smith affirmed the initial decision to refuse access to 18 folios under s.22(e) of the FOI Act, and also found that those 18 folios were exempt under s.44(1) of the FOI Act. In relation to the six folios to which access had been denied in part, Mr Smith accepted the applicant's argument that s.22(e) could not be relied upon to refuse access to parts of documents, but decided that the relevant parts of documents were exempt matter under s.44(1) of the FOI Act.

10. By letter dated 27 March 1995, the applicant, through her solicitors, applied for review, under Part 5 of the FOI Act, of Mr Smith's decision.

External review process

11. I obtained and examined the matter in issue. The 18 folios to which Mr Smith refused access under s.22(e) and s.44(1) of the FOI Act are as follows:

Folio	Description
2-3 and 5	Departmental home visit reports on prospective adoptive parents dated 7 June 1973 and 28 June 1974
9	Application to Adopt a Child dated 12 June 1975
14	Letter dated 16 March 1973 in support of Form 5 application
15	Application for Names to be Included in Adoption List (Form 5)
16	Departmental Minute enclosing folios 14 and 15
17-18	Copy of 2-3
19	Departmental Minute following up "old" adoption files dated 21 November 1978, with annotation dated 23 November 1978
20-21	Departmental letters to adoptive parents dated 4 July 1975 and 26 October 1978
22	Duplicate of folio 19 with short handwritten annotation
24	Short Extract of Birth Register
40-43	Objection to Contact/Disclosure of Identifying Information Form pursuant to s.39AA(3) of the <i>Adoption of Children Act 1964</i>

The six folios from which matter was deleted on the basis of s.44(1) of the FOI Act are as follows:

Folio	Description
1	Departmental checklist re Adoption Order
4	Departmental letter to adoptive parents dated 10 June 1975
10	Copy of 1
13	Departmental record of conversation
23	Memorandum of Adoption Order
28	Internal Departmental Inquiry Form re reply to applicant's request for information

I also obtained copies of the 32 folios to which full access was granted. They include a completed questionnaire form including remarks about the applicant's attitude to the consent to the adoption; a Consent to Adoption Form signed by the applicant on 2 June 1975; and subsequent correspondence between the Department and the applicant dating from September 1985 until shortly before the making of the relevant FOI access application.

12. It appears that the Adoptions Section of the Department attempted to be helpful, within the restrictions imposed by the *Adoption of Children Act 1964* Qld (the AC Act) in providing the applicant with as much information as possible. The Department was unable to satisfy the applicant's request made under the AC Act for identifying information because, at the time of [N's] eighteenth birthday (which under s.39AA(5) of the AC Act is the relevant time from which an objection takes effect), it had on file an Objection to Contact/Disclosure of

Identifying Information Form (the Objection) made by [N] pursuant to s.39AA(2)(b) of the AC Act.

13. Among the applicant's concerns are that the Department did not provide her with counselling at the time that she gave her Consent to Adoption or when she considered revoking it, and that it did not follow the correct procedure regarding the obtaining of the Adoption Order. The applicant has also questioned the validity of [N's] Objection (folios 41-43) on the basis that [N] may not have reached the statutory minimum age (17 years and six months) for lodging the Objection (a claim which, on the face of that document, is incorrect) and that it may not have been signed by [N].
14. By letter dated 12 December 1997, I conveyed my preliminary views to the applicant concerning the matter in issue. The applicant did not take up my invitation to provide me with a written submission and/or evidence in support of her case, although extensions of time were given to enable her to do so. The applicant has, however, orally informed members of my staff of her reasons for requesting access to the matter in issue, many of which are canvassed in her applications for internal and external review.
15. Throughout this external review, it has been pointed out to the applicant that disclosure to her of the matter in issue would not assist in her endeavours to ascertain whether there was mismanagement of, or irregularities in, [N's] adoption process. Indeed, the matter in issue is mainly information that would enable the applicant to identify and locate [N] and/or her adoptive parents, or information that concerns personal details (such as the health) of the adoptive parents.
16. In making my decision, I have had regard to the Department's reasons for its decisions, the applicant's submissions in her applications for internal and external review, and the comments by the Department in its letter dated 23 July 1998. I have also considered the records of conversations between my staff and the applicant.

Scope of FOI access application

17. In its letter dated 23 July 1998, the Department argued (for the first time) that folios 19, 21 and 22 do not fall within the terms of the FOI access application dated 8 June 1994. Those folios were created some years after the adoption, due to an erroneous belief on the part of certain staff of the Department that the adoptive parents had not yet adopted a child. Folio 21 is a letter to the adoptive parents inquiring whether they are still interested in adopting. It does not refer to [N], and I consider that it does not fall within the terms of the FOI access application dated 8 June 1994. I should add that folio 21 would clearly be exempt under s.44(1) of the FOI Act in any event, since it solely concerns the personal affairs of the adoptive parents, and there are no public interest considerations which favour its disclosure.
18. However, both folios 19 and 22 contain notes which refer to [N], although not by name. I consider that they do fall within the terms of the FOI access application dated 8 June 1994, and I will deal with them in my decision.

Section 44(1) of the FOI Act

19. Section 44(1) and s.44(2) of the FOI Act provide:

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.

20. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.

Personal affairs information?

21. In my reasons for decision in *Re Stewart and Department of Transport* (1993) 1 QAR 227, 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 relevant variations thereof) as it appears in the FOI Act (see pp.256-257, paragraphs 79-114, of *Re Stewart*). In particular, I said 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; 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, to be determined according to the proper characterisation of the information in question.

22. I am satisfied that disclosure of any part of the matter in issue would disclose information concerning the personal affairs of persons other than the applicant. Much of the information in issue is clearly information concerning the personal affairs of [N] and/or her adoptive parents. Some of the documents are assessment documents relating to the suitability of the adoptive parents for that role. They set out personal information about their health, finances and other domestic matters.
23. In addition, there is matter which, if disclosed, could reasonably be expected to enable the applicant to ascertain the identities of the adoptive parents and [N]. I consider that disclosure of information which would enable an applicant to ascertain that a person has chosen to adopt a child, or that a child is adopted, or the identity of adoptive parents or of an adopted child, would be disclosure of information concerning the personal affairs of the adoptive parents and/or the adopted child. I therefore find that the matter in issue is matter which concerns the personal affairs of persons other than the applicant.

24. I am not satisfied that s.44(2) of the FOI Act has any application in this case. The matter in issue is about the adoptive parents and [N], not about the applicant. At paragraphs 28-32 of *Re KT and Brisbane North Regional Health Authority* (Information Commissioner Qld, Decision No. 98003, 26 March 1998, unreported), I noted that the personal affairs of a child are not necessarily also the personal affairs of the child's parents. But if any of the matter in issue could be characterised as information which also concerns the applicant's personal affairs, I consider that any such 'shared personal affairs' information is inextricably interwoven with information concerning the personal affairs of other persons, and that the matter in issue is therefore *prima facie* exempt from disclosure to the applicant according to the terms of s.44(1), subject to the application of the countervailing public interest test contained within s.44(1) (according to principles explained at pp.343-345, paragraphs 172-178, of *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279).

Public interest balancing test

25. There are detailed provisions within the AC Act concerning the confidentiality of information relating to the adoption process, and protection of identifying details about the parties to an adoption process. Of particular significance in this case is s.59(3) of the AC Act, which is one of the handful of secrecy provisions in Queensland legislation whose efficacy, *vis-à-vis* the application of the FOI Act, has been given special treatment through s.16(2), s.48 and Schedule 1 of the FOI Act. Section 59(3) of the AC Act relevantly provides:

(3) An officer of the department, or other person engaged in giving effect to this Act shall not disclose or be required to disclose to any person, court or tribunal information that—

- (a) is likely to allow identification, by the natural parents of a person who has been adopted, of that person or the person's whereabouts; or*
- (b) is likely to allow identification, by the natural parents of a person who has been adopted, of the adoptive parents of that person or their whereabouts; ...*

...

except where this Act otherwise permits, expressly or impliedly, or where such identification is unavoidably incidental to the adoption of the person who has been adopted.

26. The fact that an Objection has been lodged by the adopted child pursuant to s.39AA(2)(b) of the AC Act means that any disclosure of identifying information by an officer of the Department to the applicant is not permitted under the terms of the AC Act.
27. The applicant has argued that hers is an exceptional case and that she has grounds to believe that there has been a miscarriage of justice in the way that the adoption process was handled, including a belief that the Adoption Order was "rushed through" as soon as the Department found out that she might revoke her Consent to Adoption.
28. The applicant has had access to records of telephone conversations between a departmental officer and herself on 12 and 13 June 1975 (where the applicant indicated a possible change

of mind about the Consent but subsequently decided not to disrupt the status quo), and the details of Departmental discussions concerning those earlier conversations with the applicant.

29. The matter remaining in issue does not shed any light on the matters leading up to the making of the Adoption Order. Many of the documents in issue were created on dates far removed from the actual time of the Adoption Order being made, and they relate to standard and routine procedures in the adoption process. Much of the matter in issue consists of details of the home life and health of the adoptive parents prior to the adoption, or information that could be used to identify [N], either directly or through her adoptive parents.
30. In relation to the applicant's concerns that there was inordinate haste in the Adoption Order being made, I note that the AC Act prevents the Director from making Adoption Orders in reliance upon the Consent only in circumstances enumerated in s.24(1). None of the matter in issue reveals any irregularity in the obtaining of the Adoption Order. Nor does it refer to the state of mind of the Director or any other person as to the manner in which the applicant gave her consent.
31. Folios 40-43 are the Objection To Contact/Disclosure of Identifying Information Form, under s.39AA(3) of the AC Act. On its face, this document has been signed by [N] in the presence of a Justice of the Peace who dated the document. The applicant has stated that although the Objection "must be witnessed by a Justice of the Peace, the process is open to abuse by adoptive parents who may not want the child to know that they are adopted", and that its disclosure would enable her to ascertain whether it was validly signed. She also wishes to view the date on which the objection was signed to confirm that it was made within the period allowed by the AC Act. I have indicated above that the Objection was signed and dated by a Justice of the Peace. There is no apparent irregularity in the completion of the Objection. While there may be a public interest in enhancing the accountability of the Justice of the Peace and the Department in carrying out their functions, there is nothing in the present case which would lead me to find that that public interest consideration would outweigh the public interest in protection of personal privacy (inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act) which favours non-disclosure of information concerning the personal affairs of [N] and her adoptive parents.
32. While one can understand the applicant's desire to find out as much as she can concerning [N], her interest in that regard is in competition with [N's] stated objection, and the privacy interests of [N] and her adoptive parents. In the final outcome, I must decide whether there are public interest considerations favouring disclosure to the applicant of any of the matter in issue which outweigh the public interest favouring non-disclosure of information concerning the personal affairs of persons other than the applicant for access. I am not satisfied that the public interest considerations favouring disclosure of information to the applicant are of sufficient weight to warrant a finding that disclosure of any of the matter in issue would, on balance, be in the public interest. I find that the matter in issue is exempt matter under s.44(1) of the FOI Act. In light of that finding, I do not propose to deal with questions relating to the exercise of the discretion conferred by s.22(e) of the FOI Act.

DECISION

33. I vary the decision under review by finding that folio 21 does not fall within the terms of the applicant's FOI access application dated 8 June 1994. I affirm that part of the decision under review (being the decision of Mr D Smith on behalf of the Department dated 27 January 1995) which found that the matter in issue is exempt matter under s.44(1) of the FOI Act.

