



The Freedom of Information Act 1991 and the Children's Protection Act 1993

An explanation of some Ombudsman FOI determinations dealing with information about abuse of children in schools

FOI applications

In early 2013, several applicants requested FOI access to documents about incidents of sexual abuse against a child or children at a state government school, from the Department for Education and Child Development, the Minister for Education and Child Development, and the Premier. The agencies determined to refuse access to the documents, and I subsequently received requests to review 21 determinations.

The FOI Act provides that a person has a legally enforceable right to be given access to an agency's documents in accordance with the Act. It provides that upon receipt of an application for access to documents, an agency is able to make a determination to refuse access where the documents are 'exempt'.

Exemption: disclosure an offence against the Children's Protection Act 1993

One example is where disclosure of the documents would be an offence under another Act, such as the Children's Protection Act. Subject to certain exceptions, that Act makes it an offence for any person to 'divulge' personal information relating to abuse or neglect of a child, which has been obtained while engaged in the administration of the Act.

My reviews considered the Children's Protection Act, and what the word 'divulge' meant. I determined that it would not be a 'divulgence' (and thus an offence under the Children's Protection Act) to release information that has previously been officially and legitimately disclosed and is in the public domain. Examples are where the information is reported in *Hansard*, the Government Gazette, or where the information has been previously disclosed by the agency, provided that that disclosure was not in itself a breach of the Act.

I noted the release of certain identifying information in the Government Gazette dated 10 December 2012; and in my reviews, I proceeded on the basis that the disclosure of this information was not in itself an offence under the Children's Protection Act.

I determined that the release of any information in the documents that had already been published in the Gazette would not be an offence against the Children's Protection Act.

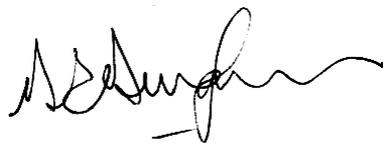
Exemption: unreasonable disclosure of information about a child

Another example of an exempt document under the FOI Act is where disclosure of information about a child would be unreasonable, having regard to the need to protect the child's welfare. In some of my reviews, I determined that any information in the documents that would tend to identify a child would also be exempt, having regard to the need to protect a child's welfare.

Neither admitting or denying the existence of documents

The FOI Act also provides that an agency is not required to include in a notice of determination any information if its inclusion in the notice would result in the notice being an 'exempt' document. Some of my reviews considered this issue, and I determined that even

admitting the existence of documents could result in the agency's notice being an exempt document, and therefore the agency would be in breach of the Children's Protection Act. In other reviews, I determined that the agency should confirm the existence of documents, as this would not be in breach of the Act.

A handwritten signature in black ink, appearing to read 'Richard Bingham', with a long, sweeping horizontal stroke extending to the right.

Richard Bingham
SA Ombudsman

28 June 2013