

Ref: (14/95)

S41 FOI Act 1989
[REDACTED]
[REDACTED]
[REDACTED]

Dear S41 FOI Act 1989

I refer to your application under the ACT *Freedom of Information Act 1989* (FOI Act), received by the Community Services Directorate (the Directorate) on 3 December 2014 in which you sought access to the following information:

1. S41 FOI Act 1989
[REDACTED]
2. The job description (or document that sets out the requirements) for case workers in CPS in 2013.
3. The name and contact details of the current Director of CPS.
4. A copy of the cultural awareness training program run by the above department and the documents that are included in that training for the year ending 2013 and 2014 including any revisions.
5. Departmental guidelines for contesting a decision made by a senior member of CPS in a child protection matter (i.e. a copy of the grievance process).
6. The selection criteria used by each of the panels assessing ATSI applications for kinship care which were successful.

I am an officer authorised under section 22 of the FOI Act to make a decision in respect of a request for information.

I note that consultation was conducted under section 27 of the FOI Act which extended the timeframe for processing your request to 2 February 2015.

Mr Julian Dennis contacted S41 FOI Act 1989 by telephone on Wednesday 14 January 2015 to discuss narrowing the scope of the request in order to bring your request under the threshold for which charges would be payable. Mr Dennis noted that while a search had to be undertaken for the 2013 job descriptions, the Jobs ACT website (<http://www.jobs.act.gov.au/>) contains job descriptions for 2014/15 which are substantially similar. Simply type in 'care and protection worker' in the search field to find job descriptions at the Health Professional Officer 1, 2, and 3 levels (these are the designations given to case workers in CPS). S41 FOI Act 1989 agreed to remove this item from the scope of your request and as such, no charges are payable for the remainder of your request.

Decision

The attached schedules list decisions regarding access to documents which are in the scope of your request. The terms used are either 'Full release', 'Partial release', or 'Exempt in full'. Where information is considered to be exempt and a deletion has been made, a reference is made in the schedule to the relevant section, or combination of sections, of legislation that apply to the particular information.

S41 FOI Act 1989

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In relation to point 3 of your request, the name and contact details of the current Director of CPS are as follows:

Mr Austin Kenney
Location: Level 6, 11 Moore Street, Canberra City, ACT 2601
Postal address: GPO Box 158, Canberra ACT 2601
Telephone: (02) 6205 4430
Fax: (02) 6207 1428
Email: Austin.Kenney@act.gov.au

Schedule 2 relates to point 4 of your request. The Directorate has utilised two cultural awareness programs over the 2013-2014 period. I have released the material for the 2013 program. I have decided not to release the 2014 document to you under section 43 of the FOI Act (documents relating to business affairs etc). I have made this decision after consultation with third party involved and on the basis that the document contains commercial-in-confidence information. The disclosure of this information could unreasonably affect the provider of the program in respect of their business affairs by allowing competitors to offer rival programs based on the provider's material.

Schedule 3 relates to point 5 of your request, and schedule 4 relates to point 6 of your request. Point 6 dealt with the selection criteria used to assess successful applications for kinship care based on data provided to you in the 19 November 2014 response to your first Freedom of Information request. Unfortunately, the selection criteria used by the successful 2003 application could not be found despite an extensive search.

Below is a summary of the sections of legislation referred to in the attached schedules. Excerpts of legislation referenced have also been provided at **Attachment A** for your reference.

Section 38, Freedom of Information Act 1989 and Section 846, Children and Young People Act 2008

Section 38 of the FOI Act exempts information to which secrecy provisions of other enactments (or legislation) apply. In this case, the secrecy provision is section 846 of the Children and Young People Act (CYP Act).

Section 846 of the CYP Act prohibits the release of sensitive information, which is defined as, among other things, care and protection report and appraisal information. The prohibition extends to information that would allow information in a child concern report or appraisal to be worked out. As such, child concern reports and appraisal outcome reports have been exempted in full. Information that refers to the content of these reports has also been exempted, even where that information is known to you.

The exemption of child concern reports and appraisal information is given a high level of importance due to the nature of the information being protected. The system of Voluntary and Mandatory Reporting, which gives rise to child concern reports and appraisal processes, is in place to ensure the ongoing safety and welfare of children and young people. This system is built on a foundation of reporter and report confidentiality. Without the protection of section 846 the confidence of the community to make reports and to participate in the appraisal process could be compromised.

Section 43, Freedom of Information Act 1989

As discussed above, section 43 of the FOI Act operates to exempt information relating to the business affairs of an individual or organisation.

Outside scope

Information referred to as 'Outside scope' has been removed because it does not relate to the scope of your request.

Review rights

My decision is appealable under the Act. This means that if you are dissatisfied with this outcome you have a right to seek a review under section 59 of the Act. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate. If you wish to seek a review you should write to:

Executive Director
Service Strategy and Community Building
Community Services Directorate
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the day you receive this notification to seek a review of the outcome or such other period as the Executive Director permits.

Under section 54 of the Act, if you are concerned about the processing of your request or related administrative matters, you may complain to the Ombudsman, who may conduct an independent investigation into your complaint. There is no fee for this, and the contact details are as follows:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Online FOI Policy

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that the non-personal information in relation to your request will be published online. All other information, including any personal information included in this decision letter, will **not** be published online. For more information about the ACT Government's Online Freedom of Information Publication Policy, a copy of the policy is available online at:

http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online

If you have any queries in relation to this matter, please contact Mr Julian Dennis, Freedom of Information Officer on 02 6205 3296.

Yours sincerely



Janelle Wheatley
Senior Manager
Community Recovery and Emergency Planning
16 January 2015

Freedom of Information Act 1989

38 Documents to which secrecy provisions of enactments apply

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

41 Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.
- (3) Where—
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request; and
 - (b) it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person;

the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a doctor to be nominated by that person.

43 Documents relating to business affairs etc

- (1) A document is an exempt document if its disclosure under this Act would disclose—
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
 - (c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information—

- (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to a request by a person for access to a document—
 - (a) only because of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) only because of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) only because of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Territory, the Commonwealth, a State or by a local government authority.

Children and Young People Act 2008

844 What is protected information?

(1) In this Act:

protected information means information about a person that is disclosed to, or obtained by, an information holder because the information holder is, or has been, an information holder.

(2) Without limiting subsection (1), **protected information** includes sensitive information.

845 What is sensitive information?

(1) For this Act:

sensitive information means any of the following:

- (a) care and protection report information;
- (b) care and protection appraisal information;
- (c) interstate care and protection information;
- (d) family group conference information;
- (e) contravention report information;
- (f) information prescribed by regulation.

Note Prenatal report information is also **sensitive information** (see s 365).

(2) In this section:

care and protection appraisal information means information—

- (a) in a record of an appraisal; or
- (b) that would allow information in a record of an appraisal to be worked out; or
- (c) in a report (an **incident report**) to the public advocate under section 507 (Public advocate to be told about action following appraisals); or
- (d) that would allow information in a record of an appraisal or incident report to be worked out.

care and protection report information means information—

- (a) in a child concern report; or
- (b) in a record that relates to—
 - (i) a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or
 - (ii) a report under the *Children and Young People Act 1999*, section 157A, section 158 or section 159 (as in force at any time); or
 - (iii) any other information received by the chief executive under the *Children and Young People Act 1999* about the suspected abuse or neglect of a child or young person; or

- (iv) any information received about the suspected abuse or neglect of a child or young person at any time an ordinance was in force in relation to child welfare; or
- (c) that would allow information in a child concern report or record mentioned in paragraph (b) to be worked out; or
- (d) that identifies a person as a person who made a child concern report or record mentioned in paragraph (b); or
- (e) that would allow a person's identity as a person who made a child concern report or record mentioned in paragraph (b) to be worked out.

contravention report information means information—

- (a) in a confidential report made under section 876 (Confidential report of contravention of Act); or
- (b) that would allow the information in a confidential report to be worked out; or
- (c) that identifies a person as a person who made a confidential report; or
- (d) that would allow a person's identity as a person who made a confidential report to be worked out.

family group conference information means information—

- (a) about anything said or done to facilitate, or anything said or done at, a family group conference arranged under section 80 (2); or
- (b) information in a family group conference agreement, or in a family group conference outcome report, that relates to a family group conference arranged under section 80 (2); or
- (c) information that would allow information mentioned in paragraph (a) or (b) to be worked out.

Note Family group conferences are dealt with in ch 3 and ch 12.

interstate care and protection information means information—

- (a) in a report (an ***interstate care and protection report***) made under a provision of a law of a State corresponding (or substantially corresponding) to section 354 (Voluntary reporting of abuse and neglect), section 356 (Offence—mandatory reporting of abuse) or section 362 (Prenatal reporting—anticipated abuse and neglect), that is provided to the chief executive under a section corresponding (or substantially corresponding) to—
 - (i) section 852 (Chief executive—giving information to person under corresponding provisions); or
 - (ii) section 861 (Information sharing entity—giving safety and wellbeing information to chief executive); or
- (b) that would allow the information in an interstate care and protection report to be worked out; or

- (c) that identifies a person as a person who made an interstate care and protection report; or
- (d) that would allow a person's identity as a person who made an interstate care and protection report to be worked out.

846 Offence—secrecy of protected information

- (1) An information holder commits an offence if the information holder—
 - (a) makes a record of protected information about someone else; and
 - (b) is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An information holder commits an offence if the information holder—
 - (a) does something that divulges protected information about someone else; and
 - (b) is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

848 Exception to s 846—information given under another law

- (1) Section 846 (1) (Offence—secrecy of protected information) does not apply to the making of a record of protected information if—
 - (a) the information is not sensitive information; and
 - (b) the record is made—
 - (i) in the exercise of a function, as an information holder, under another law in force in the Territory; or
 - (ii) under another law in force in the Territory.
- (2) Section 846 (2) does not apply to the divulging of protected information if—
 - (a) the information is not sensitive information; and
 - (b) the information is divulged—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.