

Ref: (14/91)

S41 FOI Act 1989

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 24 October 2014 and 30 October 2014, in which you sought access to the following information:

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6. CPM [CPS] Policy or directions or procedures given on panel selection for appeals.
7. CPM [CPS] Policy or directions or procedures given on complaints from the public and the escalation process to be followed.
8. CPM [CPS] statistics relating to the number of Aboriginal childcares [carers] that have applied for care of family members over the last calendar year, 5 years and 10 years.
9. CPM [CPS] Statics showing how many [Aboriginal carers] were successful in this matter over the last calendar year, 5 years and 10 years.

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

#### 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.

Schedule 3 relates to point 7 of your request, and schedule 4 relates to points 8 and 9. Points 4 to 6 are discussed below.

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 6(2), Freedom of Information Act 1989**

Section 6(2) of the FOI Act 1989 exempts the release of documents defined as health records under the *Health Records (Privacy and Access) Act 1997* (Health Records Act). If you wish to access these documents, you can apply on the attached Health Records application form, which provides the authority to consider these documents for release to you under the Health Records Act.

**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 41, Freedom of Information Act 1989**

Section 41 of the FOI Act operates to exempt information affecting personal privacy. Certain information within the scope of your request has been exempted where it contains personal information relating to other individuals. I have decided this information cannot reasonably be disclosed.

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Point 6 of your request relates to policy, directions or procedures given on panel selection for appeals. Ms Danielle Stiff (Manager, Integrated Operational Practice) has advised that no formal policy is in place which deals with panel selection for appeals. The following information has been provided from Ms Anita Chettur (A/g Senior Manager Care) in relation to Carer Assessment Panels:

Carer Assessment Panels are normally made up of representatives from Care and Protection Services (CPS), a representative from Barnardos, and a representative from Marymead. Where the child has been identified as Aboriginal and/or Torres Strait Islander, an Aboriginal and/or Torres Strait Islander representative from the community or the Office for Children, Youth and Family Support is also present.

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#### **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 documents in schedules 3 and 4 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](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 6205 3296.

Yours sincerely

  
Janelle Wheatley  
Senior Manager  
Community Recovery and Emergency Planning  
19 November 2014



**ACT**  
Government  
Community Services

**Request for access to Health Records held by the  
Community Services Directorate**  
under the *Health Records (Privacy and Access) Act 1997, section 7*

**Applicant details:**

Mr/Mrs/Ms/other: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: (home): \_\_\_\_\_ (work): \_\_\_\_\_  
 Date of birth: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Information required:**

I would like to access the following Health records documents located within the following areas of the Community Services Directorate:

*[Please tick areas you require information from]*

- |   |  |
|---|--|
| <input type="checkbox"/> Disability ACT   | <input type="checkbox"/> Housing and Community Services  |
| <input type="checkbox"/> Therapy ACT  | <input type="checkbox"/> Youth Justice (Legislation sets out Youth Justice information can only be provided to applicants over 18 years) |
| <input type="checkbox"/> Office for Children, Youth and Family Support (includes Care and Protection) |  |

**DOCUMENTS SOUGHT:**

*I would like access to:* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*(if insufficient space please attach separate sheet of paper)*

- I would like:
- a copy of these documents sent to the above address
  - to inspect these documents

Would you have an objection to the Directorate consulting with a person whose information may appear in a document relevant to your request.  YES  NO

Please sign here: \_\_\_\_\_ Date: \_\_\_\_\_

**Send Request to:**

FOI Coordination Team  
 Community Services Directorate  
 GPO Box 158  
 CANBERRA ACT 2601

Housing FOI Coordinator  
 Community Services Directorate  
 Locked Bag 3000  
 Belconnen ACT 2616

**Enquires:**

Ph: (02) 6205 0244 or (02) 6207 6547  
 Fax: (02) 6205 0343  
 Email: CSD.FOI@act.gov.au

Ph: (02) 6207 4549  
 Fax: (02) 6207 1403  
 Email: housing.customerservice@act.gov.au

***Freedom of Information Act 1989***

**6 Health Records**

- (2) An agency is exempt from the operation of this Act in respect of documents that are health records within the meaning of the Health Records (Privacy and Access) Act 1997 (the ***Health Records Act***).

**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.

## **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.