



DETERMINATION

Section 39(11) *Freedom of Information Act 1991 (SA)*

- Applicant for review:** Hon Iain Evans MP
- Agency:** Department for Families and Communities
- Ombudsman file references:** 79970D01 – application 1
79971D01 – application 2
79972D01 – application 3
78968D01 – application 4
- Determinations:** The agency's determinations with respect to applications 1 and 4 are varied. The agency's determinations with respect to applications 2 and 3 are varied (noting the agency's current position).

REASONS FOR DETERMINATION

Background

1. In late 2007, Mr Thomas Easling, a former foster carer, was acquitted by a Supreme Court jury of charges alleging that he had sexually abused youths in his care. Mr Easling is one of the applicant's constituents and has authorised the applicant to act on his behalf for the purposes of my external reviews.
2. On 30 October 2008 the applicant asked a question of the Minister for Families and Communities (**the Minister**) in the Parliament about the investigation of Mr Easling by the Special Investigations Unit of the Department for Families and Communities (**the Department**).¹ The Minister's response included the following statements:

We had people going into that house and finding semi-naked boys in his [Mr Easling's] bed. [And after interjections] If you want me to go into detail I can. It is very unsavoury.²
3. The Minister reportedly 'relied on documentation provided by the department's special investigations unit' when making her statements to the Parliament.³

¹ South Australia, *Hansard*, House of Assembly, 30 October 2008, 768 (Iain Evans).

² South Australia, *Hansard*, House of Assembly, 30 October 2008, 768-769 (Jennifer Rankine).

³ Hendrik Gout, 'Minister accused of misleading Parliament', *The Independent Weekly* (Adelaide, Australia) 14 November 2008, 2.

4. The applicant subsequently made four applications to the Department for access to documents under the *Freedom of Information Act 1991* (**the FOI Act**).
5. On 24 August 2009 the applicant made three applications for access to documents concerning:

Application 1

any report by Craig Reed on his attendance at the residence of Tom Easling 7 View Road Blackwood on 22 December 1992.⁴

Application 2

any report by Craig Reed that he attended the residence of Tom Easling 7 View Road Blackwood and found semi naked boys in his bed.⁵

Application 3

any report of a public servant that they attended the residence of Tom Easling 7 View Road Blackwood and found semi naked boys in his bed.⁶

In his application for internal review the applicant clarified his application for access by adding:

Specifically 'and found semi naked boys in his bed' (Easling's bed).

6. The applicant narrowed each of these applications by requesting that 'any name of any boy covered by this request be blackened out.'

Application 4

7. On 7 May 2009 the applicant applied to the Department for access to documents concerning:

the Minister's statement to Parliament regarding Thomas Frank Easling on the 30/10/08 that "we had people going into that house & finding semi-naked boys in his bed" and "if you want me to go into details I can. It is very unsavoury."

8. In his application for internal review, the applicant indicated that he would be satisfied with de-identified versions of the documents to which he had been refused access (**the relevant documents**). During the course of the external review he has stated that he does not want information that may identify the children allegedly involved.⁷

The Department's determinations

9. An accredited FOI officer of the Department initially determined to refuse access to one document considered to be within the scope of both applications 1 and 2, two documents considered to be within the scope of application 3, and four documents considered to be within the scope of application 4. Access to these documents was

⁴ The application for access form. The terms used in the accompanying letter are subtly different, but do not materially affect the scope.

⁵ The application for access form. The terms used in the accompanying letter are subtly different, but do not materially affect the scope.

⁶ The application for access form. The terms used in the accompanying letter are subtly different, but do not materially affect the scope.

⁷ In a letter to my Office dated 4 February 2010.

refused under clause 12(1) of Schedule 1 to the FOI Act, in conjunction with section 58 of the *Children's Protection Act 1993 (the CP Act)*. De-identified descriptions of these documents were not provided to the applicant. The Department did nevertheless release an extract from *The Australian* dated 11 September 2008 in relation to application 4.⁸ The Department confirmed the determinations following internal review.

External review process and parties' submissions

10. Aggrieved by the Department's determinations, the applicant sought external reviews by my Office.
11. During the course of these reviews, my Office has obtained submissions from the applicant, the Department, and the Guardian for Children and Young People, Ms Pam Simmons (**the Guardian**).
12. I will commence by discussing the submissions received in relation to application 4, which was the first application received by my Office. That said, some of the submissions are relevant more generally.

Application 4

13. In his application for external review dated 23 June 2009 the applicant's submissions included the following:

- The Minister offered to make the information available to the Parliament and Mr Easling, through his lawyers, asked her to make this information public.
- There are only two categories the information could fall into
 - a) It is an incident referred to in the court case.

If this is the case Mr Easling is aware of all the names and private information that Section 58 of the Act seeks to protect. Having gone through the trial Mr Easling is very well aware of the details of the persons who made claims against him. This information was released to him as part of the trial process. It is a nonsense that information released to him as part of the trial ... cannot be released to him post trial.

Note: Mr Easling's lawyers claim that the information is new and does not fall into this category.

- b) It is a new incident.

The alleged incident occurred in 1992 - hardly a new incident for the Minister to reveal in 2009! If it is a 'new' incident then, now that Mr Easling has been named in the public arena of Parliament as having '*semi-naked boys in his bed*' natural justice demands that he be able to see the information on which the now public comments are based. If it is a new incident then it raises the issue of whether the Minister acted within the law by making the issue public.

14. On 17 September 2009, after considering preliminary information provided by the applicant and the Department, two of my delegates met with representatives of the Department. The Department provided additional information to my Office by email on 23 September 2009.

⁸ It appears to be an extract from an article: Jamie Walker, 'Trial and error', *The Australian* (Australia) 11 September 2008.

15. My Office consulted with the Guardian about her attitude towards releasing information under the FOI Act. By email dated 23 September 2009, the Guardian submitted as follows:

On the information provided to me I cannot see that release of the information would serve the interests of the ... [former foster child] who is the subject of the file notes. The file notes relate to a sensitive and personal matter and should not be in the public domain.

16. By email dated 30 September 2009 my Office sought the Department's consent to provide de-identified descriptions of the documents to the applicant. The Department consented to this course by email dated 19 October 2009.
17. By letter dated 20 October 2009 I wrote to the applicant seeking a response. Among other things, I conveyed the following information to the applicant:

- 1) In the Department's view it is not practicable to provide you with partial access to the relevant documents, as permitted by section 20(4) of the FOI Act. The Department claims that even though some information is in the public domain it would constitute a 'divulgence' for the purpose of section 58 of the *Children's Protection Act 1993* to release to you the actual words used by witnesses (even if their names were masked)
- 2) After liaising with the Office of the Director of Public Prosecutions, the Department advised that the relevant documents would have been disclosed for the purposes of the criminal trial against Mr Easling.

The relevant documents

To enable you to assess the Department's submissions, the relevant documents may be described as follows:

- 1) Pages 18 to 22 of transcript of an interview with social worker dated 15 June 2004
 - 2) Extract from Family and Community Services social worker contact record dated 22 December 1992 (one page)
 - 3) Pages 11 to 20 of transcript of an interview with former foster child dated 10 July 2004
 - 4) Extract from investigation diary of Mr Steven Edgington and Ms Caroline Keogh dated 28 April 2004 and timed 1400hrs (one page).
18. By letter dated 30 October 2009 the applicant advised that he strongly disagrees with the Department's claim that release of the 'actual words used by witnesses (even if their names were masked)' 'would constitute a "divulgence" for the purpose of section 58' of the CP Act. His letter included the following submissions:

Section 58, part 3, gives some instruction as to the intent of the Parliament.

This section does not prevent;

(a) a person from divulging information if authorised or required to do so by law;

(b) a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates;

(c) a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.

Section 58, part 1 & 2 are subject to part 3.

Part 3 (b) shows the intent. Divulgence can be made of other data that would not reasonably lead to the identification of any person to whom it refers.

The Parliament is saying that you can divulge information which "could not reasonably be expected to lead to the identification of any person to whom it relates".

Section 59 argues the same principle.

I argue that if the name and address is blocked out then it is not possible to identify the people involved. If the name and address are blocked out then all the public know, if the information is released, is the allegation, that an event took place- they do not know who was involved or where the child lives- how then is the child to be identified?

Further, the Department say they cannot divulge information that is already public. If the information is already public then it is already divulged. I repeat that I am happy to accept the long standing practise of blacking out the name and residential address of the child and hence there will be no divulgence of identifying information.

...

I note Section 58 also applies to "the accused". The Department has released information identifying Mr Easling and has not claimed the Section 58 protection.

19. By letter dated 19 January 2010 I asked the applicant whether any documents fitting the de-identified descriptions of the relevant documents had been provided to him, Mr Easling, or Mr Easling's legal representatives. If so, I requested copies or detailed descriptions of the documents, and details of how the documents were received.
20. By letter dated 4 February 2010 the applicant confirmed that Mr Easling's solicitors had received documents fitting the descriptions of the de-identified documents and Mr Easling has access to them through his legal representatives. The applicant did not provide copies or detailed descriptions of these documents to my Office, however. The applicant has repeatedly asserted that the de-identified documents do not describe the allegations made by the Minister. He has provided detailed submissions to support his position, including letters from Mr Matthew Selley (Mr Easling's solicitor) to the Minister dated 12 November 2008 and 14 November 2008. Given the applicant's view that this raises the possibility that the Minister was referring to an allegation that was not put to Mr Easling during his 2007 criminal trial, the applicant submits that:

Natural Justice therefore demands that having had his name raised so publicly in the Parliament, contrary to the [CP] Act, he should have access to the documents [and 'to see the evidence behind the allegations'] so that he has the opportunity to clear his name.

Applications 1, 2 and 3

21. By letter dated 7 October 2009 the applicant made a joint application for external review regarding applications 1, 2 and 3. He provided similar background information and submissions to those he had provided in relation to application 4, and also

provided some transcript relevant to the committal hearing and the Supreme Court trial.⁹ The applicant further submitted that:

All of the testimony was public in the court and was open to media reporting.

Given that the claimant's name, the public servant's name and their testimonies are all public and the report of this visit by ... [the public servant] was released to Mr Easling's lawyers as part of the subpoena process it seems unreasonable that the Department claims it can now not be released.

The applicant argued that if the documents identified by the Department as falling within the scope of applications 2 and 3 exist, 'they should have been released under subpoena'. Alternatively, the applicant argued, that if no documents within the scope of applications 2 and 3 exist, the Department should have said so.¹⁰

In his application for internal review regarding application 3, the applicant asked, '[d]oes the report of a public servant make the claim they found "semi naked boys in his bed"?' In the determination following internal review the Department responded by saying:

Although it was confirmed reports exist, their contents were exempted under section 58 of the Children's Protection Act and therefore, it is appropriate to ensure no divulgements occur by providing further details.

In his application for external review the applicant complains that the Department's response is unclear and submits that:

The 'no divulgements' protection argued by the Department surely does not extend to not divulging what does not exist!

Surely the Department has a duty to say it does not exist if this happens to be the case. It is an abuse of the process for a Department to use the Act to hide behind what does not exist.

22. On 28 October 2009, after considering preliminary information provided by the applicant and the Department (including the documents the Department considered to be within the scope of the applications), one of my delegates queried whether the Department objected to de-identified descriptions of the documents being provided to the applicant. By email dated 5 November 2009 the Department confirmed that it did object.
23. By letter dated 19 January 2010 I wrote to the Department expressing provisional views:
 - 1) that one additional document was within the scope of application 1
 - 2) that the documents identified by the Department as within the scope of applications 2 and 3 were out of scope, 'and the Department's determination[s] should be varied to conclude that no documents exist within the scope of the application[s]'.

I sought the Department's response to these provisional views and further submissions to support the Department's objection to de-identified descriptions of the

⁹ Pages 1 to 90 of the committal transcript; pages 408 to 585 and pages 1799 to 2001 of the trial transcript, along with three additional pages relating to page 1800 of that transcript.

¹⁰ Such is required by section 23(1)(b) of the FOI Act, subject only to sections 23(3) and 23(4).

documents being provided to the applicant. In addition, I invited the Department to provide copies of any additional documents it considered to be within the scope of applications 2 and 3 (noting that this was unlikely based on previous discussions with the Department).

24. By letter attached to an email dated 17 February 2010 the Department advised that it agreed with my provisional views regarding applications 1, 2 and 3. The following is an extract from the Department's response:

Application 2

The Accredited FOI Officer took a broader view of the scope of Application 2 than you have in your provisional view. After further consideration, the Department agrees with your reasoning and consequential provisional view that the contact record does not fall within the scope of the application. The Department's determination should be varied to conclude that no documents exist within the scope of the application.

You have asked for copies of any additional documents the Department holds and considers to be in scope of application 2. The Department's process of identifying documents relating to allegations against Thomas Frank Easling has been completed with the upmost [sic] diligence. Searches of records have been conducted in conjunction with and/or in the context of Promotion and Grievance Appeals Tribunal hearings, two judicial reviews, a committal hearing and criminal trial with associated disclosure processes, multiple FOI applications and Questions on Notice, all of which culminated with the Crown Solicitor's *Review of the Easling Trial* which was tabled in the House of Assembly on 3 December 2009.

As a result of these thorough searches and consideration of the Department's records, it is reasonably believed that there are no additional documents held by the Department within the scope of application 2.

Application 3

As for application 2, the Department agrees with your provisional view that the transcript and the contact record are not within the scope of the application, and that the Department's determination should be varied to conclude that no documents exist within the scope of the application.

As also explained above in respect of Application 2, it is the Department's reasonable belief that there are no additional documents held by the Department within the scope of Application 3.

Having regard to section 39(15) of the FOI Act, I have not reproduced the Department's submissions regarding application 1 or de-identified descriptions here. Suffice to say that the Department agrees that a second document falls within the scope of application 1 and maintains its objection to de-identified descriptions of the documents being provided to the applicant.

Clause 12

25. Given the Department's concession regarding applications 2 and 3 my discussion regarding clause 12 will focus on applications 1 and 4. The Department has refused the applicant access to two documents relevant to application 1 and four documents relevant to application 4 under 12(1) of Schedule 1 to the FOI Act, in conjunction with section 58(1) of the CP Act.
26. Clause 12(1) of Schedule 1 to the FOI Act deals with documents that are subject to secrecy or confidentiality provisions in other legislation. It provides as follows:

A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

27. The Department in this case relies on section 58(1) of the CP Act:

A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any persons alleged to have abused, neglected or threatened a child, must not divulge that information.

Maximum penalty: \$10 000

28. The term 'personal information' as it appears in section 58(1) of the CP Act is not defined in the CP Act. It should be given its ordinary meaning. In my view the phrase includes:

- information, news, intelligence, opinions, recommendations
- pertaining to, concerning or affecting a person or having the capacity to do so.

For example, information which discloses or tends to disclose the identity, address or location of a person or from which such particulars could be deduced will be personal information about that person. The fact that the information may be known to other persons, or the person seeking it cannot affect its character.¹¹

29. Section 6 of the CP Act defines the terms 'child' and 'guardian'.

Other relevant provisions

30. Section 12 of the FOI Act provides that 'a person has a legally enforceable right to be given access to an agency's documents in accordance with this Act'.

31. Under section 20(1)(a) of the FOI Act, 'an agency may refuse access to a document if it is an exempt document'.

32. Section 48 of the FOI Act places the onus on the Department to justify its determination in my external reviews.

33. One of the 'principles of administration' in the FOI Act is that the Act 'should be interpreted and applied' so as to further its objects.¹² Section 3 of the FOI Act includes the following:

3—Objects

- (1) The objects of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament—
 - (a) to promote openness in government and accountability of Ministers of the Crown and other government agencies and thereby to enhance respect for the law and further the good government of the State; and
 - (b) to facilitate more effective participation by members of the public in the processes involved in the making and administration of laws and policies.
- (2) The means by which it is intended to achieve these objects are as follows:

¹¹ *Ward v Courts Administration Authority* [2003] SADC 18 (Unreported, Judge Smith, 21 February 2003) [44] - [45].

¹² Section 3A(1)(a) of the FOI Act.

- (a) ensuring that information concerning the operations of government (including, in particular, information concerning the rules and practices followed by government in its dealings with members of the public) is readily available to members of the public and to Members of Parliament; and
- (b) conferring on each member of the public and on Members of Parliament a legally enforceable right to be given access to documents held by government, subject only to such restrictions as are consistent with the public interest (including maintenance of the effective conduct of public affairs through the free and frank expression of opinions) and the preservation of personal privacy; ...

34. In addition, section 20(4) of the FOI Act provides that:

If-

- (a) it is practicable to give access to a copy of a document from which the exempt matter has been deleted; and
- (b) it appears to the relevant agency (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy,

the agency must not refuse to give access to the document to that limited extent.

35. Section 39(11) of the FOI Act provides that in my external review, and based on the circumstances existing at the time of the reviews, I may confirm, vary or reverse the Department's determinations.

Consideration of submissions and conclusion

36. I have had regard to the submissions received from the parties to the review; the views of the Guardian; the documents; the applicable law; and the present circumstances.

Section 58(1) of the CP Act

37. I am satisfied that the documents contain personal information of people within the meaning of section 58(1) of the CP Act. I am further satisfied that the information was obtained by staff of the Department in the course of their employment duties and for the purpose of administering the CP Act.

38. It is important to note that Mr Easling's consent to release any information about him is not an exception to section 58(1) of the CP Act. Further and in any event, the information in the documents concerns the personal affairs of more than one person.

39. I note that the applicant does not want information that may identify any children referred to in the documents.

40. When interpreting the word 'divulge' in section 58(1) of the CP Act, I have had regard a judgment of his Honour Judge Smith of the South Australian District Court:

In my view, the plain and ordinary meaning of "divulge" is to disclose. It does not necessarily convey the imparting of that which is previously unknown. Further, given the objectives and principles underlying the CP Act [the care and protection of children], I am of the view that the word "divulge" should be construed so as to give paramountcy to protecting the child's interests. Its meaning should not be confined to the disclosure of otherwise unknown or secret information. It should include that. There are difficulties in the qualified construction. For instance, whilst some information might be known to an applicant he or she may not be aware that it has been obtained by the agency. So in

accessing the information the applicant will know that the agency has that information. The disclosure of the fact of that holding would amount to divulgence. Also, such a narrow interpretation would require the agency to indulge in what I would regard as an intolerable task of speculating about what the applicant may or may not know. In the end, the more expansive meaning is consistent with ensuring the protection of the child and so consistent with the objectives of the Act.¹³

41. I agree with his Honour Judge Smith that '[t]he content, context and objectives of the CP Act are the care and protection of children'.¹⁴ In addition, section 4(3) of the CP Act makes it clear that '[i]n the exercise of powers under this Act, ... the child's wellbeing and best interests are to be the paramount considerations.' It is relevant that the Guardian is of the view that release of the information would not serve the former foster child's interests.
42. Through his solicitors, Mr Easling has access to documents that fit the descriptions of the relevant documents in the context of application 4 as a result of the criminal trial against him. I have had regard to this when considering the two documents within the scope of application 1.
43. According to the combined District and Supreme Court criminal registry, there is a suppression order over the names of children in Mr Easling's care who were not complainants for the purposes of the criminal trial. It is evident from transcript of the Supreme Court trial that the court room was closed to the public while a complainant gave evidence,¹⁵ and that certain departmental files were marked for identification.¹⁶ According to the Magistrates Court Contact Centre, however, details relevant to the committal hearing are suppressed.
44. In my view it is practicable to release parts of the documents within the scope of applications 1 and 4:

Application 4

- 1) *Pages 18 to 22 of transcript of an interview with social worker dated 15 June 2004*

During the criminal trial the social worker was examined about most of the issues canvassed during the interview of 15 June 2004. The exceptions to this centre on the social worker's impressions or thoughts about certain issues (parts of pages 20 and 22).

I do not accept that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose under the FOI Act the actual words used by the social worker during the interview of 15 June 2004, where the social worker gave evidence about such matters during the criminal trial. Accordingly, my view is that it is practicable to release the following parts of the document, excluding references to the child's name (in accordance with the applicant's request):

- page 18, excluding the first two responses and the first question

¹³ *Ward v Courts Administration Authority* [2003] SADC 18 (Unreported, Judge Smith, 21 February 2003) [57].

¹⁴ *Ward v Courts Administration Authority* [2003] SADC 18 (Unreported, Judge Smith, 21 February 2003) [55]. See also the long title of the CP Act.

¹⁵ Page 408 of the trial transcript.

¹⁶ See pages 554 and 581 of the trial transcript. An exhibit that is marked for identification is not made available to the jury.

- page 19
- page 20, excluding the last nine words of the third line of the social worker's first response, and the first sentence of the social worker's fourth response
- page 21
- page 22, excluding the last two questions and the last two responses (the bottom half of the page).

In saying this, my understanding is that such evidence is not suppressed and relevant information of a general nature has been reported in the media.

Although Mr Easling has access to a document fitting the description of this document through his solicitors, I consider that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose the remainder of the transcript under the FOI Act. The clear policy underpinning the CP Act is the care and protection of children, and when exercising powers under the CP Act the child's wellbeing and best interests are paramount considerations. In reaching this conclusion I have borne this in mind, as well as the Guardian's view that release of the document would not serve the interests of the former foster child.

2) *Extract from Family and Community Services social worker contact record dated 22 December 1992*

These are notes that were made by the same social worker. The social worker was examined and cross-examined extensively about a number of the issues canvassed in the notes, and indeed about the notes themselves, during the criminal trial.

I do not accept that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose under the FOI Act the actual words used by the social worker in the contact record, where the social worker was examined about such matters during the criminal trial. Accordingly, my view is that it is practicable to release the following parts of the document, excluding references to the child's name (in accordance with the applicant's request):

- the first seven lines and the first three words of the eighth line of the second entry
- the header of the page
- the date of the second entry on the page
- the information in the 'contact' column
- the signature at the bottom of the page and the date immediately above it.

I am satisfied that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose the remainder of the notes under the FOI Act, for the reasons referred to above.

3) *Pages 11 to 20 of transcript of an interview with former foster child dated 10 July 2004*

During the criminal trial the former foster child was examined about certain matters that were canvassed during the interview of 10 July 2004. In my view it is nevertheless relevant that the questions and responses were not necessarily the same or in the same format on both occasions.

I do not accept that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose under the FOI Act the actual words used by the former foster child during the interview of 10 July 2004, where the former foster child gave evidence about such matters during criminal trial in substantially the same terms. Accordingly, my view is that it is practicable to release the following parts of the document, excluding references to the child's name, street addresses and suburbs (in accordance with the applicant's request):

- the last response on page 11
- page 12, excluding the fifth question and fifth response (towards the bottom of the page)
- the third question and the third answer on page 13
- the second and third questions and the third and fourth responses on page 15 (in the middle of the page)
- the fourth and fifth questions and the fourth and fifth responses on page 16
- the last sentence of the second response; the third and fourth responses; and the second and third questions on page 17
- the last question on page 18
- the first, second and fourth responses and the first and third questions on page 19.

In saying this, my understanding is that such evidence is not suppressed. In addition, I note that relevant information of a general nature has been reported in the media.

I am satisfied that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose the remainder of the notes under the FOI Act, for the reasons referred to above.

- 4) *Extract from investigation diary of Mr Steven Edgington and Ms Caroline Keogh dated 28 April 2004 and timed 1400hrs.*

The majority of this document appears to have limited relevance to the events that gave rise to application 4. Based on the information before me it is unclear whether Mr Edgington and/or Ms Keogh gave evidence during the criminal trial and, if they did, whether it was consistent with this document.

I have had regard to information provided to the applicant with the Department's consent, and information that is publicly available via the media. As a result I do not consider that it would be a divulgence for the purposes of section 58(1) of the CP Act to release:

- the date and time
- the names of people present (the last five words of the second line)
- Mr Easling's response to one issue (the last eight words of the twelfth line and the first three words of the thirteenth line).

I am satisfied that it would be a divulgence for the purposes of section 58(1) of the CP Act to disclose the remainder of the extract under the FOI Act, for the reasons referred to above.

Application 1

My view is that it is practicable to give partial access to the two documents within the scope of application 1 for the same reasons as documents 1 and 2 in application 4.

45. Under section 39(11) of the FOI Act, I vary the Department's determinations with respect to applications 1 and 4 to enable parts of the documents to be released to the applicant as described above. The names and addresses of any children involved should be excluded from the documents provided.
46. Noting the Department's current position I vary the Department's determinations with respect to applications 2 and 3 under section 39(11) of the FOI Act to conclude that the Department holds no documents within the scope of the applications.

Right of Appeal

47. Any person aggrieved by my determination may appeal to the District Court of South Australia under section 40(2) of the FOI Act.
48. The Department may also appeal against my determination, but only on a question of law and only with the permission of the court, under section 40(1) of the FOI Act.
49. Under section 40(3) of the FOI Act, any such appeals should be commenced within 30 days after receiving notice of my determination; or in the case of a person who is not given notice of my determination, within 30 days after the date of my determination.

Richard Bingham
SA OMBUDSMAN

16 March 2010