

Dealing with applications made 'on behalf of' a child

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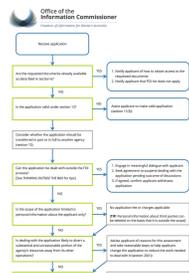


Outline

- The FOI Act is your reference point
- Section 98 – breaking it down
- The 'best interests' of the child
- Decisions of interest



The FOI process



The FOI Act outlines the process for dealing with an application – at each step be clear where you are in the process



Who can make an application 'on behalf of' a child?

Section 98 of the FOI Act

... an access application or application for amendment may be made –

- (a) on behalf of a child by the child's guardian or the person who has custody or care and control of the child; ...



What is a 'child'?

- Not defined in the FOI Act.
- Section 3 of the *Children and Community Services Act 2004* provides that
child means a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age;

'the child's guardian or a person who has custody or care and control of the child'

- Evidence that may assist the decision maker
 - Birth certificate which identifies the applicant as a parent;
 - Court orders that give the applicant care and control for the child; or
 - Correspondence and/or cards from government agencies, such as Centrelink, Medicare, or the Department of Human Services, that indicate the applicant has guardianship or care and control of the child.

Is there evidence that the person is acting on behalf of the child?

- Section 98 does not limit who can apply on behalf of an individual.
- If a person purports to act on behalf of a child but does not fall within section 98(a), the agency may consider whether the agency accepts that the person is acting on behalf of the child.

Who is the applicant?

- If the decision maker is satisfied that application is on behalf of the child, the access applicant is taken to be the child.
- If the decision maker is not satisfied of this, the purported representative is the applicant and as such they are seeking personal information about a third party.

Considering clause 3 of Schedule 1

- Clause 3 provides that information is exempt if its disclosure would reveal personal information about an individual. This is subject to limitations including clause 3(2), 3(5) and 3(6).
- If the applicant is taken to be the child, under clause 3(2) information that it merely personal information about the child is not exempt under clause 3(1).

Considering clause 3 of Schedule 1

- If the applicant is not taken to be the child, consider:
 - has the applicant provided evidence that the child has consented to disclosure (clause 3(5)): or
 - would disclosure, on balance, be in the public interest.

Is disclosure in the best interests of the child?

Section 23(4)

If a document contains personal information and the applicant, or the person to whom the information relates, is a child who has not turned 16, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the child and that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.

Other exemptions?

- Clause 13 - Adoptions or artificial conception information
Re 'L' and Department for Child Protection and Family Support [2015] WAICmr 16
- Clause 14(5) – Information protected under certain statutory provisions

Do you propose to give access?

- Consider whether section 32(3) is relevant:

If the third party, or the closest relative of a dead third party, is a child who has not turned 16 and who, in the agency's opinion, does not have the capacity to appreciate the circumstances and make a mature judgment as to the nature and significance of the document, the views of the child's guardian, or the person who has custody or care and control of the child, may be obtained for the purposes of subsection (2).

Decisions of interest

- *Re 'C' and Department for Child Protection* [2011] WAICmr 11
- *Re 'M' and Child and Adolescent Health Service* [2009] WAICmr 16

Summary

- Break it down
- Where are you in the process?
- Check the FOI Act one more time

Discussion