

LAPHAM V DEPARTMENT OF EDUCATION AND COMMUNITY SERVICES [1998]

FACTS

Lapham applied for access to documents held by the Department in its family service files which referred to him either directly or indirectly.

The Department released some documents but refused to release some documents on the grounds that they were exempt either as: (a) working documents, (b) documents protected by secrecy provisions, (c) documents affecting agency operations, (d) personal affairs, (e) documents covered by legal professional privilege, (f) documents the release of which would be a breach of confidence.

ISSUES

Did any of the claimed exemptions apply to the documents before the Tribunal.

FINDING

Most of the documents were not exempt and should be provided to the applicant.

The main reasons behind the decision were that the documents related to events which had occurred some time ago and the information contained in the documents was information which had since come to the notice of the applicant in any event.

QUOTE

President L J Curtis said:

“The ... documents in issue ...are documents of a routine administrative character concerning the administration of the children’s welfare laws in relation to a particular case and the issues with which the documents deal now lie in the past.”

“If access is sought to documents concerned with a particular issue at a time when the issue is a live one and disclosure of the documents would adversely affect the capacity of the agency to reach a proper resolution of the issue then the case for exemption under section 40(1)(d) will be a very strong one.”

“Where it is apparent, or is shown by evidence, that information has been provided to an agency on a properly confidential basis and the information is of a confidential nature, the information will be exempt matter unless the confidentiality has ceased to exist.”

IMPACT

When considering whether documents should be covered by an exemption under the Freedom of Information Act some consideration should be given to the prior disclosure of information contained in the relevant documents and when relevant events occurred.

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