

FREEDOM OF INFORMATION CASE NOTES

Information sought about a convicted criminal *Information Act s.49, s.56(1)*

The Complainant was a lawyer acting on behalf of a news organisation. She applied to an organisation for information held about a person's conviction for an offence which occurred over a decade previously. The documents sought included psychological reports, police interviews, and other documents. The Complainant already had a copy of the sentencing remarks made by the court in relation to the conviction.

The organisation contacted the offender in question as part of the third party consultation process. That offender was subject to criminal proceedings relating to more recent offences. The offender objected on the basis that the information in question would interfere with his privacy to a degree that outweighed the public interest in the material, that the public interest was best served by a fair trial in open court, and that a fair trial might be compromised by disclosure of the documents to the Complainant. Section 49 of the Act exempts information if disclosure would prejudice the right of a person to a fair trial or impartial adjudication.

The organisation decided not to release the information to the Complainant. Once the matter became a formal complaint to this Office, the organisation decided it would be bound by any decision of the Commissioner or any agreement reached between the Complainant and the offender, who was joined as a third party.

The *prima facie* decision maker found that the Complainant had an arguable case that disclosure of the information would not further prejudice the offender's right to a fair trial, given what was already in the public domain. Further, the Complainant had an arguable case that the offender should not have had a reasonable expectation that the documents in question would remain private, given they were created for use in a criminal proceeding, and that public interest factors in favour of disclosure may outweigh factors against disclosure.

Factors in favour of disclosure included:

- greater transparency of criminal justice system, a matter of public interest;
 - assisting persons impacted by the offender's alleged more recent offending to understand a significant event in their lives; and
 - possible assistance in improving safety in the community through educating the public about certain kinds of offences.
- Factors against disclosure included:
- the potential impact in obtaining frank and accurate psychological reports in criminal proceedings;
 - the underlying public interest in protecting personal privacy and the public interest in applying the law equally to all persons irrespective of their popularity.

The Complainant's case was found to have *prima facie* merit and was referred to mediation.