

FREEDOM OF INFORMATION CASE NOTES

Threat to life or health and Secrecy Provision *Information Act* s.54, s.48

The complaint was against the refusal by a public sector agency of access to mental health records on the following grounds:

it is not in the public interest to disclose the information because its disclosure would pose a serious threat to the life or health of a person (exemption under section 54(a) of the Act); and
an exemption under section 48 of the Act because of the application of section 91(4) of the *Mental Health and Related Services Act*.

The Office found that the Respondent had a very strong case to refuse access to the information based on the exemption of section 54(a) in the absence of evidence contradicting any diagnosis of mental illness currently available, that unsupervised access to the information would pose a threat to the life or health of a person, and it would not be in the public interest to release information that may trigger an adverse reaction that results in an adverse effect on the Complainant or a member of the public.

The Office also found that the section 48 exemption relied on by the public sector agency does not apply because:

- a) the exemption under section 48 arising on the basis that the disclosure is an offence under section 91(4) of the *Mental Health and Related Services Act* ceased to have effect on 1 July 2006 (that is before the date of the *prima facie* decision); and

section 48 was amended, also on 1 July 2006, to only exempt information the disclosure of which would be an offence against the provisions specified in Schedule 1 to the Act (which no longer include section 91(4) of the *Mental Illness and Related Services Act*).

The Office concluded that there was insufficient *prima facie* evidence to substantiate the complaint.