

FREEDOM OF INFORMATION CASE NOTES

‘Common interest privilege’ *Information Act s.49*

An applicant sought to access information about her relative, who he believed had made complaints about her to the Respondent. The Respondent had collected the information in the course of an investigation into a welfare matter, and with a view to potential ongoing litigation. The Respondent sought the views of the relative, who objected to release of the information. The Respondent considered the objection and decided it was still appropriate to release the information to the applicant. The relative then lodged a third party complaint with the Information Commissioner, claiming the information was exempt under legal professional privilege (now known as client legal privilege) because it was covered by ‘common interest privilege’. Common interest privilege applies when two individuals have a similar or shared interest in obtaining legal advice or representation with respect to actual or anticipated litigation. An example would be a third party insurer whom the party has made a claim upon to cover the costs of a proceeding. A claim cannot succeed where a party’s interests are selfish and potentially adverse to the other party’s, and the privilege only lasts for as long as the parties’ interests align. In dismissing the complaint, the Information Commissioner found that there was no evidence that the parties’ interests ever aligned, and that they were at any rate now clearly in conflict.