

Request by natural mother for maternity notes and paediatric files of her children who were in interim High Court wardship

Legislation	Official Information Act 1982, s 9(2)(a)
Agency	Crown Health Enterprise
Ombudsman	Sir Brian Elwood
Case number(s)	W38539
Date	August 1997

Request by natural mother for maternity notes and paediatric files of her children—children in interim High Court wardship—information previously made available—s 9(2)(a) outweighed by public interest in access to the information for the purposes of custody hearing

In this case, the mother of several young children, all of whom were in interim High Court wardship pending a full custody hearing, sought a review of the refusal by a Crown Health Enterprise (CHE) to provide her with the maternity notes and paediatric files the CHE held about the children. The mother wanted the information for the purpose of the custody hearing.

The CHE advised that, as the children were wards of the Court, it understood that the complainant was not entitled to the information at issue and the information had been withheld in reliance upon section 9(2)(a) to protect the children’s privacy.

In the course of the review a number of factors emerged as relevant. First, it was clear that an element of privacy attached to the information. However, the fact that the requester was the natural mother of the children and that the children were aged between 4 and 10 had a bearing on the extent of that privacy interest. It was also apparent that the mother had been given access to the information at issue in the past. Although the children were in interim High Court wardship, a wardship order does not extinguish the rights of the natural guardian nor does it confer guardianship on the Court to the exclusion of other guardians. Furthermore, the children were still of an age where they needed their mother to be interested in their health and wellbeing.

In light of the foregoing factors, it was concluded, after consultation with the Privacy Commissioner, that there was a privacy interest in the information which required protection in terms of section 9(2)(a). Even though the requester was the children's natural mother and the children were young, there could well be circumstances where the privacy interests of the children will be strong and will not be outweighed by the undoubtedly strong public interest in parents having access to information about the personal development, health and wellbeing of their children.

In the particular circumstances of this case, the view was formed that the privacy interests of the children were outweighed by the public interest in terms of section 9(1) of the OIA in the natural mother having access to the information about them for the purposes of the custody hearing. The information was made available to the mother.

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