|  |
| --- |
| Request by mother for copy of letter she viewed at her son’s family group conference |
|  |
| Legislation Official Information Act 1982, s 18(c)(i)  Agency Department of Child, Youth and Family Services  Ombudsman Mel Smith  Case number(s) W49146  Date August 2003 |

*Mother requested copy of letter she viewed at her son’s family group conference—refused under s 18(c)(i) because all FGC matters are confidential—s 38 of Children, Young Persons and their Families Act 1989—disclosing letter to person who attended FGC does not amount to ‘publishing’ as prohibited by s 38—letter released with proviso*

The requester had attended a Family Group Conference (FGC) in respect of her son during which a letter written by the father, who was unable to attend the FGC, was read out and given to the mother to view. The mother then wrote to the Department of Child, Youth and Family Services for a copy of that letter.

The Department responded advising:

All material and all discussions at Family Group Conferences are in confidence as per the Children, Young Persons and their Families Act 1989, section 38. Hence the letter …will not be released.

The Ombudsman was asked to review this decision.

Given the Department’s original response, it seemed clear to the Ombudsman the Department was relying on section 18(c)(i) of the OIA for withholding the letter, on the basis that making the letter available to this particular requester would be contrary to the provisions of a specified enactment, namely section 38 of the Child, Young Persons and their Families Act 1989 (CYP&F Act). After notifying the Department of his intention to investigate and review this decision, the Ombudsman received confirmation that the Department was relying on section 18(c)(i).

Section 38 provides:

(1) Subject to subsection (2) of this section, no person shall publish any report of the proceedings of any family group conference.

(2) Nothing in subsection (1) of this section applies to the publication of—

(a)   statistical information relating to family group conferences:

(b) the results of any bona fide research relating to family group conferences.

In earlier correspondence with the requester the Department set out its interpretation of this provision, stating:

Communicating details contained in [the] letter beyond the FGC amounts to a publication of the proceedings which is contrary to section 38 CYPFA.

The issue therefore turned on whether release of the letter in the circumstances of this particular case amounted to *‘publication’*. To determine the meaning of the section the Ombudsman considered the provisions of the CYP&F Act and the Department’s publications, including its Practice Guidelines.

With respect to the CYP&F Act, the Ombudsman noted sections 29 and 33 read as follows:

29 Family group conference may make decisions and recommendations and formulate plans—

(1) A family group conference convened under this Part of this Act may make such decisions and recommendations and formulate such plans as it considers necessary or desirable in relation to the care or protection of the child or young person in respect of whom the conference was convened.

(2) In making such decisions and recommendations and formulating such plans, the conference shall have regard to the principles set out in sections 5, 6, and 13 of this Act.

(3) Every Care and Protection Co-ordinator who convenes a family group conference shall cause to be made a written record of the details of the decisions and recommendations made, and the plans formulated, by that conference pursuant to this section

33 Department to maintain records of proceedings of family group conferences—

(1) Every written record made pursuant to section 29(3) of this Act in relation to a family group conference shall be kept at the District Office of the Department nearest to where the conference is held.

(2) The following persons shall have access to any such record:

(a)   Any person to whom a copy of that record is required to be sent pursuant to section 32 of this Act:

(b) Any Care and Protection Co-ordinator:

(c) Any Social Worker:

(d) Any other person who, in the opinion of a Care and Protection Co-ordinator, has a genuine and proper interest in the matter.

The Ombudsman noted that if *‘publication’* in the context of section 38 of CYP&F Act was meant to include communication with a party who had attended the relevant FGC, then such an interpretation would seem to be inconsistent with the above sections as the access required by section 33 would be prohibited by section 38.

With regard to section 29, the Ombudsman noted that it could be argued that the making of a record under this section is part of the FGC process and thus any disclosure is not to be after the FGC. However, this would not appear to be feasible given there is no time limit for access to this record under section 33.

Then the Ombudsman turned to consider the Department’s Practice Guidelines. He noted they said:

‘Publish’ is not about writing the official record and distributing it as required in the CYP&F Act. It is communicating details about the FGC beyond those limits…

Sharing observations with colleagues is an important part of the care and protection process. However, it will breach the CYP&F Act if communicated outside to third parties who do not have a valid involvement.

It was the Ombudsman’s view that these statements seemed to be consistent with his view that *‘publish’* in section 38 should be interpreted to exclude communication with parties who have a valid involvement in the FGC process, otherwise sections 33 and 38 would be irreconcilable.

The Ombudsman was not persuaded that releasing the letter at issue in this case to the mother who had already viewed its contents at the FGC amounted to *‘publishing’* as prohibited by section 38 of the CYP&F Act. As a result it was his view that the Department could not withhold the information under section 18(c)(i) of the OIA.

The Department agreed to release the information to the mother.

**Comment**

When releasing the letter to the mother, the Department referred her to the provisions of sections 37 and 38 of the CYP&F Act advising that these provisions require that she only show a copy of the letter to those persons who attended the FGC. If the mother decided to show this to someone who did not attend the FGC, the Department advised that she would be committing an offence under those provisions. Moreover, the mother was advised that she may not use the letter in any legal proceedings before a Court or Tribunal.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*