

## **'AG' and Department of Immigration and Citizenship [2013] AICmr 55 (26 April 2013) – Australian Information Commissioner**

'Freedom of information' – 'Material obtained in confidence' – 'Personal privacy exemption' – 'Request for access to documents' – 'Visa application'

Proceedings: Review of refusal access decision under *Freedom of Information Act 1982* (Cth).

Facts: The applicant applied to the Department to access specific documents related to his ex-wife. The Department refused access to 11 documents saying disclosure would reveal information provided in confidence and personal information about third parties, of which disclosure would be unreasonable and contrary to public interest.

Issues: Whether the documents were exempt under ss 45 (material obtained in confidence) and 47F (personal privacy exemption) of the FOI Act.

Decision and reasoning: Access refused.

Documents exempt under s 45 included statutory declarations made by the applicant's ex-wife and other third parties in relation to her application for permanent residency in Australia, as well as a record of interview with the ex-wife and letter sent by a third party. The commissioner was satisfied that disclosure of the documents sought would cause detriment to the applicant's ex-wife. The Commissioner was satisfied that disclosure of the documents sought would be a breach of confidence and the documents were exempt under s 45.

Documents exempt under s 47F were general correspondence in relation to the applicant's ex-wife visa applications. The documents contained personal information of the applicant's ex-wife, the applicant and other third parties, which was of a sensitive and personal nature (including names/other information). Disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, and an agency's ability to obtain confidential information and to obtain similar information in the future. Giving the applicant access to the documents was contrary to the public interest.

In reaching the decision, Acting Information Commissioner Pirani stated:

"[20] The Department has created Form 1040 for the purposes of a visa applicant providing documentation in relation to family violence matters. This was the form used by the applicant's ex-wife in support of the visa application. Form 1040 states that the information provided in the form 'is given and received on the understanding that it will be treated in confidence'."