

Decision D0032013 - Published in note form only

Re Community & Public Sector Union/Civil Service Association of WA and Department of Health [2013] WAICmr 3

Date of Decision: 1 February 2013

Freedom of Information Act 1992: Schedule 1, clause 1(1)(d)(i)

In October 2011, the Community & Public Sector Union/Civil Service Association of WA ('the complainant') applied under the *Freedom of Information Act 1992* ('the FOI Act') for access to a copy of the 'Dental Service Functionality Assessment' report. The agency identified one document within the scope of the application entitled the "*Public Dental Health Services in Western Australia: A Service Functionality Assessment 2010*" ('the disputed document').

By notice of decision dated 2 November 2011, the agency refused access to the disputed document under clause 1(1)(b) of Schedule 1 to the FOI Act. The agency confirmed its decision on internal review. The complainant applied to me for external review of that decision on 23 December 2011.

Following receipt of the complaint, the Commissioner obtained the original of the disputed document, together with the agency's FOI file maintained in relation to the complainant's access application.

On 13 July 2012, after examining all the material before him, including the disputed document, the Commissioner informed the parties, in writing, of his preliminary view of the complaint and his reasons. The Commissioner's preliminary view was that the disputed document was not exempt under clause 1(1)(b) of Schedule 1 to the FOI Act as claimed by the agency.

The agency was invited to give the complainant access to the disputed document or, alternatively, to provide submissions to support its claim that the disputed document was exempt. The agency sought, and was granted, an extension of time in which to make submissions. By email dated 15 August 2012, the agency made detailed submissions. It maintained its claim for exemption under clause 1(1)(b) and, in addition, claimed that the disputed document was exempt under clause 6(1) of Schedule 1 to the FOI Act. The agency provided additional material in support of its claims.

Having considered the agency's additional submissions and the further information provided, on 16 November 2012, the Commissioner wrote to the parties setting out his supplementary preliminary view of the complaint. In light of the additional information, it was the Commissioner's view that the disputed document was exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act. The Commissioner was satisfied, on the material before him, that the disputed document was prepared to brief the Minister for Health in relation to matters prepared for possible submission to an Executive body, in this case, the Economic and Expenditure Reform Committee (which is a committee of Cabinet) or Cabinet. The Commissioner was of the view that none of the limits on the exemption set out in clauses 1(2)-1(5) applied. As the Commissioner considered that the disputed document was exempt

under clause 1(1)(d)(i), it was not necessary for him to consider whether the exemptions claimed under clause 1(1)(b) and clause 6 by the agency also applied.

The complainant was invited to provide the Commissioner with further submissions or withdraw the complaint. The complainant sought an extension of time in order to make further submissions but, following the grant of additional time, made no further submissions to the Commissioner.

The Commissioner reviewed all of the information before him and, in the absence of any further information or material from the complainant, was not dissuaded from his supplementary preliminary view.

Consequently, the Commissioner varied the agency's decision and found that the disputed document was exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act.