

Decision and reasons for decision D0062018 – Published in note form

Re Goiran and Department of Health [2018] WAICmr 6

Date of Decision: 29 June 2018

Freedom of Information Act 1992 (WA): Schedule 1, clause 3(1)

Background

On 4 July 2017 Nicholas Pierre Goiran MLC (**the complainant**) applied to the Department of Health (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to information about induced abortions carried out after 20 weeks gestation.

On 21 September 2017 the agency decided to give the complainant access to edited copies of documents with certain information deleted on the ground it was exempt under several clauses, including clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**). On internal review, the agency varied its decision and claimed that the disputed information was exempt under several other clauses and clause 3(1) of Schedule 1 to the FOI Act.

On 29 November 2017 the complainant applied to my office for external review of the agency's decision to refuse access to information. He stated that he did not accept that the documents were exempt under clause 3(1) as the release of the information would not identify individuals and the public are entitled to know the information.

Following receipt of the complaint, the agency provided my office with a copy of the disputed documents together with its FOI file maintained in respect of the complainant's access application. The complainant confirmed that his application for external review of the agency's decision was limited to the two columns of information in the six reports to which he had been given edited access, titled 'gestation' and 'reason for abortion text'. During the process of the external review, the agency agreed to give the complainant access to the information in the column titled 'gestation.'

The only issue remaining in dispute is whether the information in the column headed 'reason for abortion text' (**disputed information**) is exempt under clause 3(1).

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal 'personal information' about an individual (whether living or dead). The definition of personal information in the Glossary to the FOI Act does not state to whom the identity must be apparent or reasonably ascertainable. Personal information is exempt under clause 3(1) subject to the application of the limits on exemption, relevant to this matter, namely 3(6) of Schedule 1 to the FOI Act (**clause 3(6)**). Clause 3(6) states that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest.

On 8 June 2018, I informed the parties in writing that it was my preliminary view that the disputed information would, if disclosed, reveal personal information about individuals other than the complainant and that its disclosure would not, on balance, be in the public interest (**preliminary view**). The complainant was invited to accept my preliminary view or to provide me with further submissions.

The complainant did not accept my preliminary view and made further submissions. The complainant maintained his view that the disputed information is not personal information and that it is, in any case, in the public interest to disclose the disputed information.

Consideration

The definition of personal information in the FOI Act includes information about an individual whose identity ‘can reasonably be ascertained’ from the information. Accordingly, the definition of personal information contemplates identification by people with special knowledge in some circumstances (see: *Re West Australian Newspapers Limited and Department of the Premier and Cabinet* [2006] WAICmr 23 at [45]).

In my view, the disputed information in this matter is so specific that, if it was disclosed, then when considered with the information to which access has already been given, that disclosure would reveal personal information about individuals other than the complainant. Any such disclosure of the disputed information could reasonably be expected to enable the identities of one, or more, of the individuals to be ascertained.

I note that disclosure of information under the FOI Act is disclosure to the world at large (see: *Public Transport Authority* [2018] WASC 47 at [71]). Accordingly, when considering whether or not to disclose documents under the FOI Act, the effects of disclosure are generally considered as though disclosure were to the world, rather than only to the particular access applicant.

In relation to clause 3(6), I accept that there is a great deal of public interest and debate about the issue of termination of pregnancies. However, I do not accept that the disclosure of very specific medical information about individual patients would make the agency more accountable or enable the public to participate more effectively in the governing of our State.

The complainant’s submissions raised several other issues which are either not, in my view, relevant to my determination under the FOI Act (for example a detailed consideration of sections 335 (5)(d) and (e) of the *Health (Miscellaneous Provisions) Act 1911*) or are matters relating to the exercise of my discretion and about which he has a different view (including, for example, an attempt to widen the scope of the issues in dispute to include additional documents and whether he should receive a summary of the agency’s submissions or a copy of the entire submissions).

I have considered all of the material before me, including all of the complainant’s submissions, however, I am not dissuaded from my preliminary view. I am satisfied that disclosure of the disputed information, considered with the information to which access has already been given, would disclose personal information that is prima facie exempt. I do not consider the public interest in disclosing that personal information outweighs the privacy of those individuals.

I find that the material facts underlying my reasons are as set out in my preliminary view and above. For the reasons given in both my preliminary view and above I am satisfied that the disputed information is exempt under clause 3(1) and that on balance its disclosure would not be in the public interest.

Decision

The agency’s decision is confirmed. I find that the disputed information is exempt under clause 3(1) of Schedule 1 to the FOI Act.

Lisa Ward
ACTING INFORMATION COMMISSIONER