Decision D0142021 – Published in note form only

***Re Goiran and Department of Health* [2021] WAICmr 14**

Date of Decision: 25 November 2021

***Freedom of Information Act 1992* (WA): clauses 3(1) and 5(1)(e)**

On 13 January 2021, Nicolas Goiran (**the complainant**) applied to the Department of Health (**the agency**) under the *Freedom of Information Act 1992* (WA) (**the FOI Act**) for access to documents described as Form 1 notifications of induced abortions, for gestation periods at 20 weeks or more for the calendar year 2019.

By notice of decision dated 2 March 2021 the agency decided to give the complainant access to an edited copy of 68 documents (**the disputed documents**). The complainant sought internal review of the agency's decision and by letter dated 19 March 2021 the agency confirmed its decision.

On 27 April 2021 the complainant applied to Information Commissioner (**the Commissioner**) for external review of the agency's decision.

Following receipt of the complaint, the agency provided the Commissioner 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 request for external review extended to all of the information that had been edited from the disputed documents (**the disputed information**).

The agency claimed that disclosure of the names and handwriting of the medical practitioners could reasonably be expected to endanger the safety of an individual and that this information is exempt under clause 5(1)(e) of Schedule 1 to the FOI Act (**clause 5(1)(e)**). The agency claimed that disclosure of the remaining disputed information, including personal information about the patients, reasons for termination, gestation periods and other clinical information, would enable the identity of individuals to be ascertained and that the information is exempt under clause 3(1) of Schedule 1 to the FOI Act (**clause 3(1)**).

On 29 September 2021, the Commissioner provided the parties with her preliminary view of the matter. It was her preliminary view that the information comprising the names and the handwriting of the medical practitioners is exempt under clause 5(1)(e), and that the remaining disputed information is exempt under clause 3(1). The complainant was invited to accept the Commissioner's preliminary view or to make further submissions.

By email dated 13 October 2021, the complainant advised that he accepted the Commissioner's preliminary view in relation to the signatures and names of the medical practitioners, but maintained his claims that the remaining disputed information was not exempt. The complainant reiterated submissions he had previously made, but did not raise any new issues that dissuaded the Commissioner from her preliminary view. The complainant additionally indicated he would be willing to accept information that was only the information about the reason for the termination.

Clause 5(1)(e) provides that matter is exempt if its disclosure could reasonably be expected to endanger the life or safety of an individual.

The Commissioner noted that the State of Western Australia had introduced the *Public Health Amendment (Safe Access Zone) Bill*, which is now law (*Public Health Amendment (Safe Access Zones) Act 2021*). The effect of this is to insert a new part into the *Public Health Act 2016*, to ensure that women seeking an abortion can have safe and private access to the clinics, where the procedures are undertaken.

The Commissioner was of the view that the fact that it is necessary to introduce legislation to create 'safe zones' around the clinics demonstrates the sensitivity of this issue in the public domain and the level of concern for the safety of individuals entering the clinics. The legislation extends its protection to employees, which the Commissioner considered demonstrated a recognition of the concerns for the safety of the staff, as well as the patients.

It is well-established that disclosure under the FOI Act is disclosure to the world at large. The Commissioner considered that in light of the extensive use of social media, it was reasonable to expect that if the names of the medical practitioners were disclosed, those individuals who are opposed to abortion would target the medical practitioners to the extent that the medical practitioners would have concerns for their physical safety.

Accordingly, the Commissioner considered it was reasonable to expect that disclosure of the names of the medical practitioners could endanger the physical safety of individuals. Additionally, the Commissioner considered that it would be possible to identify certain medical practitioners from their handwriting; accordingly, she considered that disclosure of the handwriting of the individual practitioners could also reasonably be expected to have a similar outcome as disclosure of the names themselves.

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.

The Commissioner considered that the facts of this matter were very similar to those in *Re Goiran and Department of Health* [2018] WAICmr 6. In that matter the Acting Information Commissioner (**A/Commissioner**) considered that the disputed information was so specific that, if it was disclosed, disclosure would reveal personal information about individuals other than the complainant.

Similarly, in this matter, the Commissioner considered that because of the specific nature of the information, disclosure would enable the identities of one or more of the individuals to be ascertained, albeit possibly only by people who are already aware of the terminations, either because they were involved in them or the patient concerned has already imparted that information to them.

The Commissioner considered that the public interest in the accountability of the agency was satisfied by the requirements of the *Health (Miscellaneous Provisions) Act 2011*, and was not persuaded that the public interests favouring disclosure outweighed the public interest in the protection of the personal privacy of the patients.

The Commissioner confirmed the decision of the agency.