

Decision D0182008 – Published in note form only

Re Bozinovski and Medical Board of Western Australia [2008] WAICmr 18

Date of decision: 27 May 2008

Freedom of Information Act 1992: section 23(2); Schedule 1, clauses 3(1) and 3(6)

In January 2008, the complainant applied to the agency for access, under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to any complaints made against a certain medical practitioner. The agency refused the complainant access to documents of the kind described by the complainant, without identifying any of them, on the basis of clauses 3, 4(3), 5(1)(b), 7 and 8 of Schedule 1 to the FOI Act. The agency confirmed its decision on internal review but referred only to the grounds of exemption in clauses 3 and 8. In April 2008, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of the agency's decision.

On receipt of the complaint, one of the A/Commissioner's legal officers reviewed the agency's files, including its FOI file, and advised the complainant that, in her view, documents of the kind described were exempt under clause 3(1). The complainant was also advised that the complaint was more appropriately dealt with under s.23(2) of the FOI Act. Section 23(2) provides that the agency may refuse access to the requested documents without having identified any or all of them, and without specifying the reason why matter in any particular document is claimed to be exempt, if it is apparent from the nature of the documents as described in the access application that all of the documents are exempt and there is no obligation under s.24 of the Act to give access to an edited copy of any of the documents.

In light of that advice, the complainant was invited to withdraw his complaint or make additional submissions to the A/Commissioner. The complainant maintained his complaint and provided written submissions to the effect that the limit on the exemption in clause 3(6) applied in this case because there was, on balance, a public interest in the disclosure of the requested documents, given that they related to the medical profession and the high standards expected of medical practitioners.

The A/Commissioner found that documents of the kind described in the access application were exempt under clause 3(1) because they would reveal personal information about third parties. The A/Commissioner considered the complainant's submission that there was a public interest in ensuring that the work of medical practitioners is carried out to the highest standards, both ethically and professionally. However, the A/Commissioner found that that particular public interest was satisfied by the creation and operation of the agency, which was established, amongst other things, to investigate allegations made against medical practitioners. The A/Commissioner was also influenced by the fact that the practitioner had not been subject to any disciplinary hearings conducted by the agency. The A/Commissioner considered that the FOI legislation is not intended to open the private and professional lives of its citizens to public scrutiny in circumstances where, as here, there was no demonstrable public benefit.

The A/Commissioner confirmed the agency's decision to refuse access to the requested documents and found that documents of the kind described in the complainant's access application are exempt under clause 3(1) and access should be refused under s.23(2) of the FOI Act.