

Decision D0202011 - Published in note form only

Re O'Donoghue and Health and Disability Services Complaints Office [2011] WAICmr 20

Date of Decision: 14 June 2011

Freedom of Information Act 1992: section 12(1)(e)

Freedom of Information Regulations 1993: regulations 2A and 4 and Schedule 1

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to information from the Health and Disability Services Complaints Office ('the agency') about treatment he had received. He did not pay the \$30 application fee prescribed in s.12(1)(e) of the FOI Act - set at \$30 under regulation 4 and item 1 of Schedule 1 of the *Freedom of Information Act Regulations 1993* ('the Regulations') for an application for non-personal information. Regulation 2A of the Regulations provides that 'non-personal information' means information that is not personal information about the applicant. No application fee is payable under the FOI Act by an applicant for personal information about that applicant.

In its decision, the agency gave the complainant full access to 25 documents and access in edited form to nine documents. The agency claimed that the information deleted from the nine documents was exempt under clause 3(1) - which relates to personal information - and other provisions of Schedule 1 to the FOI Act. However, the agency varied that decision following an internal review and advised the complainant that the information deleted from the nine documents was outside the scope of his access application because it was an application for personal information about him and not an application for non-personal information (that is, for personal information about other people). Therefore, it was unnecessary for the agency to claim an exemption for that material.

The complainant applied to the Information Commissioner for an external review of the agency's decision. Following a review of the information before her, one of the A/Commissioner's officers, under delegated authority, wrote to the parties and advised that, in her preliminary view, the agency's decision was justified, setting out her reasons for that view. The complainant was invited to withdraw his complaint or to provide the Commissioner with submissions as to why personal information about other people was within the scope of his application.

The complainant responded and made various queries and submissions, including that the agency had not acted in good faith in regard to various matters and that, in essence, the distinction between personal information and non-personal information was a matter of semantics. The A/Commissioner examined all of the information before her, including the disputed documents, and agreed with the preliminary view provided to the parties. Among other things, the A/Commissioner noted that the complainant had specifically requested that he not pay the application fee and the agency had specifically advised him that his application would be treated as a "*request for access to your personal information*". Having considered the complainant's submissions in response to the officer's preliminary view letter, the A/Commissioner was not dissuaded from the preliminary view.

The A/Commissioner confirmed the agency's decision to refuse the complainant access to the information deleted from the nine documents on the ground that the deleted matter was non-personal information and was, thus, outside the scope of his access application.