

Decision D0062002 – Published in note form only

Re “A” and Department of Justice [2002] WAICmr 6

Date of Decision: 30 January 2002

Freedom of Information Act 1992; section 28

In January 2001, the complainant was sentenced to a term of imprisonment on fraud charges. He appealed that conviction and, in August 2001, the Court of Criminal Appeal allowed the appeal, quashed the conviction and acquitted the complainant stating that it would be unjust, in all the circumstances, to order a new trial.

On 17 September 2001, the complainant made an application to the agency under the FOI Act for access to documents, including medical notes made by a psychiatrist, for the period of his incarceration. The agency granted him full access to a number of documents but decided that access to others would be given indirectly by making them available to a suitably qualified medical practitioner in accordance with s.28 of the FOI Act.

The complainant lodged a complaint with the Information Commissioner seeking external review of the agency’s decision.

The Information Commissioner examined the requested documents and was satisfied that both documents contain information of a medical and psychiatric nature concerning the complainant. However, it was not apparent to the Information Commissioner that, at the time that the agency made its decision on access, reasonable grounds existed for the principal officer of the agency to form the view that direct disclosure of that material to the complainant may have a substantial adverse effect on the physical or mental health of the complainant.

The Information Commissioner made her own inquiries, and obtained information, which satisfied the Information Commissioner that direct disclosure of the disputed documents to the complainant might have a substantial adverse effect on the complainant’s physical or mental health. However, the Information Commissioner was unable to disclose the content of that information without breaching the provisions of s.74 of the FOI Act.

Further, the Information Commissioner was satisfied that, if the principal officer of the agency had made sufficient inquiries into this matter, he would have had before him sufficient material to enable him to form the requisite opinion under s.28(b) of the FOI Act.

Accordingly, the Information Commissioner confirmed the decision of the agency to give access indirectly by making the documents available to a suitably qualified person and authorised the agency to withhold access until such time as the complainant nominated such a person, in writing, to the agency.