

**SCHIBECI AND HEALTHWAY**

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: 95232  
Decision Ref: D00996**

Participants:

**Renato Anthony Schibeci**  
Complainant  
  
- and -  
  
**Western Australian Health Promotion  
Foundation (Healthway)**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - documents relating to research grants for health promotion research - clause 6 - deliberative processes - public interest - factors for and against disclosure of documents - public interest in knowing processes by which agencies make decisions affecting general public - public interest in preserving integrity of agency decision-making processes.

*Freedom of Information Act 1992 (WA)* ss. 72(1)(b), 75(1), Schedule 1 clause 6(1).

*Freedom of Information Act 1982 (C'wlth)* s. 36(1)(a).

*Re Read and Public Service Commission* (Information Commissioner, WA, 16 February 1994, unreported).

*Re Waterford and Department of Treasury (No 2)* (1984) 5 ALD 588.

## DECISION

The decision of the agency is confirmed. The disputed documents are exempt under clause 6 of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

19th January 1996

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision by the Western Australian Health Promotion Foundation, trading as Healthway ('the agency') to refuse Dr Schibeci ('the complainant') access to documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. The agency provides around \$1.5m annually for health promotion research in Western Australia. The Health Promotion Research Program of the agency is administered through the Research Sub-Committee of the Health Advisory Committee which makes funding recommendations to the Board of the agency. In 1995, the agency received 44 applications for research grants and 12 were funded.
3. I am informed by the agency that applications for research grants are submitted to it in confidence. I am further informed that applications received are reviewed by independent external assessors on the understanding that the confidentiality of the assessors is maintained and that their names will not be revealed to the applicants. The assessor's reports (with assessors names deleted) are made available to applicants who are invited to respond to the comments of the assessors. A member of the research committee becomes a spokesperson for each application for a grant and he or she is responsible for collating all the information in respect of that grant, including the assessors' comments and the applicant's response. The spokesperson leads the discussion on the merits of the application. The final meeting of the Research Sub-Committee, where funding recommendations are made, is chaired by an independent external chairperson who provides a summary of the discussions and assessment of each application to the Health Advisory Committee and the Board of the agency, to assist in the deliberative process of approving or rejecting applications for research grants.
4. The complainant applied to the agency for a research grant in 1995 but was unsuccessful. On 19 September 1995, the complainant lodged an access application under the FOI Act with the agency seeking access to copies of the assessors' reports on successful research applications; the chairperson's comments on successful research applications; and a copy of the minutes of the various meetings at which the decision was made to support or not to support the various applications.
5. On 22 September 1995, Mr Richard Wilson, Manager, Finance and Administration of the agency, refused the complainant access to the assessors' reports and the chairperson's comments on the ground that those documents are exempt under clause 6 of Schedule 1 to the FOI Act. However, the agency provided the complainant with additional information relating to his application in the form of the confidential spokesperson's comments on his application.

6. Nevertheless, the complainant sought internal review of the agency's decision and, on 16 October 1995, Ms Addy Carrol, Director of the agency, confirmed the agency's initial decision that the requested documents are exempt under clause 6 of Schedule 1 to the FOI Act. On 13 November 1995, the complainant sought external review of that decision by the Information Commissioner.

## **REVIEW BY THE INFORMATION COMMISSIONER**

7. On 17 November 1995, I notified the agency that I had received this complaint and, pursuant to my power under ss. 75(1) and 72(1)(b) of the FOI Act, I obtained copies of the disputed documents and a copy of the agency's FOI file maintained in respect of this matter. The agency provided me with additional reasons for its claims that the documents are exempt and a copy of those reasons were provided to the complainant.
8. On 2 January 1996, after examining the disputed documents and considering the submissions of the parties, I provided the parties with my preliminary view and the reasons for that view. It was my preliminary view that the disputed documents were exempt under clause 6 of schedule 1 to the FOI Act. After receiving my preliminary view, on 9 January 1996, I received an additional submission from the complainant.

## **THE DISPUTED DOCUMENTS**

9. There are 34 documents in dispute between the parties. Those documents are the reports of the external assessors who assessed the successful applications for research grants made to the agency. The agency claims that each of the disputed documents is exempt under clause 6 of Schedule 1 to the FOI Act.

## **THE EXEMPTION**

10. Clause 6, so far as is relevant, provides:

**"6. *Deliberative processes***

***Exemptions***

*(1) Matter is exempt matter if its disclosure -*

*(a) would reveal -*

*(i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or*

*(ii) any consultation or deliberation that has taken place,*

*in the course of, or for the purpose of, the deliberative processes of the Government, a Minister or an agency;*

*and*

*(b) would, on balance, be contrary to the public interest."*

11. There are two parts to this exemption and the requirements of both paragraphs (a) and (b) must be satisfied for the exemption to apply. I have discussed the meaning of clause 6 in a number of my formal decisions, including *Re Read and Public Service Commission* (16 February 1994, unreported), at paragraphs 12-26. The meaning of the phrase "deliberative processes" has been considered in a number of cases based on the equivalent section in the Commonwealth *Freedom of Information Act 1982* (s.36(1)(a)). In my view, assistance for agencies in the proper application of the exemption in clause 6(1) can be found in *Re Waterford and Department of Treasury (No 2)* (1984) 5 ALD 588, a decision of the Commonwealth Administrative Appeals Tribunal ('the Tribunal') relating to the equivalent Commonwealth provision. In that case the Tribunal said, at paragraphs 58-60:

*"As a matter of ordinary English the expression 'deliberative processes' appears to us to be wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency. The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing on one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes - the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action. Only to the extent that a document may disclose matter in the nature of or relating to deliberative processes does s.36(1)(a) come into play...*

*It by no means follows, therefore, that every document on a departmental file will fall into this category. Furthermore, however imprecise the dividing line may appear in some cases, documents disclosing deliberative processes must, in our view, be distinguished from documents dealing with the purely procedural or administrative processes involved in the functions of the agency...*

*It is documents containing opinion, advice, recommendations etc. relating to internal processes of deliberation that are potentially shielded from disclosure...Out of that broad class of documents, exemption under s.36 only attaches to those documents the disclosure of which is 'contrary to the public interest'..."*

12. From my examination of the disputed documents, I am satisfied that they contain advice, opinion and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes of the agency. In this instance, it is clear that the agency was deliberating upon and deciding the relative merits of

the various applications for research grants that it had received and was in the process of evaluating each application in order to determine which were successful and which were unsuccessful. Therefore, I am satisfied that the documents contain information of the type described in paragraph (a) of clause 6(1). The question which therefore arises is whether it would, on balance, be contrary to the public interest to disclose the disputed documents.

13. In my view, the purpose of the exemption in clause 6 is to protect the integrity of the deliberative processes of the Government, a Minister or an agency by ensuring that informed and meaningful debate and a careful consideration of issues is able to take place without unnecessary interference. The integrity of that process is also preserved by ensuring that all relevant information is before the Government, a Minister or an agency as the case may be, so that decisions are made with the benefit of a full range of advice and opinion. I consider that it may be contrary to the public interest to disclose documents in circumstances where disclosure would adversely affect either the quality, or quantity, of the material made available to a Government, a Minister or an agency, for the purposes of those deliberations.
14. However, I also recognise that there is a public interest in the complainant as a member of the public, being able to exercise his rights of access under the FOI Act. Further, I also recognise that there is a public interest in citizens being informed about the processes of decision-making in government agencies, especially where those decisions have a direct affect on the citizen as it has in the circumstances of this case.
15. Generally speaking, when deliberations are current or have not concluded, I consider that it may be contrary to the public interest to disclose deliberative process documents. However, once a decision is made, different considerations may apply and the sensitivity of documents may no longer be an issue. In this instance, the deliberative process has concluded and the complainant submits that it is in the public interest to understand how the agency's system for awarding research grants operates.

**What does the complainant know about the agency's methods for awarding research grants?**

16. The agency informs me, and I accept, that the manner in which it deals with research applications is widely understood and accepted by the research community. The agency publishes guidelines for Applicants, an Instruction Booklet and an application form, each of which were provided to the complainant, containing details of the deliberative processes of the agency in respect of grant applications. The agency provided the complainant with the comments of the independent external chairperson. Further, I understand that the complainant was also provided with additional information relating to his application, in the form of the confidential spokesperson's comments on his application. That information is not normally made available to unsuccessful applicants, but, in this instance, in order to further assist the complainant with

this matter, the agency provided that further information to him. Finally, a verbal explanation of the research procedures was given to him by the Manager, Health Promotion Programs and Research in the agency. Taking those facts into account, I consider that the public interest in knowing how the agency's system of awarding grants operates and the public interest in being informed about the decision-making processes of government, have been satisfied.

17. I accept the fact that the agency's research funds are limited and that it must therefore, process and decide applications for grants according to procedures that are fair and equitable. I am informed by the agency that its practices follow procedures established by the Public Health Research and Development committee and the National Health and Medical Research Council. The complainant submitted that procedures established at a national level may not have the same validity in this State because of the size of the research community. However, I consider that the procedures employed by the agency are fair and equitable, regardless of the size of the research community.

### **The agency's submissions**

18. The agency submits that the disclosure of the independent assessors' reports would seriously compromise the frankness and candour of the assessment process and may jeopardise the willingness of people to act as assessors in the future. The agency contends that its ability to obtain free and unfettered comments from assessors is essential for sound decision-making and that its access to candid advice would diminish if the established convention of confidentiality in these matters were to be ignored. For those reasons, among others, the agency claims that disclosure would be contrary to the public interest. Further, the agency submits that the reports of the external assessors constitute only one aspect of the agency's deliberative process. The individual external assessors do not take account of the funding priorities, nor other factors considered by the agency during its deliberative process. As a result, applications for grants which may have been assessed as worthwhile on technical and scientific grounds may not, in the final analysis, receive funds from the agency.

### **Consideration of claims**

19. In my view, the decision to award research grants, when funds are limited as they are in this instance, is not one that should be taken capriciously. It appears to me that the agency's procedures are designed to obtain an informed and unbiased assessment of a wide range of research proposals, each with a different degree of utility and benefit to the health of the community. I accept that it is often difficult to draw the dividing line between successful and unsuccessful applications and that the assessors' reports are an essential component of the decision-making process.
20. The agency informs me that each application for a research grant is referred to a small group of independent volunteer assessors, for a critical assessment of the

merits of that application only. In that process, the assessment of each application is made without any comparison with any other application, and a separate assessment report on each application is provided to the agency. The agency further informs me, and I accept, that assessors are assured that confidentiality and anonymity will be maintained during that process. The agency claims that correspondence received from a range of assessors who were directly involved in the 1995 research grant program, supports its claim that the agency's ability to obtain free and unfettered assessments would be diminished if the conventions of confidentiality and anonymity were breached.

21. It is clear from the evidence before me that in order to make decisions concerning the allocation of public funds for health-related research, the agency has in place a process in which it is able to obtain unbiased and independent assessments of grant applications from members of the research community with expertise in those fields. In my view, it is necessary that government-funded organisations charged with the duty of allocating public monies in the furtherance of the public good, make decisions based upon independent advice. In my opinion, the disclosure of documents such as those in dispute, would adversely impact upon the capacity of the agency to make those decisions fairly, soundly and objectively because the quality of the assessments would suffer if that process does not remain confidential.
22. Taking all of those matters into account, I consider that maintaining the confidentiality of the source and content of assessors' reports is necessary to ensure full disclosure by applicants of their particular research methodology or the subject matter of the proposed research to the agency, and to ensure that an unbiased and independent assessment of the merits of each research application by various experts in the research community is provided to the agency to assist it in its deliberative function. Accordingly, I am of the view that disclosure of the disputed documents would, on balance, be contrary to the public interest. I find that the disputed documents are exempt under clause 6(1) of Schedule 1 to the FOI Act.

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