

Decision D0132003 – Published in note form only

Re Lyall and Workers' Compensation and Rehabilitation Commission [2003] WAICmr 13

Date of Decision: 14 April 2003

Freedom of Information Act 1992, Schedule 2: Glossary, clause 5

A Medical Assessment Panel, composed of medical experts from relevant fields of medicine, was constituted under the *Workers' Compensation and Rehabilitation Act 1981* to consider a question referred to it about a workers' compensation claim made by the complainant's wife. On behalf of his wife, the complainant sought access, under the FOI Act to a document created by the Chairman of Panel. The agency refused access. The agency claimed that, although the Panel was a tribunal and hence a "court" for the purposes of the FOI Act, the requested document was not a document of a court, as defined in clause 5 of the Glossary to the FOI Act, because it did not relate to matters of an administrative nature.

The complainant lodged a complaint with the Information Commissioner, seeking external review of the agency's decision. The complainant submitted, among other things, that the Panel is not a tribunal or, alternatively, that the requested document was created by the Chairman in an administrative capacity or is otherwise a public document.

The Information Commissioner obtained the requested document from the Chairman of the Panel and examined it. The Information Commissioner made inquiries and decided that the Panel is clothed with some of the characteristics of a tribunal, including a duty to give reasons and its decisions are subject to the prerogative writ of *certiorari* issued by the Supreme Court of Western Australia. In addition, the Panel is independent of the agency and is not bound by the rules of evidence. It makes conclusive determinations of fact, which do not have to be confirmed by a court or other body. Taking all of that into account, the Information Commissioner decided that the Panel is a specialist administrative tribunal, which determines questions of fact and that it is, therefore, a court for the purposes of the FOI Act.

Having examined the requested document, the Information Commissioner was satisfied that it was not a document of an administrative nature. Rather, it was a private document created by the Chairman of the Panel as an *aide-memoire* to assist him in determining the medical question that had been referred to the Panel. Therefore, the document was not a document of a court within the meaning of clause 5 of the Glossary to the FOI Act. The Information Commissioner also rejected the complainant's submission that the requested document is a public document, noting that it remains in the possession of the Chairman of the Panel.

The Information Commissioner found that the requested document is not a document of a court to which the FOI Act applies because it does not relate to matters of an administrative nature. The Information Commissioner confirmed the decision of the agency to refuse access to it.