

Decision D0162001 – Published in note form only

***Re 'L' and Armadale Health Service* [2001] WAICmr 16**

Date of Decision: 12 April 2001

Freedom of Information Act 1992; Schedule 1 clause 3; clause 5(1)(e)

The complainant is a former employee of the agency. During the period of his employment, some staff members complained to management about aspects of his conduct. The complainant alleged that he had been the subject of harassment and discrimination by other staff members. The agency made inquiries into these complaints and, subsequently, suspended the complainant from duty. During the period of his suspension, the agency sought professional advice from a consulting psychiatrist about the complainant's fitness to perform his duties. After taking into account a report from the psychiatrist and considering other matters, the complainant's contract of employment was terminated.

The complainant made an application to the agency for access under the FOI Act to documents relating to the termination of his employment, including a copy of the psychiatrist's report. The agency granted the complainant access to most of the requested documents, but refused access to some others on the grounds that those documents are exempt under clause 5(1)(e) of Schedule 1 to the FOI Act, which provides that matter is exempt matter if its disclosure could reasonably be expected to endanger the life or physical safety of a person. The complainant then made a complaint to the Information Commissioner seeking external review of the agency's decision and alleged that additional documents relating to his request should exist.

The Information Commissioner obtained the disputed documents from the agency and made inquiries into this complaint. Subsequently, the complainant was granted access to edited copies of two documents with personal information about third parties deleted. The deleted matter consisted of names and other identifying information about persons other than the complainant, which is information of a kind that is exempt matter under clause 3(1). The Information Commissioner considered that, in the circumstances of this complaint, the public interest in maintaining the privacy of the third parties was not outweighed by any other public interest. The Information Commissioner found the deleted matter exempt under clause 3(1).

The agency reconsidered its decision relating to the psychiatrist's report, but the psychiatrist made a submission to the Information Commissioner and claimed that his report was exempt under clause 5(1)(e). Material before the Information Commissioner indicated that the complainant had allegedly threatened staff of the agency and that staff members felt intimidated and concerned for their safety as a result of the complainant's conduct. The Information Commissioner also considered that certain other material on the agency's file supported, in part, the submissions made to her by the psychiatrist. Taking all of that into account, the Information Commissioner decided that it was neither irrational nor absurd to expect disclosure of the report to result in some endangerment to the physical safety of other people. The Information Commissioner found that document exempt under clause 5(1)(e).

Further, the Information Commissioner found that other documents described by the complainant were documents likely to be held by private medical practitioners and, therefore, not documents to which the FOI Act applies.