

Decision D0022009 – Published in note form only

Re “G” and Department of Corrective Services [2009] WAICmr 2

Date of Decision: 21 January 2009

Freedom of Information Act 1992; section 28

The complainant is currently serving a term of imprisonment.

On 4 July 2008, the complainant made an application to the agency under the FOI Act for access to documents, including psychiatric, psychological and medical records made for the period from the start of 2008. The agency granted him full access to a number of documents but decided that access to others, including progress notes and notes of counselling sessions, 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 A/Information Commissioner seeking external review of the agency’s decision.

The A/Information Commissioner examined the disputed documents and was satisfied that those documents contain information of a medical and psychiatric nature concerning the complainant. The A/Information Commissioner also examined and considered the material contained in the agency’s FOI file maintained in respect of the complainant’s access application and the written submissions made to him by the complainant.

Based on that material, and considering the complainant’s recent episodes of self harm and the views expressed by medically qualified officers contained in the documents, the A/Information Commissioner was satisfied that direct disclosure of the disputed material to the complainant may have a substantial adverse effect on the physical or mental health of the complainant. Therefore, the A/Information Commissioner was satisfied that there was sufficiently persuasive material before him to enable him to form the requisite opinion under s.28(b) of the FOI Act.

Accordingly, the A/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.