

Decision D0072014 – Published in note form only

Re ‘E’ and Department of Health [2014] WAICmr 7

Date of Decision: 7 March 2014

Freedom of Information Act 1992: sections 26 and 27(1)(g)

On 22 March 2013 the complainant applied to the Department of Health (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents relating to his treatment, medication, attendance with doctors and the opinions of doctors. To protect the privacy of the complainant I have decided not to identify him by name in these reasons for decision.

The agency confirmed that the scope of the complainant’s access application was limited to documents consisting of medical records relating to the complainant. The agency advised the complainant that it did not hold all documents of that kind and that the complainant would need to make an access application directly with the hospital or hospitals which had treated him.

In a notice of decision dated 10 April 2013, the agency decided to release four documents it had identified as coming within the scope of the complainant’s access application.

The complainant sought internal review on the basis that he claimed there are additional documents which exist in the agency but to which access was refused. On internal review, the agency decided to refuse access to the requested documents on the basis that all reasonable steps had been taken to find the documents coming within the scope of the complainant’s access application and that the requested documents do not exist.

On 22 November 2013, the Information Commissioner advised the parties in writing of his preliminary view and his reasons. The Commissioner’s preliminary view was that the agency’s decision to refuse access to the requested documents under section 26 of the FOI Act was justified. The complainant was invited to accept the Commissioner’s preliminary view and withdraw his complaint, or to make further submissions to support his claim that additional documents should exist.

The complainant made submissions to the Commissioner. The agency was provided with a copy of those submissions and invited to respond to the issues raised by the complainant. In a detailed email, the agency provided further information regarding the number and types of databases maintained by it, the purposes of those databases and the types of data retained in those databases.

In short, the agency confirmed that it has a number of different types of databases to which it has access. The agency advised that those databases are not designed or intended for patient interrogation purposes. To obtain any individual patient information it would be necessary for the agency to write a specific program to enable its databases to be interrogated in order to respond to the complainant’s access application. The Commissioner found that that is not the intention of section 27(1)(g) of the FOI Act see: *Re Terrestrial Ecosystems and Department of Environment and Conservation [2013] WAICmr 9* at paragraph 64.

Accordingly, the Commissioner found that the agency's decision to refuse access to the requested documents under section 26 of the FOI Act was justified on the grounds that he was not satisfied that the documents exist, or should exist within the agency and, in any event, the agency had taken all reasonable steps to find the documents.