

BC and Canberra Health Services [2020] ACTOFOI 28

(17 December 2020)

Decision and reasons for decision of Senior Assistant Ombudsman, Louise Macleod

Application Number	AFOI-RR/20/10048
Decision Reference	[2020] ACTOFOI 28
Applicant	BC
Respondent	Canberra Health Services
Decision Date	17 December 2020
Catchwords	<i>Freedom of Information Act 2016 (ACT)</i> – deciding access – information is not held by the respondent

Decision

1. I am a delegate of the ACT Ombudsman for the purposes of s 82 of the *Freedom of Information Act 2016 (ACT) (FOI Act)*.
2. Under s 82(2)(a) of the FOI Act, I **confirm** the decision of Canberra Health Services (**CHS**) dated 17 August 2020.

Background of Ombudsman review

3. On 27 July 2020, BC applied to CHS for access to:

The ACT Health Injury Management Unit written policy for leave applications and leave processing or by whatever name is used, for fulltime or part time staff specialist doctors on worker's compensation, and also the ACT Health People and Culture policy on the same content.

The information contains confidential personal information and medical information and as such should not be listed on the disclosure log, which is requested.

4. On 17 August 2020, CHS advised the applicant that it does not hold any documents relevant to the scope of the access application. In its decision letter, CHS said:

... the circumstances of individuals accessing Worker's Compensation due to injury, can differ significantly. Therefore, consideration is provided on a case by case basis.
5. In making its decision CHS relied on s 35(1)(b) of the FOI Act.
6. On 11 September 2020, the applicant applied for a review of CHS' decision by the ACT Ombudsman, under s 74 of the FOI Act.
7. On 23 November 2020, I provided my preliminary views about CHS' decision to the parties in my draft consideration.
8. CHS accepted my preliminary view on 30 November 2020.
9. The applicant did not provide any more submissions relating to this review.

Issue

10. The issue before me in this Ombudsman review is whether CHS' decision was incorrect.
11. In making my draft consideration, I have had regard to:
 - BC's access and review applications
 - CHS' decision notice

Relevant law

12. The FOI Act gives every person an enforceable right of access to government information, subject to any provisions of the Act providing a basis on which access can be refused.¹
13. Section 35(1)(b) of the FOI Act provides that the respondent to an access application may decide that it does not hold any information falling within the scope of the access application.

The contentions of the parties

14. The applicant's review application contends:

¹ Section 7 of the FOI Act.

It is clearly impossible to assess different and indeed adverse treatment without the comparison clauses applying to other employees in the same situation.

15. After being notified of this Ombudsman review, CHS submitted:

Canberra Health Services conducted searches of areas identified as to hold information pertinent to the scope of this request. This was extended to seeking further advice and documentation from CMTEDD. Canberra Health Services advised the applicant in the decision letter that the circumstances of individuals accessing Workers' Compensation due to injury, can differ significantly. Therefore, consideration regarding leave is provided on a case by case basis.

Considerations

16. Section 35(1)(b) of the FOI Act authorises the respondent to an access application to decide it does not hold any information that is within the scope of the access application.

17. On 29 September 2020, CHS provided the applicant with written confirmation that it does not hold any in-scope information. CHS provided internal emails in the course of this review as evidence of its searches for information that may have been in-scope. These searches included seeking information from another Directorate.

18. Based on evidence provided by CHS, I accept CHS does not hold any information that is within the scope of the access application. I note that Part 9 of the FOI Act imposes penalties for failing to identify information or making a decision contrary to the Act. There is no evidence before me which suggests that any such offence has been committed in this matter.

Conclusion

19. For this reason, under s 82(2)(a) of the FOI Act I **confirm** CHS' decision that it does not hold information that is in-scope with respect of the access application under s 35(1)(b) of the FOI Act.

Louise Macleod
Senior Assistant Ombudsman
17 December 2020