

TASMANIAN OMBUDSMAN



Freedom of Information Review under s 48 of the *Freedom of Information Act 1991*

T ZAMMIT (TAS ORTHOTICS) AND THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES
Case Reference: 0902084

REASONS FOR DECISION

The FOI request

On 8 December 2008, Mr Zammit requested information from the Department of Health and Human Services (the Department) under the *Freedom of Information Act 1991* (the FOI Act) in the following terms:

Could you please provide me with information on how many patients in these catagories [sic] that Orthotic Prosthetic Services TASMANIA has serviced

- *PrivatePatients*
- *DVA Patients*
- *MAIB Patients*
- *Private Hospital Patients*
- *Worker's Compensation Patients*

between 1991-2006 by yearly account.

The decision on the request

The Department at first instance stated that all records created before 2000 had been destroyed. In relation to records created after 2000, a breakdown of clients was provided. The Department stated that the current data capture system did not capture whether clients were privately insured and so was unable to provide a breakdown of the requested information on a yearly basis due to the lack of system reporting sophistication.

On internal review the Department reiterated that it was unable to differentiate between private and public patients, and that a yearly breakdown of total clients was unable to be supplied. The Department relied on s 20 (request may be refused in certain cases) of the FOI Act in refusing to supply a yearly breakdown in that it would 'substantially and unreasonably divert the resources' of the Department from its other work.

This review

Mr Zammit applied under s 48 of the FOI Act for a review of the Department's decision.

Submissions by the Department

The Department was requested to provide submissions as to why the work involved in providing the information requested would ‘substantially and unreasonably divert the resources’ of the Department from its other work.

The Department submitted that there are three options for retrieving the information. It provided the following information about how long each option would take and what the cost would be to the Department:

1. Manually inspect all outpatient medical records, which total more than 10,000 and document the information electronically onto a spreadsheet. This would take approximately 22 weeks for one full time administrative assistant at a total cost of in excess of \$27,000.
2. Manually inspect the database, which would involve looking at three different screens for each client in the database and then enter the information onto a spreadsheet. This would take 4.4 weeks for one full time administrative assistant at a total cost of \$5,200.
3. Manually review the invoices raised for DVA, MAIB and Workers Compensation. This method however would not be as effective as the above two options as the invoices do not necessarily relate to individual clients. The approximate cost of this option would be \$6,000.

The Department stated that once the information was onto an excel spreadsheet, it could then be manipulated to provide the numbers required by yearly account.

Section 20 FOI Act

This section of the FOI Act allows an agency to refuse to provide information if the agency is satisfied that the work involved in providing the information requested would ‘substantially and unreasonably divert the resources of the agency from its other work’. There is also a precondition that the request is expressed to relate to either all information of a specified kind, or all information in respect of a specified subject-matter.

I am satisfied that the precondition has been met in that Mr Zammit has requested all information of a specified kind.

It is a question of fact and degree in each case as to what is to be regarded as being a substantial and unreasonable diversion of the resources of an agency from its other work, having regard to the amount of the information requested and any difficulties that exist in identifying, locating or collating the information within the records of the agency.

Some of the factors which are relevant in the consideration of what is to be regarded as being a ‘substantial and unreasonable diversion’ of resources are:

- The importance of the information to the applicant,
- Whether the request is a reasonably manageable one having regard to the size of the agency and the extent of its resources usually available for dealing with FOI applications,
- The estimate as to the number of documents involved and the amount of officer time and salary cost; and
- The reasonableness of the agency’s initial assessment and whether the applicant has been co-operative in redrawing the boundaries of the application.

(see *Cainfrano v Director General, Premier's Department* [2006] NSWADT 137)

I take into consideration that the information is of considerable importance to Mr Zammit as he is attempting to determine a financial loss suffered by his business which he claims is due to the Department.

I note that there is a voluminous amount of documents involved in the request and that the amount of officer time and salary cost is significantly high.

I note with concern that the Department did not consult with Mr Zammit as required under s 20 (4) prior to its refusal to provide information and therefore Mr Zammit was not given an opportunity to redraw the boundaries of his application.

The FOI Act confers important rights on members of the public which should not be lightly overridden. Notwithstanding that, it is apparent that the work involved in extracting the requested information is extensive, whichever of the above options is chosen, and I am satisfied that it would substantially and unreasonably divert the resources of the Department from its other work. I am not satisfied that the importance of the request to Mr Zammit is a sufficient countervailing factor.

Conclusion

I conclude that the Department is justified in refusing to provide the information requested on the grounds that the work involved in providing that information would substantially and unreasonably divert the resources of the Department from its other work having regard to the amount of information and the difficulties that exist in collating the information within the records of the Department.

DATED: 21 MAY 2009

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SIMON ALLSTON
OMBUDSMAN