



Decision D0152026 – Published in note form only

Re Ambulance Employees Association of Western Australia and the Department of Health [2026] WAICmr 15

Date of Decision: 27 August 2026

Freedom of Information Act 1992 (WA): Schedule 1, clause 10(4)

Decision

1. The Ambulance Employees Association of Western Australia (**complainant**) sought access under the *Freedom of Information Act 1992 (WA)* (**FOI Act**) to the document titled 'Ambulance Services Agreement between The State of Western Australia and St John Ambulance Western Australia Limited' and made on 21 December 2022 (**disputed document**).
2. For the reasons given to the parties and summarised below, the Information Commissioner (**Commissioner**) set aside the decision of the Department of Health (**agency**) to refuse access to the disputed document under clause 10(4) of Schedule 1 to the *Freedom of Information Act 1992 (WA)* (**FOI Act**) on the ground it would reveal information (other than trade secrets or information referred to in clause 10(3)) concerning the commercial affairs of an agency and disclosure could reasonably be expected to have an adverse effect on those affairs.
3. In substitution, the Commissioner found the disputed document is not exempt.

Reasons

Clause 10(4) – adverse effect on the commercial affairs of an agency

4. Clause 10(4) provides matter is exempt if its disclosure would reveal information concerning the commercial affairs of an agency and could reasonably be expected to have an adverse effect on those affairs.
5. Clause 10(4) is subject to a public interest limitation. Matter is not exempt under clause 10(4) if its disclosure would, on balance, be in the public interest.
6. The Commissioner observed previous Commissioners have noted the exemption in clause 10(4) is more general in its terms than the exemption in clause 10(3). Clause 10(4) is directed at protecting the commercial affairs of an agency from adverse effects so the agency is not placed at a commercial disadvantage.¹

¹ [Re Hassell and Health Department of Western Australia \[1994\] WAICmr 25](#) at [74]; [Re Conservation Council of Western Australia \(Inc\) and Western Power Corporation \[2006\] WAICmr 7](#) at [32]; [Re Bennett & Philp Pty Ltd and Gold Corporation \[2019\] WAICmr 1](#) at [75].

7. The term 'commercial affairs' is not defined. However, the Commissioner also observed previous Commissioners have expressed the view that 'commercial affairs' of an agency may also include its 'business and financial affairs'.²
8. The Commissioner agreed with those views and considered the question for her determination is whether disclosure of the disputed document could reasonably be expected to have an adverse effect by placing the agency at a commercial (financial or business) disadvantage.
9. The Commissioner examined the disputed document and considered the information before her.
10. The Commissioner accepted the disputed document, being an agreement for the provision of ambulance services to the State, would disclose the business and financial affairs, and therefore the commercial affairs, of the State.
11. The Commissioner also accepted disclosure of some parts of the disputed document would disclose the agency's bargaining position, including what it is willing to offer and concede, both financially and in terms of risk allocation. The Commissioner considered this may make it more difficult for the government to negotiate services agreements relating to emergency ambulance and hospital services with other organisations in the future.
12. The Commissioner then considered the public interest factors for and against disclosure.
13. In favour of disclosure, the Commissioner considered the disputed document is clearly related to a matter of significant public importance. The 2022 report of the Standing Committee on Public Administration titled, 'Delivery of Ambulance Services in Western Australia: Critical Condition', which found, among other things, that St John Ambulance Western Australia was unable to deliver multiple key performance indicators in 2020/2021 demonstrates the public importance.
14. The Commissioner considered disclosure would promote the public interest factors of agency accountability and transparency. It would also promote informed public debate on the use of public funds for matters relating to public health, which she considered to be in the public interest.
15. In favour of non-disclosure, the Commissioner considered revealing information about the agency's bargaining position may undermine the agency's ability to negotiate future contracts. This in turn may compromise the agency's ability to achieve the best possible outcome for services delivery and use of public funds.
16. The Commissioner also considered some of the more technical information in the disputed document (for example formulae, key performance indicators and abatements) may be misunderstood if released into the public domain. If that is the case, disclosure may not advance public debate or promote accountability or transparency. However, the Commissioner considered this could be overcome by the agency providing explanatory comments if necessary.
17. Balancing the public interest factors for and against disclosure, the Commissioner considered the factors in favour of disclosure outweigh those against disclosure.

² [*Re West Australian Newspapers Ltd and Western Power Corporation* \[2005\] WAICmr 10 at \[65\]; *Re Conservation Council of Western Australia \(Inc\) and Western Power Corporation* \[2006\] WAICmr 7 at \[32\].](#)