

FREEDOM OF INFORMATION CASE NOTES

Dispute over fees when information of significant public interest *Information Act* s.156

The Complainant was a journalist who sought information about a matter of significant public interest which has been the subject of extensive news coverage. The subject matter of the request related to materials which would allegedly show that certain Members of the Legislative Assembly had behaved in what could be described as a potentially corrupt or inappropriate manner.

The relevant Department estimated the costs to process the request for information at \$4,245. The Complainant sought to have the fees waived on the basis that:

- the news organisation he worked for lacked funds to pay for the request to be processed, and
- the objectives of the Act were to improve transparency and accountability of government, and that the information sought was directly relevant to these objectives.

The Complainant was able to provide some evidence that the request was not a mere fishing expedition, but that there was reason to believe that documents of the kind sought actually existed. The Department refused to waive the fees on the basis of the impact that processing the request would have on its ability to carry out its functions with already limited resources.

The *prima facie* decision maker did not find the Complainant's argument that the organisation he worked for had insufficient money compelling. Section 156(6)(a) allows 'impecuniosity' or 'indigence' to be taken into account when waiving the fees, and while this does not mean 'utterly destitute', it does mean 'being poor, or in want of money, or having little money, or being unable reasonably to afford the access charges'. In this case, the decision maker was not satisfied the Complainant and her organisation would be caused financial hardship such that the organisation ought to reduce the charge.

However, the decision maker agreed with the Complainant that the subject of the information was of significant interest to the public and disclosure would contribute to informed debate. The decision maker was also of the view that the Department had provided insufficient information to justify the reasonableness of the processing fees charged. Accordingly, the decision maker found that there was sufficient evidence for a *prima facie* case, and the matter was referred to mediation. Subsequently, the Department in question revised its estimate of the processing fee for the matter to \$0 on the basis that it did not 'hold' the documents sought, and rather this was the responsibility of another public sector organisation, and arguably the documents were not legally within the scope of the *Information Act*. These further issues were the subject of a further complaint which was ultimately dismissed at *prima facie* stage due to jurisdictional limitations of the *Information Act* in relation to Members of the Legislative Assembly