

Decision D0072016 – Published in note form only

Re ‘N’ and SMHS - Royal Perth Hospital [2016] WAICmr 7

Date of Decision: 11 May 2016

Freedom of Information Act 1992 (WA): sections 45, 48 and 50; Part 3

On 14 September 2015, ‘N’ (**the complainant**) applied to the SMHS - Royal Perth Hospital (**the agency**) under section 45 of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for amendment of certain personal information about the complainant recorded in the complainant’s medical records held by the agency (**the disputed information**). Given the personal nature of the issues involved in this matter, the complainant has not been identified by name in order to preserve the complainant’s privacy.

The complainant sought amendment by way of deletion of the disputed information. The agency notified the complainant that it would not amend the disputed information by destroying it because it did not consider the information was inaccurate, incomplete, out-of-date or misleading. The agency suggested that it place the complainant’s application for amendment on his file as a notation under section 50 of the FOI Act disputing the accuracy of the disputed information. The agency’s decision was confirmed on internal review. The complainant did not accept the agency’s decision and subsequently applied to the Information Commissioner for external review.

Part 3 of the FOI Act deals with the right of a person to apply to an agency for the amendment of personal information about the person contained in a document of an agency and prescribes the procedures to be followed by an agency in dealing with an application for amendment. Section 45(1) provides that an individual has the right to apply for such an amendment if the information is inaccurate, incomplete, out-of-date or misleading. The person seeking the amendment must give details of the matters in relation to which the person believes the information is inaccurate, incomplete, out-of-date or misleading and the person must give reasons for holding that belief.

Further, section 48(3) of the FOI Act provides that information may only be amended by an agency by obliteration, removal or destruction if the Information Commissioner is of the opinion that it is impracticable to retain the information, or the prejudice or disadvantage that its continued existence would cause to the complainant outweighs the public interest in maintaining a complete record of information.

After making inquiries into this complaint and reviewing the material before her, the A/Commissioner was satisfied that the disputed information is personal information, as that term is defined in the FOI Act, about the complainant. However, the A/Commissioner was not satisfied that the disputed information was inaccurate, incomplete, out-of-date or misleading. In addition, the A/Commissioner did not consider there was any evidence currently before her which persuaded her that the continued existence of the disputed information would prejudice or disadvantage the complainant.

Accordingly, the A/Commissioner confirmed the agency’s decision not to amend the disputed information in the manner requested by the complainant.

The A/Commissioner noted that it remained open to the complainant to request that the agency make a notation to his medical record under section 50 of the FOI Act. Under section 50(3) the agency has to comply with any such request unless it considers that the notation is defamatory or unnecessarily voluminous.