

Decision D0102014 – Published in note form only

Re Tuck and South Metropolitan Health Service – Bentley Hospital [2014] WAICmr 10

Date of Decision: 20 May 2014

Freedom of Information Act 1992: section 26

On 25 May 2013, Mr Anthony Tuck (**the complainant**) applied to the South Metropolitan Health Service – Bentley Hospital (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents containing information about him, but which are maintained in the medical record of a close relative of the complainant (**the medical record**).

The agency released to the complainant copies of all of the documents from the medical record which contain information about him. The agency edited copies of some documents, deleting information about other individuals as it is outside the scope of the complainant's access application. On internal review, the agency confirmed its original decision. The complainant applied to the Information Commissioner for external review of the agency's decision on the basis that he claimed additional documents should exist.

Following receipt of the complaint, the Commissioner obtained a copy of the complete FOI file maintained by the agency for the purposes of the complainant's access application. In addition, the Commissioner obtained the complete original of the medical record.

Section 26 of the FOI Act provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to locate the document, and the agency is satisfied that the document is either in the agency's possession but cannot be found or does not exist. The Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to locate those documents.

The Commissioner examined the complete original of the medical record and the documents to which access had been provided to the complainant. On 14 April 2014, after considering the information before him, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Commissioner's preliminary view that the agency's decision to refuse access to the documents under section 26 of the FOI Act was justified. The complainant was invited to withdraw his complaint or to provide the Commissioner with further submissions relevant to the matter for the Commissioner's determination. The complainant did not accept the Commissioner's preliminary view and made further submissions. The complainant's submissions related more to his interpretation of the documents, than to providing evidence that additional documents exist, or should exist in the agency.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view and confirmed the agency's decision to refuse access to documents under section 26 of the FOI Act, on the basis that the documents do not exist.