

Decision D0112016 – Published in note form only

***Re P and SMHS – Bentley Health Service* [2016] WAICmr 11**

Date of Decision: 21 July 2016

Freedom of Information Act 1992 (WA): Schedule 1, clause 3

On 18 November 2015, the complainant applied to the SMHS – Bentley Health Service (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to his medical record. To protect the complainant's privacy, I have decided not to identify the complainant by name in the particular circumstances of this matter.

The agency granted the complainant access to an edited copy of his medical record on the grounds that it contained information which was exempt under clause 3(1) of Schedule 1 to the FOI Act, because that information is personal information, as defined in the FOI Act, about individuals other than the complainant. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

On 18 February 2016, the complainant applied to the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained the complainant's medical record from the agency together with the agency's FOI file maintained in respect of the complainant's access application. The Commissioner reviewed the medical record of the complainant, including the information deleted by the agency under clause 3(1) of Schedule 1 to the FOI Act. The Commissioner also considered the submissions made by the complainant and the agency's notices of decision.

The Commissioner was satisfied that the information deleted from the complainant's medical record would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the deleted information was on its face exempt under clause 3(1).

The Commissioner considered the application of the limit on the exemption in clause 3(6). In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in the complainant exercising his right of access in this case.

The complainant provided the Commissioner with evidence that certain third parties consented to the disclosure to the complainant of their personal information which may be contained in the complainant's medical record. Accordingly, the agency was invited to disclose the personal information about those individuals to the complainant. The agency disclosed to the complainant the relevant parts of his medical record which contained the personal information about one of the third parties; and confirmed to the complainant that there was no personal information about the other third party contained in his medical record.

The complainant remained dissatisfied with the access provided to his medical record. The complainant submitted that he needed access to a complete copy of his medical record because he has concerns about the accuracy of the information contained in his medical record.

Therefore, the Commissioner considered the public interests identified in favour of disclosure – including the public interest in affording the complainant the right to make corrections to personal information that is inaccurate, incomplete, out of date or misleading by being given access to documents so that such corrections can be made where it is appropriate to do so.

However, the Commissioner did not consider it was necessary for the complainant to be given access to personal information about other individuals, in order to make any corrections to the personal information about him contained in his medical record.

Therefore, in balancing the competing public interests, the Commissioner found that the public interest in protecting the privacy of third parties is not outweighed by any public interests favouring the disclosure of personal information about third parties. The Commissioner was not dissuaded from his preliminary view.

Accordingly, the Commissioner confirmed the agency's decision and found the deleted information was exempt under clause 3(1) of Schedule 1 to the FOI Act.