

Decision D0062004 – Published in note form only

Re ‘S’ and Central West Mental Health Service [2004] WAICmr 6

Date of Decision: 19 February 2004

Freedom of Information Act 1992: section 26; Schedule 1, clause 3(1).

In late 2002, ‘S’, the complainant, received treatment on a voluntary basis at the agency as both an inpatient and outpatient at the Geraldton Regional Hospital. Following the discharge of the complainant from the Geraldton Regional Hospital, and as a result of follow-up inquiries conducted by the agency, the agency referred the complainant for treatment at Graylands Hospital as an involuntary patient.

In June 2003, the complainant applied to the agency for access under the *Freedom of Information Act 1992* (‘the FOI Act’) to all documents relating to him and his treatment as a patient of the agency. The agency gave the complainant access to most, but not all, of the documents contained in his patient file. However, access was refused to some information on the ground that it is exempt under clause 3 of Schedule 1 to the FOI Act. The complainant made a complaint to the Information Commissioner, seeking external review of the agency’s decision.

As a result of the A/Information Commissioner’s inquiries into the complaint, the agency gave the complainant access to additional documents and parts of a document which were originally claimed to be exempt under clause 3. The agency maintained its claim for exemption for one part of one document only. The complainant remained dissatisfied with that and also claimed that the agency had not found all documents that fall within the scope of his access application. Further inquiries were made with the agency and the agency conducted further searches for documents of the type that the complainant claimed were missing. As a result of those additional inquiries, the agency advised that no further documents exist that fall within the scope of the access application. The agency also provided further submissions in support of its claim for exemption under clause 3 for that part of the document remaining in dispute.

The A/Commissioner decided that the agency had conducted reasonable searches in order to identify all documents that fall within the scope of the access application and did not require the agency to conduct any further searches, there being no evidence that any further documents exist or should exist.

The A/Commissioner also decided that the matter deleted from the disputed document contains personal information about a number of third parties, together with some personal information about the complainant which was so entwined with the personal information about the third parties that it could not be given to the complainant, even in an edited manner, without also disclosing the personal information about the third parties. The A/Commissioner considered in detail the competing public interest factors that weighed for and against disclosure in the particular circumstances of the matter. The A/Commissioner decided that, whilst this is a case where the competing interests were finely balanced, on this occasion the right to privacy of the third parties should prevail. For reasons which were given in detail to the parties to the complaint, the A/Commissioner found the disputed matter exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency’s decision.