

Decision D0092002 - Published in note form only

***Re Cartwright and North Metropolitan Health Service* [2002] WAICmr 9**

Date of Decision: 26 February 2002

Freedom of Information Act 1992; Schedule 1 clauses 3(1) and 5(1)(b)

In August 2001, the complainant made an application to the agency for access under the FOI Act to her medical records held by the North Metropolitan Health Service, ('the agency').

The complainant was granted access to almost all of her medical record, but some information was deleted from those documents. The agency claimed that the information deleted from those documents is exempt under clauses 3(1), 5(1) and 8(2) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

The Information Commissioner obtained the disputed documents from the agency and made inquiries into the complaint. The disputed documents form part of the complainant's medical records and contain, among other things, names of third parties and other information, which would identify third parties. The Information Commissioner decided that that information is personal information about the third parties and is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The Information Commissioner gave more weight to the public interest in protecting the privacy of third parties and considered that it was unnecessary for the complainant to be given access to personal information about other people for the complainant to exercise her rights of correction under Part 3 of the FOI Act.

The Information Commissioner also found that disclosure of other information would reveal the investigation of any contravention or possible contravention of the law, in a particular instance. The Information Commissioner decided that the exemption under clause 5(1)(b) applies regardless of how much the complainant might already know about the investigation or how much information has been disclosed through other means, or by other agencies: see *Police Force v Kelly and Anor* (1996) 17 WAR 9. However, the Information Commissioner could not give full reasons without breaching s.74(1) of the FOI Act.

Notwithstanding that, the Information Commissioner informed the parties that the relevant law, which was the subject of the particular investigation, is the Commonwealth *Crimes Act 1914*, which prescribes, among other things, offences relating to the use and misuse of telephones.

The Information Commissioner confirmed the decision of the agency to refuse access under clause 3(1) and clause 5(1)(b).