

**GOODGER AND AKMH**

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: 95054  
Decision Ref: D01095**

Participants:

**Jill Goodger**  
Complainant

- and -

**Armadale Kelmscott Memorial  
Hospital**  
Respondent

**DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access where documents cannot be found - notice issued under s.26 - sufficiency of search - whether agency has taken reasonable steps to find documents - extent of searches by agency.

*Freedom of Information Act 1992 (WA)* ss. 26; 65(1)(d).

*Re Anti-Fluoridation Association of Victoria and Secretary to Department of Health* (1985) 8 ALD 163.

## **DECISION**

The decision of the Armadale Kelmscott Memorial Hospital of 8 March 1995 is confirmed. Access to the requested documents is refused on the ground that all reasonable steps have been taken to find the documents but they cannot be found.

**B.KEIGHLEY-GERARDY**  
**INFORMATION COMMISSIONER**

9 May 1995

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Armadale Kelmscott Memorial Hospital ('the agency'), to refuse Mrs J Goodger ('the complainant') access to certain of her medical records to which access had been sought under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant first sought access to those records under the FOI Act on 11 January 1995. She was provided with copies of relevant documents relating to her admissions as a patient for the years 1978, 1979 and 1980. However, access was denied to records relating to admissions in the years 1973, 1975, 1976 and 1977 on the ground that those documents could not be located. The agency's decision-maker advised the complainant that the latter records had apparently been destroyed following flood damage at the agency some years previously.
3. The complainant sought internal review of the decision to deny her access to those documents, and, on 8 March 1995, Mr P Moody, Co-ordinator of Administration and Human Resources, informed the complainant of the outcome of that application. He explained that he had conducted a search of the medical records held by the agency; the Health Department of Western Australia's "Patient Master Index" computer system; and all the manual paper-based registers associated with the complainant's visits to the agency during the years 1973 to 1980. As a result, he had located some additional documents and provided copies of those to the complainant.
4. In that letter, Mr Moody also informed the complainant that, as he himself had found the explanation that the records had been destroyed by flood unacceptable, he had discussed the matter with the Hospital Engineer. The hospital Engineer had advised him that some time ago, after heavy rain, the basement walls of the agency (Administration Section) had leaked and a considerable amount of water had entered the building. It was explained that the water had travelled to the lowest point of the building, being the basement area where all the medical records are stored, resulting in considerable water damage and the complete loss of many medical records that were stored on the floor level. Mr Moody informed the complainant that, therefore, he was satisfied that no documents or papers had been withheld from her and, consequently, he proposed to take no further action in the matter.
5. The complainant then applied to the Information Commissioner on 31 March 1995 seeking external review of the agency's decision.

## REVIEW BY THE INFORMATION COMMISSIONER

6. Section 26 of the FOI Act provides:

*"26. (1) The agency may advise the complainant, by written notice, that it is not possible to give access to a document if -*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency is satisfied that the document -*

*(i) is in the agency's possession but cannot be found;*

*or*

*(ii) does not exist.*

*(2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document."*

7. Although not stated, I consider Mr Moody's letter to the complainant dated 8 March 1995 to be a notice pursuant to s.26(1) of the FOI Act. As such, my jurisdiction arises under s.65(1)(d) of that Act. On 4 April 1995, the agency was advised that I had accepted this complaint for review and I sought the production of the agency's file maintained in respect of the access application.
8. The function of the Information Commissioner, when reviewing a complaint involving a denial of access on the ground that documents cannot be located, is to inquire into the adequacy of searches conducted by the agency. In my view, it is not my function to physically search for the documents on behalf of a complainant, nor is it my function to examine in detail an agency's record-keeping system. If I am not satisfied that those searches have been adequate, then I will exercise my power, under s.26(2) of the FOI Act, to require an agency to conduct further searches in an effort to locate documents.
9. On this occasion, I required the agency to provide me with a detailed summary of all searches undertaken including the date or dates of those searches; the names and titles of the persons conducting the searches; the instructions given, if any; the manner in which the searches were conducted; and the results of those searches.

10. On 7 April 1995, a member of my staff attended at the agency and met and spoke with Mr Moody and with the agency's Medical Records Officer and the Hospital Engineer. During that visit, he was shown the admission and surgery registers containing references to the complainant. The method of conducting a search of records was demonstrated to him and he inspected an area in the basement of the agency in which records are filed. A written summary of three pages containing the information detailed in paragraph 9 above was also provided to my office by the agency on that date.
11. It was explained to the member of my staff that a number of searches had been conducted to locate the missing records, including searches to check the veracity of the recording system, to no avail. It was explained that until approximately 5 years ago the agency did not have an officer specifically allocated to the co-ordination and control of medical records, which were handled by various officers. Accordingly, the agency considered it difficult to have confidence in the accuracy of the record-keeping system prior to the introduction of a computer-based system and new system of reference coding 4 or 5 years ago. The agency could not confirm the existence of the missing records, nor could it confirm their destruction. However, based on the searches undertaken, it had concluded that the probable explanation is that the documents were destroyed through water damage on one of the many occasions that water had seeped into an area in the basement of the agency where old records are stored.
12. The Hospital Engineer advised that he had been employed in the agency for approximately 20 years. From his memory, there had been a problem throughout those years with water leaking into various parts of the agency, particularly the basement storage area under the administration block. Although agency staff have been advised against storing documents on the lower shelves in the basement, over time, and with staff changes, apparently this advice has not always been followed. The result is that some of the agency's documents have been damaged and subsequently destroyed.
13. Mr Moody advised that the complainant had twice sought access to her records prior to the enactment of the FOI Act. On those occasions, the agency had also been unable to locate relevant records for the years 1972-1975. Following the visit by my staff member, some documents in the form of Theatre Register entries were located and the agency provided copies of those documents to the complainant.
14. On 18 April 1995, I wrote to both parties to this complaint, informing them of my preliminary view that the efforts undertaken by the agency to locate the documents had been, in all the circumstances, reasonable. With the agency's agreement, I provided the complainant with a copy of the written summary provided to me by the agency of the searches it had conducted. I detailed the investigations undertaken by my office and the reasons for my preliminary view. I also informed the complainant that there was no evidence before me to suggest that any person had concealed, destroyed or disposed of the missing documents in order to prevent her gaining access to them. The complainant, nonetheless, refused to accept that the documents could not be located.

**Were the searches conducted by the agency reasonable?**

15. The adequacy of efforts made by an agency to locate documents the subject of an FOI access application are to be judged by having regard to what was reasonable in the circumstances: *Re Anti-Fluoridation Association of Victoria and Secretary to Department of Health* (1985) 8 ALD 163. Based on the advice of my staff member and the material before me, the agency has made what I consider to be a reasonable effort to locate the requested documents. Therefore, I find that the agency has taken all reasonable steps to find the documents and that the documents either are in the agency's possession but cannot be found or no longer exist.
16. Further, I am satisfied that the complainant has been fully informed of the extent of searches conducted by the agency in an effort to satisfy her request for access to her medical records.
17. I accept the advice of the Hospital Engineer and the evidence from officers of the agency concerning the unintentional contamination and destruction of records. Copies of some documents indicating steps were taken in 1992 towards rectifying the problem of water leakage into the basement were provided to me during the course of my dealing with this complaint. However, those documents do not indicate whether the problem has, in fact, been rectified. It should be of concern to those responsible for the administration of the agency that records are stored in such an unsatisfactory manner.

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