

Decision D0112005 - Published in note form only

Re 'T' and Department of Health [2005] WAICmr 11

Date of Decision: 9 June 2005

Freedom of Information Act 1992: ss. 45, 50(1).

The complainant applied to the Department of Health ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for the amendment of personal information about him, contained in a letter sent to the Chief Psychiatrist of the agency's Mental Health Division from the Director, Mental Health Services, of the Joondalup Health Campus in response to a complaint made to the Chief Psychiatrist by the complainant concerning his referral to Graylands Hospital in 1999 ('the Letter'). The complainant claimed that the Letter contains information that is inaccurate, incomplete, out of date or misleading and sought to have that information amended by striking it out.

The agency refused to amend the Letter, on the ground that it was an accurate account of the issues as understood by the author at the relevant time and advised the complainant of his right under s.50(1) of the FOI Act to request the agency to make a notation or attachment to the information. The complainant was dissatisfied with this decision and applied to the A/Information Commissioner for an external review of the agency's decision.

The A/Commissioner was satisfied that the disputed information was personal information about the complainant but was not persuaded that it was inaccurate, incomplete, out of date or misleading. Among other things, having inspected documents provided by both parties, the A/Commissioner considered that the disputed information was the understanding of the author of the Letter derived from his reading of the material that was available to him at the time he wrote it. The fact that the complainant disagrees with the author's opinion does not, without more, establish that that opinion is inaccurate, incomplete, out of date or misleading. There was no evidence before the A/Commissioner to establish that the opinion was not the author's honestly held opinion or that it was wrong.

The A/Commissioner expressed the view that, even if she were persuaded amendment was justified, striking out would not be the appropriate means of amendment and the attachment of a notation would have been the most appropriate means, given the nature of the document. To strike out the information would create an untrue record of the information given to the Chief Psychiatrist and therefore of the basis on which the Chief Psychiatrist formed his view of the complaint and responded to it.

As the A/Commissioner found that amendment is not justified, the complainant may ask the agency to make a notation to the Letter, pursuant to s.50(1) of the FOI Act. Unless it considers the notation or attachment to be defamatory or unduly voluminous, an agency must comply with such a request.