

Z AND GRAYLANDS

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: F0921998

DECISION No: D0191998

PARTIES: "Z"

Complainant

GRAYLANDS HOSPITAL

Respondent

No. of documents in dispute: 4

Exemption clause(s): Clauses 3 and 5(1)(b)

In December 1997, as a result of action taken by police, Z ('the complainant') was admitted to Graylands Hospital ('the agency') as a voluntary patient. Two days after her discharge, she was charged by police with the offence of criminal defamation. Given the particularly personal and sensitive nature of this background information, I have decided not to identify the complainant by name in order to protect her privacy.

By application dated 23 January 1998, the complainant applied to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents concerning her apprehension, admission, detention and discharge at the agency. The agency granted the complainant access to all documents from her medical record. However, 4 documents were released to her in edited form. The decision to grant the complainant access to edited copies of those 4 documents was confirmed following internal review by the agency. On 17 June 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision to refuse access to the matter deleted from those 4 documents.

Review by the Information Commissioner

I obtained the disputed documents from the agency and directed that further inquiries be conducted in an effort to resolve this complaint by conciliation. As a result of the intervention by my office, the agency released some of the deleted matter to the complainant, but maintained its claim that the balance is exempt matter under clause 3(1) and clause 8(2) of Schedule 1 to the FOI Act.

After considering the material before me, by letter dated 31 July 1998, I informed the parties in writing of my preliminary view of this complaint, including my detailed reasons. It was my preliminary view that the matter deleted from the 4 documents may be exempt under clause 3(1), clause 5(1)(b) and clause 8(2) of Schedule 1 to the FOI Act.

The complainant provided no further submissions for my consideration and did not withdraw her complaint. Accordingly, I have not been dissuaded from my preliminary view that some of the matter to which access is refused is exempt matter under clause 3(1) and some is exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. A summary of my reasons follows.

The exemptions – Clause 3

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The definition of "personal information" in the Glossary makes it clear that any information or opinion about a person from which that person can be identified is, on the face of it, exempt matter under clause 3(1).

I have examined the matter in dispute. Some of that matter consists of information about a number of individuals, other than the complainant, from which the identity of those individuals could readily be ascertained. In my view, that matter is, on the face of it, exempt under clause 3(1). Clause 3(1) is subject to a number of limits on exemption

contained in clauses 3(2) to 3(6). In my view, the only limit which may apply in the circumstances of this matter, is clause 3(6). Clause 3(6) provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.

Public interest

I recognise that there is a strong public interest in ensuring the maintenance of personal privacy, which will only be displaced by a very strong competing public interest that requires the disclosure of personal information. I also recognise the public interest in the agency maintaining its ability to obtain background information about patients in order to carry out the effective management of such patients.

Balanced against those public interests, there is a public interest in persons being able to exercise their rights of access under the FOI Act to obtain documents containing information about them which are held by government agencies. In the circumstances of this matter, I also consider there to be a public interest in the complainant being as fully informed as possible for the reasons for her referral to the agency and for the subsequent diagnostic assessment.

However, I am of the view that, to a large extent, these public interests have been satisfied, as far as the agency can satisfy them in this instance, by the provision to the complainant of edited copies of the disputed documents. The release of these documents enables the complainant to review the reasons for her referral to the agency and the evidence taken into account by officers of the agency in reaching their diagnostic assessment. Therefore, in balancing the competing public interests I am not persuaded that there is any other public interest that outweighs the public interest in protecting the privacy of the third parties.

Accordingly, I find that the limit on exemption in clause 3(6) does not apply and that some of the disputed matter, which I have identified to the parties, is exempt under clause 3(1) of Schedule 1 to the FOI Act.

Clause 5(1)(b)

Clause 5(1)(b) provides that matter is exempt matter if its disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted. The scope and meaning of clause 5(1)(b) has been the subject of three decisions by the supreme Court of Western Australia and I am bound by those decisions.

If disclosure of the disputed matter could reasonably be expected to reveal that there had been a police investigation, the identity of the person being investigated and the subject matter of the investigation then it will be exempt: *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9 at 13.

Having inspected the 4 disputed documents, it is my view that disclosure of certain matter (which I have identified to the parties) contained in 3 of them would reveal that there was an investigation of a possible contravention of the law, the identity of the person investigated and the subject-matter of the investigation. Clearly, the complainant is aware of the fact of the investigation having been subsequently charged with an offence. However, the exemption in clause 5(1)(b) can apply regardless of the actual state of knowledge of the complainant about the particular matter, or the stage the investigation has reached: *ibid* at 14-15. In that case, Anderson J made it clear that documents can “reveal an investigation” even when the fact of the investigation has been revealed through other materials or the investigation has concluded: *ibid*.

For the reasons I have given to the parties, I am satisfied that some of the disputed matter falls within the terms of the exemption in clause 5(1)(b) of Schedule 1 to the FOI Act, and find, therefore, that it is exempt.

Conclusion

I find that some of the disputed matter (as identified to the parties) is exempt under clause 3(1) and the remainder (as identified to the parties) is exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Accordingly, for the reasons given to the parties which I have summarised above, I confirm the decision of the agency to refuse the complainant access to that matter.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
7 August 1998