

JACKSON AND SCGH

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: F1001998

DECISION No: D0241998

PARTIES: Daniel John JACKSON

Complainant

SIR CHARLES GAIRDNER HOSPITAL

Respondent

No. of documents in dispute: 8

Exemption clause(s): Clause 3

Mr Jackson ('the complainant') has been charged by police with allegedly assaulting another person ('the third party'). The complainant will stand trial for that alleged offence in the District Court of Western Australia. By letter dated 26 May 1998, solicitors for the complainant lodged an application with Sir Charles Gairdner Hospital ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to medical records of the third party, that were created or came into existence between 15 October 1997 and 10 November 1997.

The agency refused the complainant access to the requested documents on the grounds that they were exempt under clauses 3(1) and 8 of Schedule 1 to the FOI Act. The agency's initial decision was confirmed following internal review. On 8 July 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

The agency identified 57 documents, including 8 X-rays of the third party, as documents falling within the ambit of the complainant's access application. I obtained those documents from the agency. Meetings were then held with the complainant's legal representatives to determine whether this complaint could be resolved by conciliation between the parties. Discussions were also held with the agency and the third party.

On 28 August 1998, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint including my reasons. It was my preliminary view that the requested documents may be exempt under clause 3(1) of Schedule 1 to the FOI Act. Thereafter, the complainant informed me that he was only seeking access to the 8 X-rays of the third party. That concession by the complainant considerably reduced the number of documents in dispute. However, I received no further submissions from the complainant and I have not been dissuaded from my preliminary view that the requested documents, including the X-rays, are exempt under clause 3(1). A summary of my reasons, which have been provided to the parties in full, follows.

THE DISPUTED DOCUMENTS

There are 8 documents remaining in dispute namely, the X-ray photographs of the third party taken by the agency between 15 October 1997 and 10 November 1997.

The exemption – Clause 3 (Personal Information)

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 in Schedule 2 to the FOI Act 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 disputed documents. They contain certain information about the third party, from which the third party can be identified, including the third party's name. In my view, that matter is, on the face of it, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

Limits on exemption

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 that applies 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. Under s.102(3) of the FOI Act, the onus is on the complainant to persuade me that the disclosure of documents containing personal information about the third party would, on balance, be in the public interest.

The complainant's submission

The complainant informs me that his reason for seeking access to the X-rays is to assist in the preparation of his defence at his trial by enabling his own medical experts to examine those documents and to provide evidence in support of his defence at trial. The complainant has not alluded to any necessity or centrality of the disputed documents to his defence, nor has he put before me any compelling material in support of his submission that the disputed documents should be disclosed to assist his defence of the charges against him.

PUBLIC INTEREST

I recognise a public interest in an accused person having access to sufficient material, both exculpatory and incriminating, to properly defend himself or herself. I also recognise a public interest in the proper administration of justice and, in a system based on principles of fairness to the accused, maintaining the ability of the Courts to regulate their own proceedings. I understand that, in criminal proceedings in the District Court, there is a process whereby the accused is provided with a brief of the evidence against him or her. Freedom of information legislation does not seek to override or in any way vary the rules relating to the production of documents in the context of Court proceedings; rather, it adds to a person's rights to obtain access but does not restrict him or her from gaining access by other means: *Re Green and Australian and Overseas Telecommunications Corporation* (1992) 28 ALD 655.

However, there is nothing before me to suggest that disclosure of the disputed documents would interfere with the proper administration of justice or the proceedings of the District Court. Equally, there is nothing before me to suggest that disclosure is necessary for the proper preparation of the complainant's defence.

I also recognise a public interest in the protection of individual privacy. That public interest is enshrined in clause 3(1) of Schedule 1 to the FOI Act. I consider that the exemption in clause 3(1) is a recognition by Parliament of the fact that government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause. In my view, the strong public interest in maintaining personal privacy will only be displaced by some stronger countervailing public interest that requires the disclosure of personal information.

Although the complainant's reasons for seeking access to the disputed documents may be relevant when I am balancing the competing public interests, I do not consider those reasons to be sufficiently strong in this instance to warrant the disclosure of personal medical records concerning the third party.

It follows, therefore, for the reasons given to the parties that, in balancing the competing interests, I am not persuaded that disclosure of the disputed documents would be in the public interest. On balance, I consider that the maintenance of the third party's right to privacy outweighs the public interest in the complainant being able to have access to personal information about the third party.

Accordingly, I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act and confirm the decision of the agency to refuse the complainant access to them.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
9 September 1998