

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation: *Re Giannuzzi and Kalamunda Hospital* [1999] WAICmr 34**

**COMPLAINT No:** F1231999

**DECISION No:** D0341999

**PARTIES: Michael Stephen GIANNUZZI**

Complainant

**KALAMUNDA HOSPITAL**

Respondent

**No. of documents in dispute:** 25

**Exemption clause(s):** Clause 3

On 23 May 1999, Mr Giannuzzi ('the complainant') made an application to his employer, the Kalamunda Hospital ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents held on his personal file. Although the agency granted access to some documents, the complainant alleged that certain other documents were missing from that file. Subsequently, the agency located the missing documents but refused the complainant access to those documents on the ground that they are exempt under clause 3(1) of Schedule 1 to the FOI Act.

The agency's initial decision was confirmed following internal review. Thereafter, on 29 July 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

**Review by the Information Commissioner**

I obtained the disputed documents from the agency. My Senior Investigations Officer discussed this matter with the parties in an effort to determine whether this complaint could be resolved by conciliation. However, conciliation did not appear to be an option.

On 12 October 1999, 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 disputed documents may be exempt under clause 3(1). Nothing further was received from the complainant and I am not dissuaded from my preliminary view that the documents are exempt. A summary of my reasons follows.

**The disputed documents**

There are 25 documents in dispute in this matter. Those documents comprise various handwritten and typed letters of complaint and statements made by third parties.

**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 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 under clause 3(1).

In the Glossary to the FOI Act, "personal information" is defined to mean:

*"personal information" means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -*

- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample;"*

The disputed documents contain a considerable amount of personal information, as defined in the FOI Act, about third parties, including names and addresses, private facts and other information that would identify those third parties, and information about them that appears to be quite private and sensitive in nature. Unless any of the limits on exemption in sub-clauses (2)-(6) of clause 3 applies, that kind of information is, on its face, exempt under clause 3(1).

In the circumstances of this matter, I do not consider that any of the limits on exemption provided in clause 3(2)-(5) applies. The only limit that might apply is the limit on exemption in clause 3(6) which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Pursuant to s. 102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure of personal information about the third parties would, on balance, be in the public interest.

### **Public Interest**

I recognise that there is a strong public interest in maintaining personal privacy and I consider that the purpose of the exemption in clause 3 is to protect the privacy of third parties. In my view, that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance. I also recognise that there is a public interest in maintaining the capacity of the agency to receive and to act on information affecting the well being of its employees.

Balanced against those public interests, I also recognise that there is a public interest in people being informed of any allegations or complaints made against them to government agencies and in a person such as the complainant being given an opportunity to respond to those complaints or allegations. There is also a public interest in persons such as the complainant being able to exercise his or her right of access under the FOI Act and to be given access to documents containing personal information about that person.

In this instance, the complainant informed me that he does not seek access to information concerning the identity of the complainants, but that he is seeking access to information concerning the nature of the complaints made against him. I am informed by the agency that the specific allegations it received about the complainant have been put to him in some detail at a number of meetings held between the complainant and officers of the agency. I am also informed by the agency that the complainant was given the opportunity to respond to each of the allegations and to give his version of facts to the agency.

The complainant has not disputed those facts. Therefore, in the circumstances of this matter I consider that the public interests weighing in favour of disclosure have been satisfied, to some extent. I am not persuaded that the public interest in the complainant being informed of the complaints made against him and being given an opportunity to address those complaints requires disclosure of the disputed documents. Nor do I consider that that public interest requires the disclosure of the identities of the person or persons providing information to the agency, which would necessarily occur if the documents were to be disclosed.

### **Deletion of exempt matter**

There is also some information in the disputed documents that is personal information about the complainant. However, the personal information about him is only a small part of the matter contained in the documents and it is so inextricably interwoven with the personal information about the third parties that, in my view, it could not be disclosed to the complainant without also disclosing the personal information about the third parties.

For that reason, I do not consider that it would be practicable to delete personal information about third parties from the disputed documents and to give the complainant access to edited copies of documents. To delete personal information about third parties would require the deletion of almost all of the contents of the disputed documents and would not be of a minor or inconsequential nature. The balance of those documents would, in my view, be misleading or unintelligible and could be described as making little or no sense.

Therefore, I consider that the public interest in maintaining the privacy of third parties is not outweighed by any other public interest. Accordingly, I find that the disputed documents are exempt under clause 3(1) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to those documents.

**B. KEIGHLEY-GERARDY**  
INFORMATION COMMISSIONER  
26 October 1999