

BREARLEY 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: 97108

DECISION No: D03497

PARTIES: Michael Anthony BREARLEY

Complainant

SIR CHARLES GAIRDNER HOSPITAL

Respondent

No. of documents in dispute: Not applicable

Exemption clause(s) : Not applicable

By letter dated 20 December 1996, Mr Brearley ('the complainant') applied to the Sir Charles Gairdner Hospital ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents concerning his partner, a former patient of the agency who is now deceased ('the patient').

By its notice of decision dated 13 January 1997, the agency provided the complainant with access to the requested documents by way of inspection and also by the provision of copies of those documents. However, the complainant sought internal review of that decision on the basis that access had not been provided to all the documents. In a letter dated 22 April 1997, the agency informed the complainant that he had been given access to all of the documents within the scope of his access application. That decision effectively confirmed the initial decision on access.

By letter dated 23 June 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

After receiving this complaint, a member of my professional staff contacted the complainant and he confirmed my understanding of his complaint, namely, that he believed additional documents should exist in the agency. On that basis, I dealt with this complaint as one involving the question of the sufficiency of the searches conducted by the agency to locate the documents requested.

Subsequently, I obtained a copy of the agency's FOI file maintained in respect of the complainant's access application, and copies of the documents to which access had been granted. Inquiries were made with various officers of the agency about the agency's record-keeping system. My Investigations Officer also met with other officers of the agency and obtained further information in respect of matters raised by the complainant.

After considering that material and the searches conducted by the agency, I informed the parties in writing of my preliminary view and reasons for that view. It was my preliminary view that the agency had taken all reasonable steps to locate the documents requested by the complainant and additional documents either did not exist or could not be found. The complainant claimed that additional documents recording the details of contacts between the social work department of the agency and the patient, her family or him should also exist.

The complainant's claim that additional documents created by the social work department should exist were put to the agency. Consequently, one additional document was found. The agency granted the complainant access to a copy of that document from which exempt matter had been deleted. The matter deleted from the document relates to other patients and is, therefore, outside the scope of the complainant's access application. My office conducted further inquiries into this aspect of the complaint, but no more documents were located. Thereafter, I provided the complainant with a further preliminary view, but he did not withdraw his complaint.

The complainant has been fully informed about the extent of the searches conducted by the agency in respect of the requested documents and of the inquiries undertaken by my office in respect of this matter. There is nothing before

me that dissuades me from my preliminary view that access to additional documents cannot be provided because the documents either do not exist or cannot be found. My reasons for that view have been given in detail to the parties. A summary of my reasons follows.

Documents that do not exist or cannot be found

Section 26 of the FOI Act deals with the requirements of an agency in circumstances where it is unable to locate the documents sought by an access applicant. Section 26 provides that an agency may advise an applicant in writing that it is not possible to give access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document is in its possession, but cannot be found or it does not exist. For the purposes of the FOI Act, the sending of such notice is to be regarded as a decision to refuse access to the document, and on external review or an appeal under Part 4 of the FOI Act, the agency may be required to conduct further searches for the document.

I have discussed my view of the requirements of s.26 in previous decisions concerning documents that cannot be found. I remain of the view that, when dealing with such an issue, there are two questions, which must be answered. The first question is whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question, in my view, is whether the agency has taken all reasonable steps to find those documents.

I do not consider it is my function to physically search for the requested documents on behalf of the complainant. Provided I am satisfied that the requested documents exist, or should exist, I take the view that it is my responsibility to inquire into the adequacy of the searches conducted by the agency in a particular instance, and to require further searches if necessary.

The existence of the documents

I am satisfied that the documents to which the complainant was initially given access by the agency are the documents identified by him in his original access application. Those documents include medical records, social workers' notes, CAT scans, MIR scans and X-rays. The documents which the complainant claims should exist consist of one X-ray and documents which should record details of contacts between the social work department of the agency and the patient, her family, or the complainant.

My inquiries with the agency on this matter confirm that the number of contacts recorded against the name of a patient relate to the contacts which relate to that patient. Some of those contacts may not have been made directly with the patient, but may have been made with relevant medical staff or members of the patient's family. Based on that information, I consider it reasonable to expect some kind of documentary record of those contacts to exist in the agency.

However, further inquiries with the relevant social worker proved fruitless. The social worker agreed that some record or notes of contacts with the patient should exist, but she could not remember making such notes nor could she explain why those notes could not be found. The agency has searched its computerised data base using the patient's name and number as prompts. Additional searches were undertaken in the psychiatric, renal, social work and radiotherapy departments of the agency without success.

Although I consider that it is reasonable to expect some additional documents to exist recording contacts between the social work department of the agency and the patient, there is no evidence before me to suggest that such documents do, in fact, exist or where those documents might be found. I am also satisfied that the complainant has been given access to all the relevant X-rays of the patient. There is nothing before me to support the view that additional X-rays should exist. In the circumstances, I am satisfied that the agency has taken all reasonable steps to locate the documents. There is nothing before me to warrant my requiring the agency to conduct further searches for those documents.

Therefore, for the reasons given to the parties which I have summarised above, I confirm the decision of the agency to refuse access to the documents on the ground either that they do not exist or cannot be found.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
9 December 1997