

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F1911999
Decision Ref: D0411999**

Participants: **Batoul Oset**
Complainant

- and -

Fremantle Hospital and Health Service
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – clause 3(1) - personal information about access applicant - patient medical records relating to access applicant - personal information about third parties – access to edited copies of documents - deletion of personal information about third parties – public interest factors for and against disclosure - public interest in maintaining privacy of third parties – section 26 – whether documents exist or should exist in agency.

Freedom of Information Act 1992 (WA) ss. 21, 26, 45, 46, 102(3); Schedule 1 clause 3.

Mental Health Act 1962

DECISION

The decision of the agency is confirmed. The matter to which access has been refused is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*, and the further documents sought by the complainant do not exist.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

18 November 1999

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by Fremantle Hospital and Health Service ('the agency') to refuse Mrs Oset ('the complainant') access to documents requested by her under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 21 June 1999, the complainant made an application to the agency seeking access to her entire patient file. On 20 July 1999, the agency granted the complainant access to edited copies of documents in that file with certain matter deleted. The agency claimed that the matter deleted from various documents was exempt under clause 3(1) of Schedule 1 to the FOI Act because it was personal information about third parties, including her son. After receiving written authorisation from the complainant's son, the agency released the documents containing personal information about her son to the complainant.
3. On 16 September 1999, the complainant sought internal review of the agency's initial decision and identified a number of particular documents that she alleged were missing from her file. In addition, she asked the agency to delete certain information, which she claimed to be false, from the records. On 24 September 1999, the agency responded to the request for internal review and amendment of its records. The agency informed the complainant that she had been given access to her complete patient file, save for matter deleted on the ground that it is exempt under clause 3(1). The agency also informed her that it did not hold any documents of the kind identified in her request for an internal review. In respect of her request for the deletion of information, the agency informed the complainant that it was prepared to insert a note into its records containing her version of events.
4. On 8 October 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. Although it was not clear from the complainant's complaint to my office, it appeared to me that she was seeking a review of two aspects of the agency's decision. Those are, firstly, the agency's decision to refuse access to documents described by the complainant as "relating documents" on the ground that those documents do not exist and, secondly, the agency's decision to withhold some information on the ground that it is exempt under clause 3(1) of Schedule 1 to the FOI Act. As a result, the external review conducted by my office proceeded on that basis.

6. I obtained the disputed documents from the agency together with the file maintained by the agency for the purpose of dealing with the complainant's access application. On 26 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 that the matter to which access had been refused may be exempt under clause 3(1). It was also my preliminary view that the additional documents sought by the complainant are not held by the agency and the agency's decision to refuse access to those documents, therefore, may be justified.
7. The complainant provided a further written submission for my consideration. She also informed me that she required the deletion of information she claims to be false in certain records of the agency.

DOCUMENTS THAT DO NOT EXIST OR CANNOT BE FOUND

8. Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate the documents sought by an access applicant. That section provides:

“Documents that cannot be found or do not exist

26. (1) *The agency may advise the applicant, by written notice, that it is not possible to give access to a document if -*

(a) *all reasonable steps have been taken to find the document; and*

(b) *the agency is satisfied that the document -*

(i) *is in the agency's possession but cannot be found; or*

(ii) *does not exist.*

(2) *For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document.”*

9. If a complainant raises the issue of the existence of documents that have not been identified by the agency, in my view, there are two questions that are required to 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 is whether the agency has taken all reasonable steps to find the documents.

The existence of the documents

10. In the complainant's application to the agency for internal review, she described the additional documents sought in the following terms:
- documents relating to her complaint to the Medical Board;
 - documents relating to her complaints to the Commissioner of Police;
 - documents relating to the involvement by Scarborough Police in a raid on her home, including a police Offence Report;
 - documents relating to the above incident authored by 3 other individuals;
 - documents relating to her complaints to the Minister for Police;
 - documents relating to her complaints to the Commissioner for Health;
 - documents relating to approaches made to the agency by the Psychiatric Emergency Team (PET) and other hospitals; and
 - documents relating to her complaints made to the State Ombudsman.
11. I do not disbelieve that the complainant has made a number of complaints to various people and organisations such as the Medical Board, the Commissioner of Police, the Minister for Police, the Commissioner for Health and the State Ombudsman. However, I have no reason to believe that documents relating to such matters would, or could reasonably be expected to be, found on her patient file in the agency.
12. From my knowledge of the agency and my knowledge of record management in the public sector generally, I would not expect the agency to hold copies of those documents or documents of that kind. The agency is a hospital and its business is the provision of health services, including mental health services, to the public. If an applicant wished to obtain access to letters written by himself or herself to various agencies, the normal procedure would be for that applicant to make an application to those agencies.
13. In my view, it would be most unlikely that the agency would hold documents of the kind requested by the complainant. Even if it were likely to hold such documents, I do not consider it likely that they would be held on her patient file that was the subject of her access application. The agency informed the complainant that no documents of the kind described by her were held on her patient file. Although I have power under s.26(2) to require an agency to conduct further searches for a requested document, in the circumstances of this matter I consider that such a search is unnecessary. In my view, the agency's decision to refuse access to the additional documents on the ground that those documents do not exist in the agency is justified. Accordingly, I confirm the agency's decision in that respect.

THE EXEMPTION – Clause 3 (Personal information)

14. The agency claims that information deleted from various documents in the complainant's patient file is exempt matter under clause 3(1) of Schedule 1 to the FOI Act. Clause 3, so far as is relevant, provides:

“3. Personal information

Exemption

(1) Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).

Limits on exemption

...

(6) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”

15. In the Glossary to the FOI Act, the term “personal information” is defined to mean:

“... 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;”

16. I have examined the matter deleted by the agency from the various documents in the complainant’s patient file. The documents in that file consist of various medical forms, such as pathology reports, In-Patient assessments, PET forms, contact information notes and integrated patient notes, discharge forms, nursing care plans, observation charts, nursing discharge plans, integrated progress notes and Forms 3, 4, and 5 issued under the *Mental Health Act 1962*. In addition to containing information about the complainant and her son, those documents also contain personal information about third parties. That information includes names and addresses, private facts and other information that would identify those third parties. 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).

17. 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 be in the public interest.

Public interest

18. Although the complainant provided a submission, there is little, if anything, in that submission that touches upon the question of where the balance of the public interest should lie in a matter of this nature. It appears to me that the complainant disagrees with a psychiatric assessment made by the agency concerning herself and her son and that is the main reason that she requires access to personal information about other people.
19. 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 health and well being of its patients.
20. Balanced against those public interests, I also recognise that there is a public interest in a person 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. That public interest has been, to a very large extent, satisfied by the disclosure to the complainant of everything on her patient file except personal information about other people.
21. Some of the information that has been deleted from the disputed documents by the agency is personal information about the complainant and her son. Section 21 of the FOI Act provides that the fact that a document contains personal information about an access applicant is a factor to be considered in favour of disclosure. I have considered that factor in the balancing process. However, it seems to me that the personal information about the complainant and her son is so inextricably interwoven with personal information about the third parties that it could not be disclosed to her without also disclosing the personal information about the third parties. I do not consider that the complainant has identified any public interest factors favouring disclosure that are strong enough to outweigh the public interest in the protection of the personal privacy of the third parties in this instance.
22. Therefore, in balancing the competing public interests, I consider that the public interest in maintaining personal privacy is not outweighed by any other public interest. Accordingly, I find that the matter deleted from the documents is exempt under clause 3(1).

Amendment of personal information

23. In her later submission to me, the complainant endeavoured to raise for my consideration the question of her request to the agency for the deletion from its records of certain information she claims is false. I do not propose to deal with that aspect of the complainant's complaint because, firstly, for the reasons outlined below, I do not consider that the complainant has made a valid application for amendment of personal information. Secondly, even if her

request - raised in her application for internal review – had been a valid application, the complainant has not applied for internal review of that decision and is not, therefore, entitled to lodge a complaint with the Information Commissioner concerning it.

24. Although the complainant states that she requires the deletion of “*false information and unorthodox comments*” from the agency’s records, I do not consider that a request framed in those terms complies with the requirements in s.46(1) of the FOI Act. The right under s.45(1) to apply for the amendment of personal information is limited to the amendment of information that is inaccurate, incomplete, out of date or misleading. Section 46(1)(b) and (c) of the FOI Act requires that an applicant give enough details to enable the document that contains the information to be identified and that the applicant also gives details of the matters in relation to which he or she believes the information is inaccurate, incomplete, out of date or misleading. The complainant does not appear to me to have done so.
25. In my view, a mere assertion that information is false and consists of unorthodox comments is insufficient to establish that personal information is inaccurate, incomplete, out of date or misleading. I accept that the opinions of one person about another person may constitute personal information that is capable of being amended under the FOI Act. However, the FOI Act requires more than merely disagreeing with an expressed opinion to establish that the information is inaccurate, incomplete, out of date or misleading.
26. By way of comment, based on the material presently before me, I do not consider that there would be any ground for amendment. In any event, the agency has agreed to the insertion of a note containing the complainant’s views of the particular events. I consider that that option is one that the complainant ought to pursue if she wishes.
