

H AND GRAYLANDS

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

**File Ref: 96105
Decision Ref: D05096**

Participants:

'H'
Complainant

- and -

Graylands Hospital
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - psychological tests - clause 11(1)(a) and clause 11(1)(b) - whether disclosure could reasonably be expected to impair effectiveness of procedures or methods of conduct of examinations - public interest factors - disclosure to the world at large.

Freedom of Information Act 1992 (WA) ss.3(1)(b), 10(1), 102(3); Schedule 1 clause 11.

DECISION

The decision of the agency is varied. The disputed documents are exempt under clauses 11(1)(a) and 11(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

6th September 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by Graylands Hospital ('the agency') to refuse access to documents requested under the provisions of the *Freedom of Information Act 1992* ('the FOI Act'). In this decision, the second involving the complainant and the agency, I have identified the complainant as "H" in order to protect her privacy.
2. The complainant is a former patient of the agency having been admitted for treatment on three occasions during 1994. The agency's admission procedures relating to patients admitted for treatment include the conduct of psychological tests which may be re-administered if the patient re-enters the agency for treatment at any time after his or her discharge. The complainant was the subject of various psychological testing procedures on at least one occasion of her admittance in the agency in 1994.
3. Although the complainant applied to the agency in May 1995 for access under the FOI Act to her medical records, the documents associated with the agency's psychological testing of her were neither identified nor disclosed to her as a result of her earlier FOI request. Thereafter, the complainant lodged an access application seeking access to the documents relating to the specific psychological tests which had been administered to her by the agency.
4. On 27 March 1996, the complainant was refused access to the documents, described by the agency as psychological test protocols, on the ground that those documents are exempt under clause 11(1)(a) of Schedule 1 to the FOI Act. The complainant applied for internal review of the agency's decision and, on 15 May 1996, Mr Russell McKenny, General Manager, Graylands Hospital and Special Care Services, confirmed the initial decision of the agency that the requested documents are exempt under clause 11(1)(a).
5. On 8 July 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision to refuse access to the requested documents.

REVIEW BY THE INFORMATION COMMISSIONER

6. I obtained the originals of the documents requested by the complainant from the agency. My Investigations Officer met with the Co-ordinator, Clinical Psychologist and the Senior Clinical Psychologist of the agency to obtain background information concerning the requested documents and the relationship of those documents to the psychological testing procedures of the agency.

7. After examining the requested documents and considering the material provided by the parties, on 6 August 1996, I provided the parties with my preliminary view and my reasons for that view. It was my preliminary view that the requested documents may be exempt under clauses 11(1)(a) and 11(1)(b) of Schedule 1 to the FOI act. Subsequently, the complainant sought and was granted an extension of time in which to prepare a further submission for my consideration to support her claim for access to those documents.

THE DISPUTED DOCUMENTS

8. There are 5 discrete documents identified by the agency as being within the ambit of the complainant's access application. Those documents comprise the results of the psychological tests administered to the complainant by the agency in April 1994 and are as follows:
 - (i) Wechsler Adult Intelligence Scale - Revised (WAIS-R) Record Form consisting of 8 pages;
 - (ii) A series of drawings (5 pages) and a one page explanation, dated 7/4/94;
 - (iii) Three pages of notes, comments and scores;
 - (iv) Rorschach Inkblot Tabulation sheet and Inquiry Chart; and
 - (v) Answer Sheet and Hardscoring of the Minnesota Multitphasic Personality Inventory - (MMPI - 2).

THE EXEMPTION

9. The agency claims the disputed documents are exempt under clause 11(1)(a) of Schedule 1 to the FOI Act. Clause 11 of Schedule provides:

"11. Effective operation of agencies

Exemptions

(1) Matter is exempt matter if its disclosure could reasonably be expected to -

(a) impair the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency;

(b) prevent the objects of any test, examination or audit conducted by an agency from being attained;

(c) have a substantial adverse effect on an agency's management or assessment of its personnel; or

(d) have a substantial adverse effect on an agency's conduct of industrial relations.

Limit on exemptions

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

10. I am informed by the agency that each of the psychological tests administered to the complainant forms part of a group of tests designed to provide the clinical psychologist who tested the complainant with information from which a more complete "psychological picture" of the complainant could be constructed. In one particular test the subject is asked to draw certain objects and he or she is then questioned about the picture drawn. I am informed by the agency that it is possible for a subject to modify his or her responses to this particular test on any subsequent occasions that he or she may be tested, if the subject believes that the first set of drawings may have adversely impacted on his or her assessment.
11. The agency also informs me that the Rorschach Inkblot Method Test is a standard psychological test used world wide. The test consists of a series of inkblot images which the subject is allowed to view for a set period and he or she is then asked to describe what he or she sees in the inkblot images.
12. The MMPI test is also a standard psychological test which is administered on a one to one basis. The subject is given a book of questions and he or she records his or her answers to those questions on a response sheet which is also provided by the testing psychologist.
13. I am also informed by the agency that the fundamental effectiveness of psychological testing is founded upon protecting the integrity and confidentiality of the questions and answers to the tests in question and that the release of such tests and answers would seriously compromise the value of the test and its usefulness to the psychological profession. Although the tests are administered on a one to one basis, the results may be discussed with the subject in general terms only. The interpretation of the test results is used by the agency, together with other medical and clinical information, to decide upon a treatment program for the patient. Further, such psychological tests may be administered to a patient whenever he or she enters the agency for treatment and those tests may be re-administered to the complainant if she were to re-enter the agency for treatment in the future.
14. The agency claims that the disclosure of the disputed documents would reduce the effectiveness of those particular testing procedures because the complainant and other potential subjects could practice answers to the questions and thereby significantly distort future results and the effectiveness of the tests. That is, if a person were familiar with the type of tests administered by the agency, he or she

could construct answers that would present a favourable psychological profile to the tester which would have the effect of impairing the effectiveness of the testing procedure as a basis for treatment.

15. I am also informed that the Australian Psychological Society's Code of Professional conduct provides that its members must not compromise the effective use of psychological tests, nor render them open to misuse, by publishing or otherwise disclosing their content to persons unauthorised or unqualified to receive such information. Accordingly, the completed test documents relating to the complainant remain confidential between the complainant and the clinical psychologist and those documents are stored in the office of the clinical psychologist separately from the complainant's medical records. Access to the disputed documents is strictly limited by the agency.

Findings

16. Based on my examination of the disputed documents and other material before me, I am satisfied that the agency follows a system for the clinical examination of patients that relies upon accepted standards and procedures for the conducting of psychological tests.
17. On the material before me, I am satisfied that the disclosure of the disputed documents could reasonably be expected to impair the effectiveness of the agency's procedures for psychological testing of patients. As no conditions may be attached to the disclosure of documents under the FOI Act, disclosure to an access applicant is potentially, and must be considered, disclosure to the world at large. In this case I accept that if the disputed documents were to be disclosed to the complainant and, thereby, to the world at large, then the complainant, and any other person to whom the documents were subsequently disclosed, may then be in a position to tailor his or her answers to the tests, so that a contrived rather than a true picture of his or her psychological profile is presented, and the method of testing would therefore be less effective as the results could not be relied upon.
18. The exemption in clause 11(1)(b) appears to me to be directed at the outcome of the particular test, examination or audit, whereas clause 11(1)(a) is directed at protecting the viability of a method or procedure for the conduct of a test, examination or audit. I consider that there is some overlap between the exemptions provided in clauses 11(1)(a) and 11(1)(b) of Schedule 1 to the FOI Act. Depending on the nature of the test in question, disclosure of test documents may have the effect of either impairing the method or procedure for conducting the tests, or preventing the objects of the test from being attained, or both.
19. Although the agency has not claimed exemption for the disputed documents under clause 11(1)(b), I also consider that, for reasons similar to those set out in paragraphs 16-17 above, the disclosure of the disputed documents could reasonably be expected to prevent the objects of any future tests conducted upon

the complainant - or others to whom the documents may be disclosed - from being attained, because those persons would be in a position to contrive answers to those tests which would not represent an accurate assessment of the individual, nor enable proper treatment of that individual by the agency.

20. Accordingly, I am satisfied that the disputed documents meet the requirements of clauses 11(1)(a) and 11(1)(b). However, clause 11(1) is limited by clause 11(2). Pursuant to s.102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure of those documents would, on balance, be in the public interest.

Public interest

21. The complainant submits that it would *“benefit the public by identifying the horrendous abuses that are currently taking place against individual’s human rights under the auspices of “mental health”.*” The complainant informs me that her motive for pursuing litigation against the agency is not only to redress the wrongs allegedly done to her, but to assist others by establishing a precedent in that regard. The complainant further informs me that she is seeking to make the agency accountable for its actions.
22. I recognise that there is a public interest in ensuring that State and local government agencies are accountable to the public for the decisions that they make. That particular aspect of the public interest is embodied in s.3(1)(b) of the FOI Act. I also recognise that there is a public interest in the complainant being able to exercise her right of access under the FOI Act.
23. However, I also recognise that there is a public interest in maintaining the effectiveness of the methods and procedures used by the agency for assessing persons committed to its care and in ensuring that the objects of conducting such tests are not compromised. To the extent that the efficacy of those tests is necessary for the agency to properly perform its functions for the benefit of patients and the wider community, I also recognise that as an aspect of the public interest. Further, I am not persuaded that disclosure of the disputed documents would serve the public interest claimed by the complainant, and quoted in paragraph 21 above, to warrant their disclosure.
24. I note that the agency has offered the complainant access to the disputed documents by having the Senior Clinical Psychologist who administered the tests to the complainant, explain and discuss her answers and any other questions which the complainant may have concerning those tests.
25. The complainant submits that the public interest in maintaining the effectiveness of the agency’s testing procedures and in ensuring that the objects of such tests are not compromised can be overcome because she is willing to sign a confidentiality agreement if the disputed documents are released to her. Alternatively, she has suggested that indirect access to those documents could be

achieved by making them available to her through another psychologist nominated by her.

Consideration

26. The right of access under s.10(1) of the FOI Act is a general right given to each person without any requirement of "standing". An applicant under the FOI Act is not required, therefore, to establish any antecedent reasons for seeking access and the right is not affected by either the reasons given or by an agency's belief as to what those reasons might be. For this reason, disclosure of documents under the FOI Act is considered to be disclosure "to the world at large". In complaints before me, disclosure of documents under the FOI Act depends on whether those documents are exempt as claimed, and where the balance of the public interest, if any, lies. Disclosure does not depend on any agreement as to confidentiality made by an access applicant, nor does it depend on administrative arrangements between an agency and an applicant which may or may not be entered into by those parties in order to facilitate access.
27. It is a matter for the complainant to decide whether she will accept the agency's offer referred to in paragraph 26 above, and for the agency to decide whether it is prepared to entertain the complainant's suggestions referred to in paragraph 26 above. Those are not matters relevant to the discharge of my function at this stage of proceedings, which is to determine whether the documents are exempt and to confirm, vary or set aside the decision of the agency in that regard.
28. Consequently, in balancing the competing public interests I am of the view that the public interest in maintaining the effectiveness of the psychological testing procedure and, hence, the ability of the agency to carry out its functions in respect of mental health on behalf of the wider community, outweighs the other public interests which I have identified. Accordingly, for the reasons given, I find that the disputed documents are exempt under clauses 11(1)(a) and 11(1)(b) of Schedule 1 to the FOI Act.
