

J AND GRAYLANDS

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

**File Ref: 95106
Decision Ref: D05495**

Participants:

J
Complainant

- and -

Graylands Hospital
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - medical records, reports and notes - access to edited copies - clause 3 - personal information - public interest in maintaining privacy of third party - public interest in applicant gaining access to personal information about applicant - clause 5(1)(e) - disclosure could reasonably be expected to endanger the life or physical safety of any person.

Freedom of Information Act 1992 (WA) ss.21, 72(1)(b), 75(1), 102(3); Schedule 1 clause 3(1), 3(6), 5(1)(e), 5(4); Schedule 2 Glossary.

DECISION

The decision of the agency is confirmed. The matter deleted from the documents, being the matter described in the schedule attached to this decision, is exempt matter either under clause 3(1) or clause 5(1)(e) of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

21st November 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of Graylands Hospital ('the agency') to provide "J" ('the complainant') with access to edited copies of documents requested by the complainant under the *Freedom of Information Act 1992* ('the FOI Act').
2. On 6 January 1995, the complainant lodged an access application under the FOI Act with the agency seeking access to personal information about the complainant. The agency interpreted this to mean that the complainant was seeking access by way of copies of medical records, notes and reports associated with the complainant's two admissions to the agency in 1989 and in 1990.
3. On 23 February 1995, the agency sought from the complainant an extension of time to deal with the access application. It appears that the complainant did not reply to that request. In a notice of decision dated 1 March 1995, the complainant was informed that a decision had been made by Mr Endersbee, Director of Nursing in the agency. In that notice of decision Mr Endersbee granted the complainant access to edited copies of a number of documents from which exempt matter had been deleted. The matter deleted from those documents was claimed to be exempt matter under various clauses of the FOI Act.
4. On 10 March 1995, the complainant sought internal review of the decision of the agency. It appears that the agency again requested an extension of time in order to properly deal with that request. On 1 June 1995, Dr G P Smith, Director of Psychiatric Services, Health Department of Western Australia, decided to vary the original decision and to provide the complainant with access to additional documents and to reduce the amount of information for which exemption was claimed. The agency provided the complainant with a detailed schedule in which the documents and the exempt matter were described. However, on 16 June 1995, the complainant applied to the Information Commissioner for external review of the decision of Dr Smith.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 20 June 1995, in accordance with my authority under ss.75(1) and 72(1)(b) of the FOI Act, I obtained copies of the disputed documents and the agency's FOI file maintained in respect of this matter. After examining those documents and considering other information provided to me by the agency about the complainant's medical history, I formed the preliminary view that the matter deleted from the documents was exempt matter under clauses 3(1) and 5(1)(e) of Schedule 1 to the FOI Act. The parties were informed of my preliminary view and reasons for that view, on 5 October 1995.

6. After the parties were given my preliminary view, two members of my staff met with the complainant and took oral submissions from the complainant which were recorded and reduced to writing. During that meeting the complainant claimed that part of the documents provided to him by the agency were medical records of another patient of the same surname who received treatment in the same ward of the agency as the complainant in 1990.
7. Although that matter was not part of the complaint before me, inquiries were made with the agency on this point. Subsequently, the agency confirmed that one document relating to another patient had been incorrectly filed on the complainant's file. That mistake was corrected by the agency and the complainant was informed by the agency of the action it had taken in this respect. As the complainant wishes to pursue access to the matter edited from the documents, my decision concerns the exempt status or otherwise of that matter.

THE DISPUTED DOCUMENTS

8. The agency identified 86 documents as being within the ambit of the complainant's access application. Those documents are patient medical records relating to the complainant's admissions to the agency in 1989 and 1990. The agency granted the complainant full access to 57 documents and access to edited copies of the 29 other documents. Therefore, this complaint only relates to the agency's decision to grant access to edited copies of 29 disputed documents. However, for the purposes of this decision, I have more accurately described those documents in the schedule attached to this decision. In some instances, I have consolidated folios so that they are now part of another document. My schedule describes all the exempt matter, but it now only refers to 18 documents.
9. The disputed documents are medical records including social welfare notes, nursing reports, progress notes, letters between the agency and another hospital, letters to the Board of Visitors, and patient discharge information. The matter deleted from those documents consists of the names and other personal information of third parties which is claimed to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act, and information connected with specific incidents that occurred during the complainant's admissions to the agency which is claimed to be exempt under clause 5(1)(e) of Schedule 1 to the FOI Act.
10. The agency provided the complainant with edited copies of the requested documents and a schedule listing and describing the parts of documents for which exemption is claimed. Although the complainant experiences some communication difficulties resulting from severe head injuries received in a motor vehicle accident in 1988, I am satisfied that the complainant is aware of the nature of the matter for which exemption is claimed. Further, I am satisfied that the complainant has been given the opportunity to make submissions on relevant points in relation to this matter.

THE EXEMPTIONS

(a) Clause 3

11. The agency claims that certain matter deleted from the documents listed on the schedule 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

- (2)..
(3)..
(4)..
(5)...

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

12. In the Glossary in Schedule 2 to the FOI Act, "**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."*

13. I have considered the meaning and application of the exemption in clause 3(1) in a number of my formal decisions. As I have said before, the exemption in clause 3(1) is designed to protect the personal privacy of individuals whose private information may be contained in documents held by State and local government agencies. In my view, the protection of personal privacy is an important feature of the FOI legislation in Western Australia and I consider there to be a strong public interest in maintaining that privacy, subject only to some clearly demonstrated countervailing public interest that requires the disclosure of such information.

14. In this case the matter which is claimed to be exempt under clause 3(1) consists of the names of third parties and, in some cases, it includes information connected with specific incidents in the agency from which, in my view, the identities of the third parties could be ascertained. In my view, all of the matter claimed to be exempt under clause 3(1) is, *prima facie*, exempt matter.
15. The exemption in clause 3(1) is limited by, *inter alia*, clause 3(6) which provides that such matter is not exempt if its disclosure would, on balance, be in the public interest. The onus of persuading me that personal information about third parties should be disclosed on that basis rests on the complainant under s.102(3) of the FOI Act.
16. In some instances, the matter deleted from the disputed documents consists of personal information about the complainant as well as third parties. However, where exempt matter consists of personal information about one or more third parties which is entwined with personal information about the complainant in such a way that it cannot be separated, it is necessary that I balance the public interest in an access applicant having access to the personal information about him or her - which interest is enshrined in s.21 of the FOI Act as a factor in favour of disclosure to the complainant - against the public interest in maintaining the privacy of third parties. In some circumstances, the exempt matter may be so "personal" and sensitive to third parties that the reasons for an applicant seeking access to his or her personal information will be relevant to my consideration of the competing interests and where the balance of the public interest should lie.
17. The complainant informed my officers that the reason for seeking access to the deleted matter is to enable the complainant to clear the complainant's name with family members and to explain the reason for the admissions to the agency in 1989 and 1990. The complainant also wished to demonstrate to family members that the agency inappropriately held the complainant against the complainant's will.
18. I am not persuaded by that explanation that disclosure of the deleted material would, on balance, be in the public interest. Disclosure of the deleted material will not provide the answers the complainant is seeking. The names and other personal information of third parties cannot assist in this regard. On balance, I consider the maintenance of individual privacy to outweigh the public interest in the complainant being able to have access to personal information about the complainant. Accordingly, I find the matter identified in the schedule attached to this decision to be exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

(b) Clause 5(1)(e)

19. The agency also claims that certain matter deleted from the documents listed on the schedule is exempt under clause 5(1)(e). Clause 5(1)(e) provides:

“5. Law enforcement, public safety and property security

Exemptions

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

(e) endanger the life or physical safety of any person;”

20. In support of its claims under clause 5(1)(e) of Schedule 1 to the FOI Act, the agency informed me that the complainant has made threats of physical violence to various persons since the motor vehicle accident in 1988 and, taking into account the type of injury and the fact that the complainant has been reluctant to participate in therapy, the agency considers that the risk to individuals who are or have been the targets of the complainant’s aggression has not been eliminated.
21. The complainant submits that there is no history of violence and that any threats the complainant may have made to other parties was due to the fact that the complainant was upset about losing the complainant’s motor drivers’ licence and, in any case, those threats would not have been carried out.
22. Based on the material before me, I consider that there is sufficient evidence to conclude that it is reasonable to expect that disclosure of the matter deleted from the disputed documents could have the effect of endangering the life or physical safety of a person. Further, I am satisfied that the documents to which the complainant has been granted access by the agency contain sufficient information for the complainant to understand those aspects of the complainant’s behaviour that have caused alarm and which have contributed to the agency’s concerns in this regard.
23. I am also satisfied that none of the limitations in sub-clause 5(4) applies and, therefore, the public interest does not arise as an issue for my consideration. Accordingly, I find the matter described in the schedule attached to this decision is exempt matter under clause 5(1)(e) of Schedule 1 to the FOI Act.

Schedule of Exempt Matter

Document No.	Description	Description of exempt matter	Exemption Clause
1	Social welfare notes dated 24 August 1989, 11 September 1989, 27 September 1989 and 8 November 1989 (folio 18).	All of the handwritten entries for 24 August 1989, 11 September 1989, 27 September 1989 and 8 November 1989.	5(1)(e)
2	File copy of letter from officer of agency to Sir Charles Gairdner Hospital dated 11 October 1989 (folio 19).	All except the hand written annotation in the top right corner.	5(1)(e)
3	Nursing Report (folio A3-A24).	The name of a third party, being the last two words of the first line of the entry of 7 September 1989 on folio A4.	3(1)
		The first two lines and the first four words on the third line of the handwritten text on folio A11.	3(1) & 5(1)(e)
		All the handwritten text after the word "visited" in the fourth last line of the entry for 26 August 1989 on folio A12.	3(1) & 5(1)(e)
		All of the 13th, 14th, 15th and 16th lines of the entry for 14 August 1989 on folio A20.	3(1) & 5(1)(e)
		The last four words of the eighth line to the sixth word in the 12th line of the entry for 9 August 1989 on folio A24.	3(1) & 5(1)(e)
4	Progress Notes (folios 31-39)	Apart from the date, all of the first line of the entry for 6 September 1989 on folio 32.	5(1)(e)
		Apart from the date, the whole of the entry for 12 September 1989 on folio 32.	5(1)(e)
		All of the handwritten text on folio 35 apart from the diagram.	3(1) & 5(1)(e)
		All of the third paragraph of the entry for 14 August 1989 on folio 36.	3(1) & 5(1)(e)
5	File copy of letter from officer of agency to another agency dated 12 September 1989 (folio 40).	All except the hand written annotation in the top right corner.	5(1)(e)

6	Copy of letter from Royal Perth Hospital dated 10 March 1989 (folios 46 and 47).	The three line hand written annotation to the right of the addressee details on folio 47.	5(1)(e) & 3(1)
7	Referral to agency from Sir Charles Gairdner Hospital dated 8 August 1989 (folios 50-52).	All text after the word “family” in line 3 to the end of the sentence in line 5 of the first paragraph on folio 51.	5(1)(e)
8	Discharge summary dated 5 January 1990 (folios 60 and 61).	All of the third paragraph of text on folio 60.	3(1) & 5(1)(e)
		All text after the word “violence” in line 8 of the second paragraph of text on folio 61 to the end of that sentence in line 9.	3(1) & 5(1)(e)
		All text after the word “brooding” in line 3 of the third paragraph of text on folio 61 to before the word “On” in line 6.	
9	File copy of letter from the agency to the Board of Visitors of the agency dated 2 March 1990 (folios 73-74).	All the text after the date “05.01.90” in line 3 of the first paragraph of text on folio 74 to the end of the paragraph.	3(1) & 5(1)(e)
10	Copy of letter from the Board of Visitors to the Psychiatrist Superintendent at the agency dated 22 February 1990 (folios 82-83).	The name of a third party in the heading of the letter and all text in paragraphs 6 and 7 on page 1 (folio 83) and all text in paragraphs 1 and 2 on page 2 (folio 82).	3(1)
11	Social welfare notes (folios 130-134).	All except the heading of the page on folio 130.	3(1) & 5(1)(e)
		All text in point 1 (the first 3 paragraphs) on folio 131.	3(1)
		All text in the entry for 12 February 1990 on folio 132.	3(1) & 5(1)(e)
		The word after “through” in line 2 of the entry for 16 January 1990 on folio 133.	5(1)(e)
12	“Nursing Discharge Plan” dated 9 April 1990 (folios B1 and B2).	The fifth and sixth words in line 9 of the entry for 19 January 1990 on folio 133.	5(1)(e)
		Four handwritten words alongside the sub-heading “Reason for admission” under the heading “Nursing Discharge Summary” on folio B1.	5(1)(e)

13	Nursing Report (folios B3 and B18)	Patient's name on the last line on folio B15.	3(1)
		All of the second and third lines of the entry for 12 January 1990 on folio B16 except for the signature at the end of the third line of that entry.	5(1)(e)
14	Letter to Bentley Clinic dated 9 April 1990 (folio 142).	All of the 2nd sentence of the first paragraph of the text of the letter.	5(1)(e)
15	Undated letter/memo from Psychiatric Registrar (folios 143 and 144).	All text of the document.	5(1)(e)
16	Progress Notes (folios 145-168).	Whole of entry for 19 March 1990 (on folios 147 and 148).	3(1)
		Whole of entry for 28 February 1990 (on folio 151).	3(1)
		Whole of entry for 21 February 1990 (on folio 152).	3(1)
		All text after the word "her" in line 11 to the end of line 17 of the entry for 15 February 1990 on folio 156.	3(1)
		The last two words in line 1 and the first two words in line 2, on folio 163.	5(1)(e)
		All text after the word "volatile" in the third line to the end of the seventh line of the entry for 12 January 1990 on folio 163.	5(1)(e)
		All text in the third, fourth and fifth lines of the third item numbered on folio 165.	3(1) & 5(1)(e)
		All text except the last 4 lines on folio 167.	3(1) & 5(1)(e)
		All of line 3 of paragraph 2 and all except the last word of line 4 of paragraph 2 on folio 168.	3(1) & 5(1)(e)
		All text in the last paragraph on folio 168.	3(1) & 5(1)(e)
17	Patient information form dated 5 January 1990 (folio 170).	All hand written text alongside the words "Reason for Referral".	5(1)(e)

18	Discharge summary dated 15 May 1990 (folios 172-174).	The first sentence of paragraph 4 on folio 172.	5(1)(e)
		The second sentence of paragraph 2 on folio 173.	5(1)(e)
		The last three words of the first line, all of the second line and the first three words of the third line of the first paragraph on folio 174.	5(1)(e)