

N AND GRAYLANDS

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

**File Ref: 295201
Decision Ref: D06095**

Participants:

N
Complainant

- and -

Graylands Hospital
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents recording or relating to an interview on admission – section 26 – documents either in the possession of the agency but cannot be found or do not exist – sufficiency of search – whether agency has taken reasonable steps to find documents – role of the Information Commissioner.

Freedom of Information Act 1992 (WA) ss. 26, 66(6).
Mental Health Act 1962 (WA)

DECISION

The decision of the agency to refuse access to requested documents, on the ground that the documents do not exist or cannot be found, is confirmed.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

12th December 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 refuse "N" ('the complainant') access to certain documents of the agency on the ground that those documents either cannot be found or do not exist.
2. The complainant first applied to the agency in November 1994 seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents associated with her admission to the agency in 1994. In respect of that access application, the complainant's mother acted as agent on her behalf. Access to the relevant records was provided with information relating to third parties deleted from those documents.
3. Following a request for internal review, the agency confirmed its initial decision and explained why additional documents did not exist within the agency. The complainant's mother was allowed to inspect the agency's original files and the complainant and her mother were informed of their right to seek external review by the Information Commissioner.
4. In September 1995 the complainant's mother again applied under the FOI Act for access to documents recording interviews with the complainant and her mother on the occasion of the complainant's first admission to the agency. In particular, access was sought to a record allegedly compiled by Dr Cutler of the agency. The complainant's mother was informed by the agency that it had provided the complainant with access to all documents pertaining to her first admission, subject only to the deletion from them of personal information about third parties.
5. On 14 October 1995, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse access to the requested documents on the ground that those documents either do not exist or cannot be found. Therefore, the issue for my determination concerns the adequacy of the searches undertaken by the agency to locate the documents requested by the complainant.

REVIEW BY THE INFORMATION COMMISSIONER

6. Following my receipt of the complaint, one of my investigations officers met with the agency's FOI co-ordinator on 26 October 1995 in order to make some preliminary inquiries into the matter. During that visit, with the concurrence of the agency, my investigations officer inspected the agency's files relating to the admissions of the complainant to the agency. That inspection suggested that all

relevant documents had been identified by the agency and that the complainant had been given some form of access to those documents.

7. Following receipt of that information, and given the particular circumstances of this matter, I decided to exercise my discretion under s.66(6) of the FOI Act and allow the complaint to be made even though internal review had not been applied for by the complainant.
8. On 7 November 1995, in response to a request from my office, the agency provided me with further information regarding its record-keeping practices. On 16 November 1995, I formally notified the agency of the complaint and informed both parties of my preliminary view of the matter. It was my view, on the information before me, that the agency had given the complainant access to all documents within the ambit of the access application, and that its decision to refuse access to others on the basis that those documents do not exist, was justified. Although invited to do so, the complainant provided no additional evidence or submissions in support of her assertion that those documents exist. Neither did the complainant withdraw her complaint.

THE DISPUTED DOCUMENTS

9. The complainant claims that some 12 pages of hand-written notes were made by Dr Cutler, some on the complainant's admission to the agency and 24 hours later when her mother attended at the agency. The agency claims those documents do not exist and never existed and, therefore, refused access in accordance with s.26 of the FOI Act.

Sufficiency of search

10. 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 as follows:

"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."*

11. As I have said in previous decisions, for the purpose of my dealing with complaints concerning allegations of documents that are missing from an agency's record-keeping system, there are two questions that must be answered. Firstly, are there reasonable grounds to believe that the requested documents exist? Secondly, in circumstances in which the first question is answered in the affirmative, were the searches conducted by the agency to locate the documents reasonable in all the circumstances?
12. I have previously expressed the view that it is not my function to physically search for the requested documents on behalf of an applicant, nor is it my function to examine in detail the agency's record-keeping system. However, if I am satisfied that requested documents exist, or might exist in an agency, it is my responsibility to inquire into the adequacy of the searches conducted by an agency, to require further searches if necessary and to satisfy myself that the agency has acted reasonably, pursuant to its obligations under the FOI Act.
13. In support of her contention that more relevant documents exist in the agency than those to which she was given access, the complainant claimed that, on her admission to the agency, Dr Cutler had written in the region of 6 pages of admission details. The complainant also claimed that a further 6 pages of notes were made when her mother attended at the agency 24 hours after her admission. The complainant alleges that those documents would evidence that she was asked "illegal" and improper questions and was not treated in accordance with the *Mental Health Act 1962* upon her admission to the agency and she suggests that that is why the documents are "lost".
14. In response, I am informed by the agency that when a person arrives at the agency as a patient, he or she is interviewed, initially by a Registrar and then by a consultant psychiatrist. The notes of those interviews are recorded directly into the case notes of the patient which case notes also include the results of physical and mental state examinations of the patient, and supporting information from relatives, friends or escorting police. I am further informed that all notes are maintained on the patient's admission file and that it is not the practice of agency staff to re-write notes for any reason. Dr Cutler informed me that it is not her usual practice to draft notes first and then to transcribe them as case notes.
15. The agency also informed me that some time before the complainant was admitted as a patient in the agency, the agency had in place the practice of doctors making hand-written notes of interviews with patients which would then be typed at a later stage. However, the agency had found that practice too cumbersome and it resulted in a backlog of notes awaiting typing. As a result,

the procedure was changed and it was now the practice for medical staff to write their notes directly onto the patient's file.

16. The agency has not disputed the existence of notes taken by Dr Cutler, but claims that those notes were recorded directly onto the case notes of the complainant in accordance with usual practice. The relevant case notes are the documents to which the complainant has been given access.
17. From the information before me, I am satisfied that it is unlikely that the documents to which the complainant seeks access exist and they probably never did. Further, I am satisfied that the searches undertaken by the agency to locate all documents relating to the complainant's admissions to the agency were, in all the circumstances, reasonable, and I do not require any further searches to be undertaken.
18. Accordingly, I find that the decision of the agency to refuse access to those documents on the ground that the requested documents do not exist or cannot be found, was justified
