

S AND BENTLEY

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

**File Ref: 96144
Decision Ref: D06296**

Participants:

“S”
Complainant

- and -

Bentley Hospital
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access document relating to admission of psychiatric patient - access refused because documents do not exist - section 26 - whether reasonable grounds to believe that documents exist or should exist - sufficiency of searches.

Freedom of Information Act 1992 (WA) ss.26, 28(1), 40(2), 68(1).
Mental Health Act 1962

DECISION

The decision of the agency to refuse access to the requested document on the ground that it either does not exist or cannot be found, is confirmed.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

22nd November 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision by Bentley Hospital ('the agency') to refuse "S" ('the complainant') access to a certain document on the ground that that document either does not exist or cannot be found. In this instance, I have decided not to identify the complainant by name in order to protect his privacy.
2. In 1991 and in 1993, the complainant was admitted to Heathcote Hospital as an involuntary patient, pursuant to the provisions of the *Mental Health Act 1962*. When Heathcote Hospital ceased its operations in November 1994, its patient records were transferred for safe-keeping and storage to either Fremantle Hospital or the agency. In respect of the complainant, the agency was the custodian of the relevant records.
3. On 16 November 1995, the complainant lodged an access application with Fremantle Hospital seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to the records relating to his admissions to Heathcote Hospital in 1991 and 1993. Fremantle Hospital transferred that request to the agency and, on 13 December 1995, the complainant was informed by the agency that his medical records were available for his inspection.
4. It appears that the complainant did not respond to that notification from the agency and, on 21 August 1996, the complainant was informed again that the relevant records were available as requested. After receiving that advice and following further contact with the agency, on 20 September 1996, the complainant lodged a request for internal review in respect of one document which the complainant claimed was missing from his file.
5. Under s.40(2) of the FOI Act, a person aggrieved by a decision on access made by an agency has 30 days in which to lodge an application for internal review. The complainant's application for internal review was clearly out of time and the agency was, therefore, not obliged under the FOI Act to accept it. In any event, the agency did accept his application and carried out an internal review of its earlier decision. On 24 September 1996, the agency informed the complainant that the particular document either could not be found or did not exist. Accordingly, access was refused to that document pursuant to s.26 of the FOI Act.
5. On 1 October 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision in respect of that document.

REVIEW BY THE INFORMATION COMMISSIONER

6. After receiving this complaint, I notified the agency in accordance with my duty under s.68(1) of the FOI Act, and I had produced to me the original medical file pertaining to the complainant's admissions to Heathcote Hospital. The complainant's complaint before me concerns the adequacy of the searches undertaken by the agency in respect of the document which has not been located. Accordingly, my Investigations Officer made inquiries with and visited the agency to inspect its record-keeping facilities and to have the searches undertaken explained to her, and reported the results of those inquiries to me.
7. On 8 November 1996, after considering the material before me, I provided the parties with my preliminary view in relation to this complaint and my reasons for that view. I was not satisfied that the requested document actually exists. Accordingly, it was my preliminary view that the searches conducted by the agency were, in all the circumstances, reasonable, and I did not require further searches to be undertaken to locate the document in question. However, the complainant remains dissatisfied, although he has provided no evidence or further submission in support of his claim that the document exists, despite being afforded the opportunity to do so.

SUFFICIENCY OF SEARCH

8. Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate the document sought by an access applicant. Pursuant to s.26 of the FOI Act, access may be refused on the ground either that a document does not exist or cannot be found. Section 26 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. As I have said before, when I am dealing with a complaint concerning a decision of an agency to refuse access on the ground that a document either does not exist or cannot be found, I consider that there are two questions that must be answered. The first of those is whether there are reasonable grounds to believe that the requested document exists or should exist, and is, or should be, held by an agency. In the circumstances in which the first question is answered in the affirmative, the second question, in my view, is whether the agency has taken all reasonable steps to find the document.

The first question - Does the document exist or should it exist?

10. In this instance, the document which the complainant alleges is missing from his medical file is described by him as an “involuntary form”. The complainant claims that when he was admitted to Heathcote Hospital in January 1992 he refused to take the medication prescribed for him and claims that, as a result of that refusal, he was coerced into signing a particular document so that the medication could forcibly be administered to him by a medical officer of the agency.
11. My examination of the medical records pertaining to the complainant reveal that his two admissions to Heathcote Hospital were involuntary admissions made pursuant to s.28(1) of the *Mental Health Act 1962*. Section 28(1) of that Act provides:

“(1) A person may be received into, and admitted to, an approved hospital upon the production of a referral, in the prescribed form, by a medical practitioner, based upon a personal examination of that person made by the medical practitioner not more than fourteen clear days before the presentation of that person to hospital.”
12. For the purposes of the complainant’s first admission to Heathcote Hospital, the referring medical practitioner was a psychiatrist employed at Sir Charles Gairdner Hospital. For the purposes of his second admission, the referring medical practitioner was a psychiatrist employed at Royal Perth Hospital.
13. A medical officer was assigned to the complainant during his first admission on 17 January 1992. On that occasion the complainant was diagnosed as suffering from schizophrenia and mania. The documents before me indicate that, on 18 January 1992, the complainant insisted that he would not take his medication. On 20 January 1992, the complainant again refused to take his medication and he was subsequently transferred to another area of Heathcote Hospital for close supervision. A document entitled “Nursing Report” which contains relevant records relating to the complainant for that period indicates that while he initially refused medication, ultimately he accepted the medication prescribed for him.

14. Neither the documents entitled "Integrated Progress Notes" nor the Nursing Report relating to the complainant contain any apparent gaps in the medical records concerning the complainant's first admission. There is simply nothing to support the complainant's claim that he was forcibly administered medication after signing a missing document as he claims. Further, I am informed by the agency that the medical officer assigned to the complainant at the relevant time was not authorised to admit patients to Heathcote Hospital, nor was he authorised to sign any documents relating to the complainant's admission.
15. Therefore, for the reasons given, I am not satisfied that the requested document exists, or should exist, in the agency. However, even if I were satisfied on that point, I would in any case be satisfied that the agency has taken all reasonable steps to locate the requested document.
16. The agency maintains two separate record keeping systems. The primary storage system contains records relating to current patients of the agency. The secondary storage system contains old medical records, including the records transferred to the agency after the closure of Heathcote Hospital. The complainant's access application was referred to the medical records section after it had been transferred to the agency from Fremantle Hospital. A search was conducted by the records section and one file was located. The complainant was given full access to that file, firstly by inspection and then by being provided with at least one, possibly two, photocopies of the complete record.
17. On the basis of the material before me, I am satisfied that the agency took all reasonable steps to locate the requested document and I do not require the agency to conduct further searches. It is my view that the requested document does not exist. Accordingly, I confirm the agency's decision to refuse access pursuant to s.26 of the FOI Act.
