

Decision D0042014 – Published in note form only

Re ‘D’ and SMHS – Fremantle Hospital and Health Service [2014] WAICmr 4

Date of Decision: 27 February 2014

Freedom of Information Act 1992: Schedule 1, clause 3

On 19 March 2013, ‘D’ (**the complainant**) applied to SMHS – Fremantle Hospital and Health Service (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to her deceased son’s mental health records. Given the sensitive nature of the issue involved in this matter, I have not identified the complainant by name.

The agency gave the complainant access to edited copies of the requested documents by deleting information (**the disputed information**) which it claimed was exempt under clause 3(1) of Schedule 1 to the FOI Act, because it was personal information, as defined in the FOI Act, about individuals other than the complainant. The complainant applied for internal review of that decision. The agency confirmed its initial decision on internal review on the ground that the disputed information was exempt under clause 3(1). On 5 August 2013 the complainant applied to the Information Commissioner for external review of the agency’s decision.

Following receipt of the complaint, the Commissioner obtained the requested documents from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application.

The Commissioner reviewed the requested documents and carefully considered the detailed submissions made by the complainant.

The Commissioner was satisfied that the disputed information would, if disclosed, reveal personal information, as defined in the FOI Act, about people other than the complainant. The Commissioner considered that the disputed information was on its face exempt under clause 3(1).

The Commissioner considered the application of the limit on the exemption in clause 3(6). In balancing the competing public interests, the Commissioner was of the view that the public interests in protecting the privacy of third parties outweighed the public interest in the complainant exercising a right of access in this case. The Commissioner considered that the latter public interest had largely been satisfied by the disclosure to the complainant of the information about the treatment received by her deceased son from the agency in the edited documents to which the agency had granted access.

The Commissioner was also of the view that disclosure of the disputed information would not further the protection of the public as contended by the complainant. The Commissioner did not generally consider that it is in the public interest for sensitive and private information about third parties to be placed in the public domain by way of the FOI process – particularly where the third parties concerned could not be consulted.

On 13 February 2013 the Information Commissioner advised the complainant in a preliminary view that, in his view, the disputed information was exempt under clause 3(1) as

claimed by the agency. The complainant was invited to withdraw the complaint or, alternatively, to provide further submissions. The complainant made further submissions to the Commissioner.

The Commissioner considered the complainant's further submissions. The only additional relevant matter raised by the complainant was her assertion that she knew the identity of the person referred to in the disputed information. However, in *Police Force of Western Australia v Kelly* (1996) 17 WAR 9 [at 14] the Supreme Court noted that what is under consideration in dealing with an application under the FOI Act is the right of access to particular documents and that their character as exempt documents does not depend on what the applicant knows or claims to know of their content. The Commissioner agreed with that view.

Therefore, the Commissioner was not dissuaded from his preliminary view.

Accordingly, the Commissioner confirmed the agency's decision and found that the disputed information was exempt under clause 3(1) of Schedule 1 to the FOI Act.