

**Decision D0052016 – Published in note form only**

***Re ‘M’ and SMHS - Armadale Health Service [2016] WAICmr 5***

**Date of Decision: 21 March 2016**

***Freedom of Information Act 1992 (WA): section 28***

On 18 September 2015, ‘M’ (**the complainant**) made an application to SMHS – Armadale Health Service (**the agency**) for access under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) to his medical record. On 9 October 2015, the agency’s principal officer decided to give the complainant access to those documents, under the provisions of section 28 of the FOI Act. Section 28 provides, in certain circumstances, for documents requested by an access applicant to be given to a suitably qualified person – that is, a medical practitioner – nominated by the applicant. Given the sensitive and personal nature of this matter, the Information Commissioner decided not to identify the complainant.

The Commissioner examined the disputed documents and was satisfied that those documents contain information of a medical and psychiatric nature concerning the complainant (section 28(a) of the FOI Act). The Commissioner also examined and considered the material contained in the agency’s FOI file maintained in respect of the complainant’s access application and the detailed written submissions made to him by the complainant.

The Commissioner considered that, at the time the agency made its decision on access, there were reasonable grounds for the principal officer of the agency to form the view that disclosure of the medical notes to the complainant may have a substantial adverse effect on the complainant’s mental health (section 28(b)). The Commissioner noted that the principal officer was a qualified psychiatrist who had received professional advice from staff involved in the complainant’s care and formed an opinion as to the possible impact of disclosure on the physical or mental health of the complainant. The principal officer’s decision to provide indirect access pursuant to section 28 was based on that assessment.

Based on the information before him, the Commissioner was satisfied that the principal officer was of the opinion that direct disclosure of the disputed documents to the complainant may have a substantial adverse effect on the physical or mental health of the complainant and that that opinion was held on reasonable grounds.

Accordingly, the Commissioner confirmed the decision of the agency to give access indirectly to the complainant by making the documents available to a suitably qualified person.