

Decision D0082017 – Published in note form only

Re ‘R’ and SMHS - Rockingham Peel Group [2017] WAICmr 8

Date of Decision: 6 April 2017

Freedom of Information Act 1992 (WA): Schedule 1, clause 3

On 22 August 2016, ‘R’ (**the complainant**) applied to SMHS – Rockingham Peel Group (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to reports about hospital admissions of his son, between 2015 and 2016. There is a Consent Order in place in relation to the child which provides that the child lives with the mother and that the complainant and the mother have shared parental responsibility. However, there is a Violence Restraining Order in place which prevents communication between the complainant and the mother. The complainant is currently in prison. To protect the privacy of the complainant and other related parties, I have decided not to identify the complainant by name in my published decision.

By notice of decision dated 30 September 2016, the agency refused the complainant access to the disputed documents on the ground that they were exempt under clause 3(1) of Schedule 1 to the FOI Act, because they included personal information, as defined in the FOI Act, about a number of other individuals. The complainant applied for internal review of that decision. On internal review, the agency confirmed its original decision.

By letter dated 6 December 2016 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision. Following receipt of the complaint, the Commissioner obtained copies of the disputed documents from the agency together with the agency’s FOI file maintained in respect of the complainant’s access application.

The Commissioner reviewed the disputed documents and considered the submissions made by the complainant and the agency. The Commissioner was satisfied that the disputed documents would, if disclosed, reveal personal information, as defined in the FOI Act, about individuals other than the complainant. Therefore, the Commissioner considered that the disputed documents are on their face exempt under clause 3(1).

The Commissioner considered the application of the limit on the exemption in clause 3(6), which provides that matter is not exempt under subclause (1) if its disclosure would, on balance, be in the public interest. The complainant submitted that the documents were required as there was no communication between himself and the mother, and he wanted to ensure that appropriate care was being taken of the child, while the complainant was in prison.

In balancing the competing public interests, the Commissioner was of the view that the public interest in protecting the privacy of third parties outweighed the public interest in disclosure of personal information about third parties to the complainant.

On 17 March 2017, the Commissioner advised the parties in a preliminary view letter that, in his view, the disputed documents were 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 complainant submitted that he had concerns about whether the hospital was providing the correct treatment for his son. However, the Commissioner considered that there was no material before him that suggested that correct treatment was not being given to the child. As the information contained in the disputed documents is available to the mother, any public interest in disclosure of the disputed documents in relation to accountability of the agency was satisfied. Therefore, the Commissioner was not dissuaded from his preliminary view.

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