

**Decision D0222012 - Published in note form only**

***Re 'P' and South Metropolitan Area Health Service – Mental Health [2012] WAICmr 22***

**Date of Decision: 16 August 2012**

***Freedom of Information Act 1992: sections 28, 40(2) and 40(3); Schedule 1: clauses 3(1)-3(6)***

In October 2010, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Peel Community Mental Health Service for access to her medical notes for 2010 ('the medical notes') and another document ('the Document'). By notice of decision dated 30 November 2010, the agency refused access to the Document on the basis that it contained information about third parties. The agency also refused direct access to the medical notes, citing s.28 of the FOI Act, but offered to meet with the complainant to review those notes. 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.

The agency confirmed its decision on 26 October 2011, after exercising its discretion to accept the complainant's application for internal review well outside the time permitted under the FOI Act: see ss.40(2) and 40(3) of the FOI Act. Thereafter, in December 2011, the complainant applied to the Information Commissioner for external review of the agency's decision.

Following the receipt of the complaint, the Commissioner's office made further inquiries with the agency. On 1 June 2012, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that:

- the Document was exempt under clause 3(1) of Schedule 1 to the FOI Act;
- the prescribed details of officers or contractors of agencies in the medical notes were not exempt under clause 3(1), pursuant to clauses 3(3) and 3(4), but that the remainder of the disputed information in the medical notes – that is, all of the remaining personal information about third parties – was exempt under clause 3(1); and
- the agency's decision to give access to the medical notes (with exempt information deleted) in accordance with s.28 of the FOI Act was justified.

The agency accepted the Commissioner's preliminary view so that the prescribed details in the medical notes were no longer in dispute. Accordingly, the personal information about private third parties and the personal information about officers and contractors that did not amount to prescribed details (together 'the disputed information') was the only matter remaining in the medical notes which was proposed to be deleted under clause 3(1). In response, the complainant made further submissions to the Commissioner both in relation to the public interest and s.28.

In weighing the competing public interests pursuant to clause 3(6), the Commissioner considered that the public interests in the complainant exercising her rights of access and in patients being given as much information as is reasonably possible to help them understand the actions taken by the agency concerning them, were largely satisfied by the agency's multiple offers to meet with the complainant to discuss the matters contained in those records

and by the agency giving the complainant access to an edited copy of the medical notes through her nominated medical practitioner. The Commissioner considered that the public interests in protecting the privacy of the third parties and in the agency maintaining its ability to obtain information to enable it to carry out its functions in respect of mental health on behalf of the wider community outweighed the public interests in favour of disclosure in this case. Therefore, the Commissioner was satisfied that clause 3(6) did not apply.

With respect to that matter in the medical notes which the Commissioner considered was not exempt, the Commissioner was satisfied that it contained information of a medical and psychiatric nature concerning the complainant (s.28(a) of the FOI Act) and 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 (s.28(b)). The Commissioner noted that the principal officer was a qualified psychiatrist who had treated the complainant clinically in 2010 and 2011; the principal officer had reviewed the complainant's clinical notes and received professional advice from staff involved in the complainant's care; and the decision to provide indirect access pursuant to s.28 was based on that assessment. Accordingly, the Commissioner was satisfied that there was sufficient material before the principal officer to form the requisite opinion under s.28(b) of the FOI Act and that the agency's decision to give access in accordance with s.28 was justified.

Therefore, the Commissioner varied the agency's decision. The Commissioner found that the Document and the disputed information were exempt under clause 3(1) of Schedule 1 to the FOI Act and confirmed the agency's decision to give access to the remainder of the complainant's medical notes in accordance with s.28 of the FOI Act.