

Decision D0442008 – Published in note form only

Re “F” and Osborne Park Hospital [2008] WAICmr 44

Date of decision: 15 October 2008

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

In May 2006, the complainant provided the agency with a signed authority for it to provide her then legal advisers with documents relating to a Family Court matter, including any documents to which she was entitled under the *Freedom of Information Act 1992* (‘the FOI Act’). The agency accepted that authority as an application for access, under the FOI Act, to the complainant’s medical records held by the agency. On 30 June 2006, the agency granted the complainant access to an edited copy of her medical records, refusing access to certain parts of that record under clause 3(1) of Schedule 1 to the FOI Act which comprised personal information about persons other than the complainant.

On 1 August 2008, the complainant applied to a different hospital for internal review of the agency’s decision in relation to one document only which the complainant believes forms part of her medical records. The agency accepted the complainant’s application for internal review even though it was some two years out of time. The agency confirmed the original decision on internal review and, in August 2008, the complainant applied to the A/Information Commissioner (‘the A/Commissioner’) for external review of the agency’s decision.

Having reviewed the complainant’s medical records, and the agency’s FOI file, this office advised the complainant that the decision of the agency to grant access to an edited copy of the complainant’s medical records, by refusing access to certain personal information under clause 3(1) of Schedule 1 to the FOI Act, was justified. The complainant was invited to reconsider her complaint or to provide further submissions to the A/Commissioner. The complainant then engaged legal counsel who made submissions to the A/Commissioner, on behalf of the complainant.

Having carefully considered all of the material before him, the A/Commissioner found that the information deleted from the complainant’s medical records would reveal personal information about third parties, if disclosed, and would therefore be *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act. It is well established that the FOI Act protects the privacy, rights and interests of third parties and that a strong public interest would need to be demonstrated by the complainant to override the privacy interests of third parties.

While the complainant submitted that there was a public interest in her being able to access this information in order to facilitate a legal challenge to her treatment in a mental hospital, the A/Commissioner considered that this public interest had been met to some degree by way of the disclosure to the complainant of an edited copy of her medical records. The A/Commissioner concluded that the public interest in maintaining the privacy of third parties should, on balance, prevail in this instance.

The A/Commissioner also found that none of the limits on the exemption contained in clauses 3(2)-3(6) would apply. Therefore, the agency was justified in refusing access to the information deleted from the complainant’s medical records because such information is exempt under clause 3(1). The A/Commissioner therefore confirmed the agency’s decision.