

## D AND GRAYLANDS

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: 94102  
Decision Ref: D00495**

Participants:

**D**  
Applicant  
  
- and -  
  
**Graylands Hospital**  
Respondent

### DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - correspondence, internal memorandum, reports and medical records - refusal of access - access to edited copies - clause 3 - personal information - whether the Psychiatric Emergency Team is an agency - decision made Principal Officer of the agency - adequate notices of decision - definition of agency - deemed refusal - public interest in maintaining privacy of individual - public interest in applicant gaining access to personal information about applicant - sufficiency of searches undertaken by agency.

*Freedom of Information Act 1992 (WA)* ss. 13(1)(b); 21; 28; 30; 39(3)(a); 65(1)(d); 72(1)(b); 75(1); 102(3); Schedule 1 clauses 3(1), 3(3), 11(1)(a); Glossary in Schedule 2 to the FOI Act.

*Freedom of Information Regulations 1993 (WA)* Regulation 9(1).

*Freedom of Information Amendment Regulations 1994 (WA)* Regulation 8.

*Mental Health Act 1962 (WA)* Schedule 2.

*Re Guyt and Health Department of Western Australia* (Information Commissioner WA, 16 March 1994, unreported).

*Re Clements and Health Department of Western Australia* (Information Commissioner WA, 16 March 1994, unreported).

*Re A and Heathcote Hospital* (Information Commissioner WA, 9 June 1994, unreported).

*Re Hassell and Health Department of Western Australia* (Information Commissioner WA, 13 December 1994, unreported).

*Re Veale and Town of Bassendean* (Information Commissioner WA, 25 March 1994, unreported).

*Re Kobelke and Minister for Planning and Others* (Information Commissioner, 27 April 1994, unreported).

***Re A and Heathcote Hospital*** (Information Commissioner, 9 June 1994, unreported).

***Re Hayes and the State Housing Commission of Western Australia (Homeswest)*** (Information Commissioner, 17 June 1994, unreported).

***Re Gray and The University of Western Australia*** (Information Commissioner, 23 June 1994, unreported).

***Re Manly and the Ministry of the Premier and Cabinet*** (Information Commissioner, 16 September 1994, unreported).

***Re Morton and City of Stirling*** (Information Commissioner, 5 October 1994, unreported).

***Re C and Department for Community Development*** (Information Commissioner, 12 October 1994, unreported).

***Re Smith and State Government Insurance Commission*** (Information Commissioner, 5 December 1994, unreported).

***Re Edwards and Ministry of Justice*** (Information Commissioner, 12 December 1994, unreported).

## DECISION

The decision of the agency is varied. It is decided that the only information which is exempt matter under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* is as follows:

- (i) All of **Document A**.
- (ii) The name in the second sentence in **Document B**.
- (iii) The parts of **Document C** which have not been released to the applicant except for the name and position title of the author of this document.
- (iv) The second and third words in line 1 and the first word in line 3 of **Document D**.
- (v) **Document E**  
*Folio 117* - Lines 3-8 under heading "History Details" and the first word in line 10;  
*Folio 116*- the third and fourth words in line 4 and the third, fourth and fifth words in line 27;  
*Folio 115* - the fourth and fifth words in line 33; and  
*Folio 114* - the fifth, sixth and seventh words in line 20, and all of lines 21, 22, 23 and 24.

B.KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

16th February 1995

## REASONS FOR DECISION

### BACKGROUND

1. This is an application for review by the Information Commissioner arising out of a decision of Graylands Hospital ('the agency') to provide "D" ('the applicant'), with access to edited copies of certain documents requested by the applicant under the *Freedom of Information Act 1992* ('the FOI Act'). In this decision I have referred to the applicant as "D" for reasons which will be apparent.
2. On 9 May 1994, the applicant applied to the agency for copies of documents consisting of the "*...record of my admission and detainment...from [J]anuary 29th 1993 until...[M]arch 17th 1993*" ('the requested documents'). Following the lodging of this access application further correspondence ensued between the agency and the applicant and, on 1 June 1994, the agency was informed in writing by the applicant that access was sought to the full medical records of the applicant.
3. On 23 June 1994, the applicant was advised by the agency that part of the access application had been transferred for consideration by the Psychiatric Emergency Team (PET) and an extension, until 7 July 1994, of the "permitted period" of 45 days, within which an agency is required to deal with an access application under the FOI Act was requested.
4. On 15 July 1994, the applicant received a notice of decision, as required by s.13(1)(b) of the FOI Act, from the agency's FOI Contact Officer. That officer advised the applicant of two decisions that had been made in respect of the access application. Firstly, it had been decided on 11 July 1994, by Miss June MacDonald, General Manager, Graylands Hospital and Special Care Services, that the requested documents contained matter that was personal information about third parties and access to that information was refused on the ground that it was exempt matter under clause 3(1) of Schedule 1 to the FOI Act. However, access to edited copies of the requested documents was provided to the applicant. Secondly, it had been decided by Dr Peter Brennan, Commissioner of Health and principal officer of the agency for FOI purposes, that access to the remaining documents would be provided in accordance with s.28 of the FOI Act, by making them available indirectly to the applicant through release to a suitably qualified psychiatrist nominated by the applicant. In respect of that part of the application that had been transferred for determination by PET, the applicant receive an edited copy of a document but did not receive a notice of decision as required by s.13(1)(b) of the FOI Act.
5. Following receipt of the agency's notice of decision from the FOI Contact Officer, further correspondence between the applicant and the agency ensued, including a letter from the applicant to the agency dated 18 July and a response dated 9 August 1994 from the agency, which purported to be the agency's notification of outcome of a request for internal review. On internal review, the

agency's decision-maker, Dr Brennan, Commissioner of Health, confirmed the decision of 11 July 1994 by Miss MacDonald, General Manager, Graylands Hospital and Special Care Services, to grant access to edited copies of some of the requested documents. The second decision had been made by the agency's principal officer and, accordingly, s.39(3)(a) of the FOI Act excluded internal review in respect of that decision.

6. On 22 August 1994, the applicant applied to the Information Commissioner for external review of the decisions of Dr Brennan, which were that the applicant was granted access to edited copies of some documents and indirect access, through a suitably qualified medical practitioner, to other documents.

## **REVIEW BY THE INFORMATION COMMISSIONER**

7. Although the applicant had sought the intervention of the Information Commissioner in a letter dated 18 July 1994, the basis for the jurisdiction of the Information Commissioner was not clear at that date and it was necessary for inquiries to be directed to the agency in order to determine the status of the applicant's access application. Those initial inquiries established that the agency was, in fact, still dealing with the access application in accordance with the procedures provided by the FOI Act and the applicant was advised accordingly.
8. Subsequently, following receipt of the applicant's complaint of 22 August 1994, on 25 August 1994, I advised the agency that this complaint had been accepted for review. Having considered the nature of the complaint and the agency's notices of decision given to the applicant, I determined that I should inspect the disputed documents in order to properly dispose of the matter. Therefore, pursuant to my authority under s.75(1) and s.72(1)(b) of the FOI Act, I required the production to me of the disputed documents and the agency's FOI file maintained in respect of this access application.
9. It was also necessary for me to seek further information from the agency including a proper identification of the number and type of documents in dispute described on a schedule, the material findings of fact on which the agency's claims for exemption were based, and the public interest factors considered by the agency to be relevant to its decision, where these formed part of the relevant exemptions claimed.
10. This request of the agency was necessary in spite of the fact that health related agencies have been the subject of formal decisions on four previous occasions and there has, therefore, been ample guidance provided by my office on the statutory responsibilities of these agencies, in particular, when dealing with access applications (see *Re Guyt and Health Department of Western Australia* (16 March 1994, unreported); *Re Clements and Health Department of Western Australia* (16 March 1994, unreported); *Re "A" and Heathcote Hospital* (9 June 1994, unreported); *Re Hassell and Health Department of Western Australia* (13 December 1994, unreported)).

11. I have found it necessary to remind the relevant agency in each case of its duties under the FOI Act, particularly the duty to provide a notice of decision as required by s.13(1)(b) that complies with the requirements of s.30 of the FOI Act. After this length of time, and in view of the published decisions of the Information Commissioner, I consider the failure by an agency to comply with its statutory obligations under the FOI Act, particularly the obligations relating to the provision of sufficient reasons for a decision to deny access to documents, to be a management issue that must be addressed at the highest level in that organisation.
12. On 12 September 1994, the agency advised the applicant that it had withdrawn its decision under s.28 of the FOI Act to provide indirect access to some documents and it was now prepared to provide direct access to copies of some of those documents. However, the agency maintained its claims for exemption under clause 3(1) and also claimed exemption under clause 11(1)(a) of Schedule 1 to the FOI Act for matter deleted from the remaining documents.
13. On 14 October 1994, I received the disputed documents and the additional information I had requested from the agency, consisting of further and better reasons for its decision. I had also requested information relating to the status of PET and this was supplied to me on 14 October 1994 in a separate submission from Mr Michael Ash, Co-ordinator of PET.

#### **PRELIMINARY ISSUE - STATUS OF PET**

14. It is my understanding, from Mr Ash's submission, that PET was set up in 1988/89 as an autonomous unit following discussions between the Community Mental Health Service and the Director of the Mental Health Policy and Planning Unit of the Health Department of Western Australia ('the Health Department'). In 1992 a reorganisation of the Health Department resulted in the creation of "Central Psychiatric Services" under the management of a chief executive officer (CEO) who was also the CEO of the agency. PET was included as one of the services under this new umbrella. Since 1992, PET has had a separate budget and cost centre from which salaries are paid, although it is managed by staff of the agency. It is also my understanding that PET was not established either by legislation or a Minister. However, the agency claimed that PET is a separate "agency" for FOI purposes.
15. In my view, based on the information provided to me by the agency, PET is not an "agency" for FOI purposes. The term "agency" is defined in the Glossary to the FOI Act as follows:

""**agency**"" means -

- (a) a Minister; or
- (b) a public body or office,

...

The Glossary further relevantly defines "**public body or office**" as follows:-

- "(a) a department of the Public Service;
- (b) an organisation specified in column 2 of the Schedule to the Public Service Act 1978;
- (c)...
- (d)...
- (e) a body or office that is established for a public purpose under a written law;
- (f)... a body or office that is established by the Governor or a Minister; or
- (g)..."

16. The agency claimed that PET was an "agency" because it was a department of the Public Service (paragraph (a) above). No evidence was provided to me to support this contention. In the 1992 Annual Report of the Public Service Commission, in Appendix I at page 87 of that publication, the Chief Executive Officers of recognised departments in the Public Service are listed. PET does not appear on this list, which shows the Health Department as the relevant Department in Western Australia. I am not aware of any legislation establishing PET and, although I was initially informed that PET was "...developed as a directive/initiative of the Minister for Health...", I was subsequently informed that no record of any such directive could be located. Based on the information provided to me, I am of the view that PET came into existence through an administrative decision, taken within the Health Department, to improve the delivery of mental health services to the community. I find that PET is not an agency for FOI purposes and that the transfer by the agency of part of the applicant's access application to PET for its determination was neither authorised nor required under the FOI Act. It has not been clearly established whether PET is part of the agency or part of the Health Department and I make no finding on this point.
17. In my view, the result of the finding that PET is not a separate agency for the purposes of the FOI Act is that the agency has failed to either properly transfer the access application, or to provide a notice of decision under s.13(1)(b) in the form required by s.30. This amounts to a deemed refusal of access by the agency to those parts of the document which have been deleted from the copy provided to the applicant by PET. The deemed refusal also grounds my jurisdiction under s.65(1)(d) of the FOI Act.

## **THE DISPUTED DOCUMENTS**

18. There are five documents in dispute in this matter consisting of 11 folios in total which may be briefly described as follows:

- A letter to the Superintendent of the agency, dated 7 February 1993, consisting of folios 9 and 10 (two pages);
  - B agency internal memorandum from Dr Jacobs to Dr Srna concerning Document A, undated, consisting of folio 11 ( one page);
  - C Social Welfare Report from Lizzie Hill, Senior Social Worker, dated 2 February 1993, consisting of folios 28 and 29 (two pages);
  - D Progress Notes of Dr Piirto, dated 23 and 24 February 1993, consisting of folio 100 (two pages); and
  - E the PET report, undated, consisting of 4 pages and a cover sheet containing a "With Compliments" slip from PET.
19. The agency claimed exemption for Documents A-D (or parts of those documents) under clauses 3(1) and 11(1)(a) of Schedule 1 to the FOI Act. As no notice of decision was provided with respect to Document E, I must also consider whether the material deleted from the edited copy of that document which was provided to the applicant is exempt and, if so, under what clause or clauses.

## THE EXEMPTIONS

### (a) Clause 3 (Personal Information)

20. Documents A-D, described in paragraph 18 above, are each claimed by the agency to contain matter that is exempt under clause 3(1) of Schedule 1 to the FOI Act. Clause 3 provides:

#### **"3. *Personal information***

##### ***Exemption***

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

##### ***Limits on exemption***

- (2)...
- (3)...
- (4)...
- (5)...

- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest."*

21. In the Glossary in Schedule 2 to the FOI Act, "**personal information**" is defined to mean: "...*information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -*
- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
  - (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample."*
22. The exemption in clause 3(1) is the most frequently cited reason for agencies to refuse access to documents under the FOI Act (see Information Commissioner's Annual Report 1993-94, Figure 10, page 31). The data indicate that, in the main, agencies are conscious of the need to protect the privacy of third parties which, as I have said in previous decisions, this exemption is designed to protect (see *Re Veale and Town of Bassendean* (25 March 1994, unreported); *Re Kobelke and Minister for Planning and Others* (27 April 1994, unreported); *Re A and Heathcote Hospital* (9 June 1994, unreported); *Re Hayes and the State Housing Commission of Western Australia (Homeswest)* (17 June 1994, unreported); *Re Gray and The University of Western Australia* (23 June 1994, unreported); *Re Manly and Ministry of the Premier and Cabinet* (16 September 1994, unreported); *Re Morton and City of Stirling* (5 October 1994, unreported); *Re C and Department for Community Development* (12 October 1994, unreported); *Re Smith and State Government Insurance Commission* (5 December 1994, unreported); *Re Edwards and Ministry of Justice* (12 December 1994, unreported)).
23. As I have said before, the protection of personal privacy is an important feature of the FOI legislation in Western Australia and I consider there to be a strong public interest in maintaining that privacy, subject only to some clearly demonstrated countervailing public interest that requires the disclosure of such information. Where exempt matter consists of personal information about the applicant as well as one or more third parties, it is necessary that I balance the public interest in an applicant having access to his or her personal information - which interest is enshrined in s.21 of the FOI Act as a factor in favour of disclosure to the applicant - against the public interest in maintaining the privacy of third parties. In some circumstances, the exempt matter may be so "personal" and sensitive to third parties that the reasons for an applicant seeking access to his or her personal information will be relevant to my consideration of the competing interests and where the balance of the public interest should lie.
24. Document A is a hand-written letter which, I am satisfied from my reading of it, contains personal information about one or more third parties. I am also satisfied that it is not practicable to give access to an edited copy of that document because its author may be identifiable by the hand writing. There is also material before me indicating that the author objects to the release of this document to the applicant for the reason that it is considered to be personal correspondence between the author and the Superintendent of the agency.

25. Exemption is claimed under clause 3(1) for one name only in Document B. That name identifies the author of Document A. I am satisfied from my examination of that document that the name, and the context in which it appears, constitute personal information about the author.
26. The agency claims that most of Document C, including the name and position of the social worker who is the author of that document, is exempt matter under clause 3(1). Part of the document has already been released to the applicant. From my reading of the document, I am satisfied that the rest of the document contains personal information about a number of members of the applicant's family, as well as the applicant. I am also satisfied that furthering editing of the already edited document is not an option.
27. However, clause 3(3) of Schedule 1 to the FOI Act provides that prescribed details in relation to an officer or former officer of an agency are not exempt under clause 3(1). Regulation 9(1) of the *Freedom of Information Regulations 1993* ('the regulations') (inserted by the *Freedom of Information Amendment Regulations 1994*, regulation 8) provides that details of the following, in relation to a person who is or has been an officer of an agency, are prescribed details for the purposes of clause 3(3):
  - (a) the person's name;
  - (b) any qualifications held by the person relevant the person's position in the agency;
  - (c) the position held by the person in the agency;
  - (d) the functions and duties of the person, as described in any job description document for the position held by the person; or
  - (e) anything done by the person in the course of performing or purporting to perform the person's functions or duties as an officer as described in any job description document for the position held by the person.

For this reason, I find that the name and position of the author of Document C does not constitute exempt matter under clause 3(1).

28. Exemption is claimed under clause 3(1) for the first paragraph only in Document D. From my reading of that paragraph, I am satisfied that it contains personal information about a third party as well as the applicant. I am also satisfied that the personal information about the third party is so entwined with that about the applicant that access to an edited copy of the document would not be practicable.
29. I am also satisfied that some, but not all, of the exempt matter which has been deleted from Document E consists of personal information about third parties. Some of the deleted matter consists of the names of officers of agencies. That information is not exempt under clause 3(1) as it consists of information prescribed by regulation 9(1) of the regulations. Therefore, I am satisfied that each of the disputed documents contains matter that is, *prima facie*, exempt matter under clause 3(1) of Schedule 1 to the FOI Act and it remains for my

determination whether disclosure of that information would, on balance, be in the public interest.

### The agency's submission

30. The agency's decision-maker said that the agency was concerned to protect the supply of information to the agency from informed individuals, particularly where that information is necessary for the treatment of people with mental illnesses. Whilst the agency recognised a public interest in the applicant being able to access personal information about the applicant, it decided that, on balance, the public interest in the efficient functioning of the agency outweighed the former. However, other than recognising that the disputed documents contain matter that constitutes personal information about third parties, the agency did not consider the relevance of third party interests to its determination of where the balance of the public interest should lie.

### The applicant's submission

31. Although the submissions of the applicant were less than satisfactory for my purposes, it was apparent that the applicant was seeking access to personal records for the purpose of understanding why the applicant had been admitted as a patient of the agency between January and March 1993. The material before me indicates that the history of that admission was provided to the applicant in a letter of explanation on 2 February 1994 from the Regional Manager, North Metropolitan Regional Health Service. There is also material before me which indicates that the applicant had complained about certain matters to the State Ombudsman and that he had also contributed material to assist the applicant's understanding on this point, in a letter of explanation about his investigation of police action which had apparently led to the admission of the applicant as a patient of the agency.
32. I am satisfied that that material, together with the balance of the material to which the applicant has been provided access, supplies the answers that the applicant is seeking. The applicant claimed that there was a public interest in having unsubstantiated complaints exposed and a public interest in a person being able to clear his or her name. I accept that those factors identified by the applicant are relevant to my consideration of where the balance of the public interest should lie. However, I consider both elements of the public interest have been satisfied by the inquiry undertaken by the Ombudsman and by the report of his investigation, of which the applicant has a copy. In my opinion, the applicant has not provided me with any material that persuades me that there is a public interest in the applicant being granted access to unedited copies of the disputed documents which outweighs the public interest in maintaining the privacy of the third parties. In my view, the applicant has not discharged the onus under s.102(3) of the FOI Act and I find that the following matter is exempt matter under clause 3(1):
- (i) all of **Document A**;
  - (ii) the name in the second sentence in **Document B**;
  - (iii) the parts of **Document C** which have not been released to the applicant except for the name and position title of the author of this document;

- (iv) the second and third words in line 1 and the first word in line 3 of **Document D**;
- (v) **Document E**  
*Folio 117* -Lines 3-8 under heading "History Details" and the first word in line 10;  
*Folio 116*- the third and fourth words in line 4 and the third, fourth and fifth words in line 27;  
*Folio 115* - the fourth and fifth words in line 33; and  
*Folio 114* - the fifth, sixth and seventh words in line 20, and all of lines 21, 22, 23 and 24.

- 33. As I have decided that the matter described in paragraph 32 above is exempt matter under clause 3(1) of Schedule 1 to the FOI Act, it is unnecessary for me to consider the agency's other claims for exemption for this material.
- 34. During the course of this review the applicant raised the matter of a document consisting of medical notes that had not been identified or supplied to the applicant. However, from the inquiries made by my office and the searches conducted by the agency, I am not satisfied that such a document ever existed or, if it did, that it can be found. The applicant also raised the matter of a discrepancy in relation to a form entitled "Special Warrant to Enter a Place and Examine a Person" which is a prescribed form under Schedule 2 to the *Mental Health Act 1962*. That issue has been dealt with by my office in relation to another complaint by the applicant, concerning the Police Force of Western Australia.

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