

Decision D0072002 – Published in note form only

Re “B” and Royal Perth Hospital [2002] WAICmr 7

Date of Decision: 5 February 2002

Freedom of Information Act 1992; Schedule 1 clause 5(1)(b)

In August 2001, the complainant made an application to the agency for access under the FOI Act to, among other things, her medical records held by the Inner City Mental Health Service. The Inner City Mental Health Service is part of the overall health services provided by the agency.

The complainant was granted access to all of the requested documents, save for two documents. The agency claimed that those documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner seeking external review of the agency’s decision.

The Information Commissioner obtained the disputed documents from the agency and made inquiries into the complaint. The two disputed documents are hand written notes. Document 1 is undated; Document 2 is dated 19 April 2001. After examining those documents, the Information Commissioner found that disclosure of the disputed documents would reveal the fact of an investigation, the identity of the person being investigated and the subject matter of the investigation. The Information Commissioner decided that disclosure of the disputed documents could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law, according to the decision in *Police Force v Kelly and Anor* (1996) 17 WAR 9.

The Information Commissioner found the disputed documents exempt under clause 5(1)(b) and informed the parties accordingly. However, the Information Commissioner could not fully explain her reasons for reaching that view without breaching s.74(1) of the FOI Act. Notwithstanding that, the Information Commissioner informed the parties that, in this instance, the relevant law is the Commonwealth *Crimes Act 1914*, which prescribes, among other things, offences relating to the use and misuse of telephones.