

SHEPHERD AND PLANTAGENET HOSPITAL

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

**File Ref: 97168
Decision Ref: D03697**

Participants:

Margaret Jane Shepherd
Complainant

- and -

Plantagenet District Hospital
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - signatures on petitions - access to edited copies - clause 3 - personal information about third parties - balance of public interest .

Freedom of Information Act 1992 (WA) ss.10(2); 102(3); Schedule 1 clause 3; Glossary.
Hospitals Act 1927

DECISION

The decision of the agency is confirmed. The matter to which access has been refused is exempt under 3(1) of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16th December 1997

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Plantagenet District Hospital ('the agency') to refuse Margaret Jane Shepherd ('the complainant') access to the signatures appearing on two petitions dated 21 July 1988 and 10 August 1988 respectively. The complainant seeks access to the signatures under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is a clinical nurse with certificates in general nursing and midwifery. In April 1984, the complainant was appointed as a Level 1 clinical nurse at the agency. On 12 August 1988, the Plantagenet District Hospital Board of Management ('the Board') terminated the complainant's employment and gave her two weeks pay in lieu of notice. The complainant sought reinstatement but the Board refused. In May 1991, the complainant lodged an application with the Western Australia Industrial Relations Commission alleging unfair dismissal.
3. In the meantime, in April 1991, the complainant applied for a vacant position as a midwife with the agency, but was unsuccessful. Subsequently, the complainant lodged a complaint with the Parliamentary Commissioner for Administrative Investigations ('the State Ombudsman') about various matters surrounding her dismissal and the fact that she was not interviewed for the vacant position of midwife. On 2 September 1993, the complainant received a report from the State Ombudsman in respect of her complaint.
4. In September 1995, the complainant was given access under the FOI Act to copies of various documents on her file. By letter dated 4 August 1997, the complainant lodged another access application with the agency seeking access under the FOI Act by way of inspection of documents associated with her dismissal and the subsequent investigations and inquiries in respect of that matter. In particular, the complainant informed the agency that she wished to inspect the originals of the two petitions.
5. By letter dated 25 August 1997, the agency reminded the complainant that she had previously been supplied with copies of the relevant records concerning her dismissal. Notwithstanding that, she was granted access to edited copies of the two petitions with the signatures deleted. Although the agency purported to deny access to the signatures under the FOI Act, no reasons were given, nor was any exemption clause cited as a basis for the refusal of access to that matter.
6. The General Manager of the agency, Mr Keith Symes, made the decision on access. In the notice of that decision, the complainant was informed that, as Mr Symes is the principal officer of the agency for the purposes of the FOI Act, internal review was not available in respect of his decision. Thereafter, by letter

dated 23 September 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

7. It has come to my attention in the course of dealing with this matter that the General Manager of the agency may not be the principal officer of the agency for the purposes of the FOI Act and it is, therefore, unclear whether internal review was, in fact, available. However, there would seem to me to be no benefit to either of the parties to delay this matter further at this late stage in order to clarify this issue, and nothing to be gained by referring the matter back to the agency for internal review were that required. Therefore, I have decided to exercise my discretion under s.66(6) of the FOI Act and proceed to deal with this complaint even though there has been no internal review of the decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. The agency was notified that I had received and accepted this complaint and I required the agency to produce to me for my examination the originals of the disputed documents and the FOI files maintained for the purposes of dealing with the complainant's access applications. After receiving those documents, I directed my Legal/Investigations officer to make some additional inquiries on my behalf to clarify aspects of the complaint.
9. Two conferences were held with the complainant to determine whether this complaint could be resolved by negotiation between the parties. At the preliminary conference attended by the complainant on 6 October 1997, my Legal/Investigations officer discussed with the complainant the scope of her complaint. As a result of those discussions, the complainant withdrew that part of her complaint concerning access to the matter deleted from the two petitions. Other issues raised by the complainant during the course of that meeting were taken up with the agency and were resolved to the satisfaction of the complainant. The second conference was held with the complainant on 29 October 1997. During those discussions, the complainant informed my office that she wished to reinstate her complaint in respect of the matter deleted from the two petitions.
10. After considering all of the material before me, by letter dated 17 November 1997, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the matter to which access had been refused, namely, the signatures on the petitions, may be exempt matter under clause 3(1) of Schedule 1 to the FOI Act. By facsimile transmission dated 25 November 1997, I received a further written submission from the complainant. I have considered the complainant's submission but I am not dissuaded from my preliminary view that the signatures are exempt under clause 3(1). My reasons follow.

THE DISPUTED MATTER

11. There are two documents in dispute, copies of which have been released to the complainant in edited form. The first is a petition dated 21 July 1988, and the second is a petition dated 10 August 1988. The agency has deleted from both documents the signatures of the individuals who signed the petitions. The signatures are hereinafter referred to as the disputed matter.

THE EXEMPTION

12. Clause 3 of Schedule 1 to the FOI Act 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) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.

(3) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -

(a) the person;

(b) the person's position or functions as an officer; or

(c) things done by the person in the course of performing functions as an officer.

(4) Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -

(a) the person;

(b) the contract; or

(c) things done by the person in performing services under the contract.

(5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*

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

13. In the Glossary in 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”.

14. In a number of my formal decisions, I have expressed the view that the purpose of the exemption in clause 3 is to protect the privacy of individuals. That exemption is a recognition by Parliament of the fact that all government agencies collect and hold a vast amount of important and sensitive private information about individual citizens and that information of that kind should not generally be accessible by other persons without good cause. Personal information is not generally accessible under the FOI Act by others without the consent of the person to whom the information relates. In my view, the definition of personal information in the Glossary makes it clear that any information or opinion about a person, from which that person can reasonably be identified, is exempt matter under clause 3(1).

15. In my view, the disputed matter is “personal information” as defined in the FOI Act and, unless any of the limits on exemption in sub-clauses (2)-(6) of clause 3 applies, it is exempt matter and the agency is entitled to refuse access to that matter.

16. In the circumstances of this complaint, I do not consider that the limit on exemption in clause 3(2) applies as the disputed matter contains no personal information about the complainant. There is no evidence before me that, at the relevant time, the individuals concerned signed the petitions in the course of or during the performance of any functions or duties they may have had as officers of the agency. Accordingly, I do not consider that clauses 3(3) and 3(4) operate to limit the exemption. Further, the complainant has not provided any material evidencing that any of the individuals consents to the disclosure of personal information about him or her. Therefore, I am of the view that the limit in clause 3(5) does not apply.

17. In this instance, I consider that clause 3(6) is the only limit that may apply. Pursuant to s. 102(3) of the FOI Act, the complainant bears the onus of persuading me that the disclosure of the disputed matter would, on balance, be in the public interest.

THE COMPLAINANT'S SUBMISSION

18. The complainant states that, in her opinion, the two petitions were foremost in her dismissal by the Board. She alleges, among other things, that certain people she has approached have denied signing a petition. Therefore, the complainant contends that disclosure of the disputed matter would enable her to ascertain if any undue pressure was placed on people to sign the petitions, and it would also enable her to verify the authenticity of the signatures.
19. The complainant referred to the *Hospitals Act 1927* and to the fact that the Board, which she submits consists of lay-persons, has certain functions and powers under that Act. The complainant made a number of claims about the actions of the Board culminating in her dismissal in 1988. The complainant's claims that I consider to be particularly relevant to the onus on her under s.102(3) of the FOI Act, are as follows:

"I feel that it is in the interest of the public to know what has happened when "lay persons" in small towns, who become involved in Government Departments, are given powers to act under Government Legislation and as to whether they acted within the guide-lines of their role as a Hospital Board."

CONSIDERATION

20. It is my understanding the complainant claims to know the identities of the individuals whose signatures have been deleted from the petition dated 10 August 1988. I am informed that she is seeking access to the disputed matter in order to determine whether the individuals were coerced into signing the petitions against their wills or whether the signatures were forged. Pursuant to s.10(2) of the FOI Act, a person's right of access is not affected by any reasons given for wishing to obtain access or the agency's belief as to what those reasons might be. However, when I am balancing the factors for and against disclosure, the reasons for wishing to obtain access may become relevant.
21. In this instance, I have considered the reasons given by the complainant, but I do not consider them to have weight in the balancing process. There is no evidence before me to support the complainant's concerns about the authenticity of the signatures. Further, the State Ombudsman advised the complainant in his letter dated 2 September 1993 that he had investigated this aspect of her complaint to him and he did not believe that further action was warranted. Neither has the complainant provided me with any evidence to substantiate her allegations that the Board acted improperly.

Public interest

22. I recognise that there is a strong public interest in maintaining personal privacy and I consider that that public interest may only be displaced by some stronger countervailing public interest that requires the disclosure of personal information in a particular instance.
23. I also recognise that there is a public interest in a person being informed of the nature of complaints made against him or her and being given an opportunity to respond to those complaints. However, I consider that that public interest has been satisfied by the release of edited copies of the disputed documents and the release of the other documents to which the complainant has already been given access. Those documents contain details of various incidents during her employment at the Plantagenet District Hospital and reasons for the decision taken by the Board which culminated in her dismissal in 1988. In my view, the disclosure of the disputed matter on a petition would add nothing to this aspect of the public interest.
24. I accept the complainant's contention that there is a public interest in the accountability of agencies, including, in this instance, the accountability of the Board for its decisions. However, I do not see how the disclosure of the disputed matter could affect the accountability of the Board for a decision taken by it some 9 years ago. As I have said in paragraph 23 above, the reasons for the decision of the Board are contained in the documents already in the complainant's possession. Therefore, I have not accorded much weight in the balancing process to this aspect of the public interest.
25. In the circumstances of this matter, I consider the relevant public interest factors which I must consider and weigh in the balancing process are (a) the public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act, and (b) the public interest in maintaining the personal privacy of other people.
26. After taking into account the contents of the documents to which the complainant has already been given access, the nature of the very limited amount of matter to which access has been denied, and the complainant's submission, I am not persuaded that there is any public interest in the disclosure to the complainant of personal information about other people. I consider that the public interest in maintaining personal privacy outweighs any other public interest in the disclosure of the disputed matter. Accordingly, I find the disputed matter is exempt under clause 3(1) of Schedule 1 to the FOI Act.
