

**DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)**

**Decision title and citation:** *Re Ion-Petersen and Fremantle Hospital and Health Service* [1999] WAICmr 48

**COMPLAINT No:** F2191999

**DECISION No:** D0481999

**PARTIES:** **Brigitte ION-PETERSEN**

Complainant

**FREMANTLE HOSPITAL AND HEALTH SERVICE**

Respondent

**No. of documents in dispute:** 36

**Exemption clause(s):** Clause 3(1)

On 15 September 1999, Mrs Ion-Petersen ('the complainant') made an application to the Fremantle Hospital and Health Service ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to her medical record for the period 1995-1998.

The agency decided to grant the complainant access in full to some documents, but deleted some information from parts of other documents on the ground that the deleted matter is exempt under clause 3(1) of Schedule 1 to the FOI Act. The complainant sought internal review of the agency's initial decision. However, the internal reviewer confirmed the decision to refuse the complainant access to parts of her medical record on the ground that the information deleted is exempt. On 15 November 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

#### **Review by the Information Commissioner**

In order to assist me in dealing with this matter, I required the agency to produce to me the originals of the disputed documents and the agency's FOI file maintained for the purposes of the complainant's access application.

Although it is not entirely clear to me, it appears that this complaint relates to two issues. The first issue concerns the information deleted from the documents to which the complainant was granted access by the agency. The second issue concerns the lack of documents relating to other incidents.

On 16 December 1999, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the information deleted by the agency may be exempt under clause 3(1) of Schedule 1 to the FOI Act. It was also my preliminary view that the other documents requested by the complainant either do not exist or cannot be found.

Nothing further of substance was received from the complainant. Therefore, I am not dissuaded from my preliminary view. A summary of my reasons follows.

#### **The disputed documents**

I consider that there are 36 documents in dispute in this matter. Those documents consist of various progress notes, reports, in-patient assessments and other documents that comprise part of the complainant's medical record. The matter in dispute consists of the information deleted from those documents by the agency.

#### **The exemption**

Clause 3(1) provides that matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead). The term "personal information" means information or opinion, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

I consider that the purpose of this exemption is to protect the privacy of individuals about whom personal information may be contained in documents held by State and local government agencies. The definition of "personal information"

in the Glossary in the FOI Act makes it clear that any information or opinion about a person from which that person can be identified is, on its face, exempt matter under clause 3(1).

I have examined the matter deleted from of the disputed documents. That matter consists of names, addresses, telephone numbers and various other comments about individuals other than the complainant. Clearly, that kind of information is potentially protected from disclosure under the FOI Act, unless any of the limits on exemption in subclauses 3(2)-(6) applies.

Having examined the disputed documents, I am of the view that none of the limits provided by subclauses (2)-(5) applies. The only limit that might apply is the limit on exemption in clause 3(6) which provides that matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. Under s. 102(3) of the FOI Act, the onus is on the complainant to establish that disclosure of the deleted matter would be in the public interest.

### **Public Interest**

The term “public interest” is not defined in the FOI Act and is not a term that is easily defined. However, essentially, it refers to something that is of serious concern or benefit to the public. I understand that the complainant seeks access to her full medical record because she believes it will close a chapter in her life that has, apparently, resulted in a period of uncertainty for her and her family.

Clearly, the complainant has a personal interest in the disclosure of the information to her. However, the public interest is not primarily concerned with the personal interests of the particular access applicant. Rather, the question is whether disclosure of that information would be of some benefit to the public generally, that is, whether it would be of benefit to the public for personal information about other people to be disclosed to another person.

In considering whether the disclosure of personal information about other people would be in the public interest, I must identify and weigh the public interest factors for and against disclosure and determine where the balance lies. I recognise that there is a strong public interest in maintaining personal privacy and that public interest may only be displaced by some other, stronger, countervailing public interest that requires the disclosure of personal information about one person to another person. I also consider that there is a public interest in maintaining the ability of the agency to obtain information about its patients from a wide variety of sources so that the agency may discharge its duty of providing effective health care services.

Balanced against those public interests, I recognise that there is a public interest in persons such as the complainant being able to exercise their rights of access under the FOI Act. I also recognise that there is a public interest in people being able to access information about themselves which is held by government agencies, including information about treatment under the public health system. That public interest has been satisfied to a large degree by the extensive access that the complainant has already been given.

Although there is some personal information about the complainant in the disputed matter, in my view, that information is so entwined with personal information about other people that it could not be disclosed to the complainant without also disclosing personal information about those other people. In balancing the competing public interests, and based on the material before me, I am not persuaded that the public interest in maintaining personal privacy is outweighed by any other public interest that requires the disclosure of personal information about other individuals in this instance. Accordingly, I find that the deleted matter is exempt under clause 3 and confirm the decision of the agency to refuse access to it.

### **The existence of additional documents**

My office made inquiries into the issues raised by the complainant about the existence of additional documents. However, for the reasons given to the parties in my letter containing my preliminary view, I consider that the documents described by the complainant either do not exist or cannot be found. On the basis of all the material before me, I consider that the agency has taken all reasonable steps to locate the documents described and that it has dealt with the complainant’s access application in accordance with its obligations under the FOI Act. In the circumstances, I do not require the agency to conduct any further searches for those documents.

Therefore, I confirm the decision of the agency to refuse access to those documents on the ground that they either do not exist or cannot be found.

**B. KEIGHLEY-GERARDY**

INFORMATION COMMISSIONER

21 December 1999