

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 114 of 1993
(Decision No. 94025)

Participants:

"F"
Applicant

- and -

WEST MORETON REGIONAL HEALTH AUTHORITY
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - names of patients other than the applicant appearing in the applicant's hospital records - whether information concerning the personal affairs of the other patients - whether exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld.*

Freedom of Information Act 1992 Qld s.44(1), s.44(3), s.46, s.46(1), s.46(1)(b), s.52, s.78
Freedom of Information Act 1982 Vic s.33
Health Rights Commission Act 1991 Qld s.39(3)(e)

F and Health Department, Re (1988) 2 VAR 458
Knight & Medical Board of Victoria, Re (1991) 5 VAR 171
Stewart and Department of Transport, Re (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported)

DECISION

I affirm that part of the decision under review, being the decision of Ms G Taylor made on 21 May 1993, by which it was determined that the matter in issue in folios 105 and 93 of file 1, and in folios 51, 13, 12, 11, 10 and 9 of file 6, is exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld.*

Date of Decision: 26 September 1994.

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F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

"F"
Applicant

- and -

WEST MORETON REGIONAL HEALTH AUTHORITY
Respondent

REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision to refuse him access to matter contained in medical records relating to the applicant. Since the initial refusal of access, significant concessions have been made by the respondent and other interested persons, to the extent that the only matter now remaining in issue is the names of patients, other than the applicant, which are mentioned in the applicant's medical records.
2. By undated letter received on 18 February 1993, the applicant applied to the central office of the Queensland Department of Health (the Department) for access to "copies of my psychiatric records in the Queensland Health Department". The applicant went on to specify years during which he was a patient at various psychiatric hospitals, and to provide information to enable the Department to consult with various relatives in relation to the disclosure to him of information which the relatives may have provided to the Department. By letter dated 18 February 1993, the applicant was advised that the West Moreton Regional Health Authority (the Authority) would be responsible for responding to his request.
3. By letter dated 19 April 1993, Mrs P Meyer, Freedom of Information Co-ordinator for the Authority, advised the applicant as follows:

There are six files containing 145, 30, 36, 2, 15 and 51 folios respectively held by the West Moreton Regional Health Authority.

I have decided to grant you access to most of the folios. Other parts have been deleted in accordance with s.44(1) and s.46(1) of the Freedom of Information Act. The deletions are shown in black on the copy of the document on the file.

4. By letter dated 26 April 1993, the applicant applied under s.52 of the FOI Act for internal review of Mrs Meyer's decision. In his letter seeking internal review, the applicant set out his objections to the exemptions claimed on behalf of the Authority:

Personal Affairs by which you have deleted documents refers to "one's own, individual, private, affairs". It is simple to argue that everything in my psychiatric records is "personal affairs", but you have not taken this attitude.

Your position on "public interest" is extraordinary.

I argue:

1. *you are attempting to conceal my "personal affairs" from me. This is totally unacceptable and against my and the "public interest".*
2. *There is no place for a secret society in medical treatment. This is similar if not identical to 20th century fascism.*
3. *Nobody involved would wish to conceal anything stated regarding my "personal" psychiatric "affairs" from me. This could be proved by declarations if you supplied the names of those involved.*
4. *I already know the "personal affairs" of others involved to a degree that makes anything in your records minuscule and trivial.*
5. *A large number of people have read my psychiatric records and anything in them ceased to be "personal".*
6. *I have proof my psychiatric records were illegally handed to and read by another body of people, and everything in them ceased to be "personal".*
7. *Psychiatrists and psychiatric nurses are known and proven to gossip about their clients, and the contents of my records ceased to be personal.*
8. [The applicant referred to his academic qualifications.]
9. *I cannot recall ever being given a reason for action by Queensland Psychiatrists. It is therefore overwhelmingly in my and the "public interest" to receive a copy of all documents.*
10. *After viewing a multitude of other psychiatric records, I am aware that such records are inaccurate, incorrect, fantasised, psychotic, falsified by omission, grossly defaming and clinically useless for reference. The records can also be used against me in a Court. It is therefore overwhelmingly in my and the "public interest" that I be given a copy of all documents to correct them.*
11. *I have seven permanent brain and body lesions inflicted by psychiatrists. It is essential to trace the origins and it is obviously in my and the "public interest" to read all the documents.*

It is incomprehensible to me that the reasons for treatment and confinement can be withheld from anybody.

5. The applicant also set out arguments in relation to s.46 of the FOI Act which are not relevant to this decision (for the reasons explained at paragraphs 9-12 below). The applicant forwarded to the internal review officer of the Authority a further letter dated 7 May 1993 which repeated the arguments contained in his letter of 26 April 1993.
6. The internal review was undertaken by Ms G Taylor, Regional Director of the Authority. By letter dated 21 May 1993, Ms Taylor advised the applicant of her decision to uphold the refusal of access to certain folios under s.44(1) of the FOI Act. After enumerating the relevant folios, Ms Taylor went on to state:

I have based my decision on the following facts:

- (a) *the information contained in the document relates to the personal affairs of individuals other than yourself;*
- (b) *these people have not authorised this information to be given to you; and*
- (c) *the privacy of individuals is considered paramount when considering the release of material under the Freedom of Information Legislation.*

I also do not consider that it would be in the public interest to release this information to you as disclosure of the material may have a prejudicial effect on the private affairs of the people concerned.

7. The remainder of Ms Taylor's letter sets out her reasons in relation to s.46(1) which are not relevant to this decision (for the reasons explained in paragraphs 9-12 below).
8. On 10 June 1993, the applicant sought an external review by the Information Commissioner of Ms Taylor's decision.

The External Review Process

9. By letter dated 30 June 1993, the Authority's FOI Co-ordinator informed me that, following further consideration and consultation with relatives of the applicant in relation to information provided by them to the Authority, the Authority was prepared to release a number of additional documents which had been claimed to be exempt under s.46(1) of the FOI Act.
10. It had been my preliminary view that the Authority had correctly claimed that the information provided to the Authority by relatives of the applicant was exempt matter under s.46(1) and s.44(1) of the FOI Act. I also considered that it was appropriate to forward copies of the relevant documents to the applicant's relatives so that they could make an informed decision about release of those documents to the applicant. I also invited the applicant's relatives to become participants in this review in accordance with s.78 of the FOI Act.
11. By letter dated 24 June 1994, the applicant's relatives advised me that they had no hesitation in allowing the information contained in the documents which had been forwarded to them to be released to the applicant.
12. By letter dated 13 July 1994, the Deputy Information Commissioner advised the applicant that I had authorised the release of the matter which the Authority had previously claimed to be exempt under s.46(1)(b) of the FOI Act and, by arrangement with the Authority, forwarded those documents to the applicant.
13. Following release to the applicant of the additional material referred to in paragraph 12 above, eight folios remained in issue. In each case, the Authority had given the applicant access to the documents subject to the deletion of the names of other patients.
14. By letter dated 13 July 1994, the Deputy Information Commissioner communicated to the applicant his preliminary view that all of the matter which remained in issue was exempt matter under s.44(1) of the FOI Act, and set out reasons in support of that view. The applicant was invited, should he not accept those preliminary views, to put before me a written submission and/or evidence in support of his contention that the matter remaining in issue was not exempt under the FOI Act.

15. By letter dated 20 July 1994, the applicant advised that the preliminary views communicated to him were not accepted and that, rather than provide additional submissions or evidence, the applicant was content to rely on previous submissions he had made in relation to the exemptions claimed by the Authority

The application of s.44(1) to the matter in issue

16. Section 44(1) of the FOI Act provides as follows:

44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

17. In my reasons for decision in *Re Stewart and Department of Transport* (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported), I identified the various provisions of the FOI Act which employ the term "personal affairs", and discussed in detail the meaning of the phrase "personal affairs of a person" (and the relevant variations thereof) as it appears in the FOI Act (see paragraphs 79-114 of *Re Stewart*). In particular, I said that information concerns the "personal affairs of a person" if it relates to the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

family and marital relationships;
health or ill-health;
relationships and emotional ties with other people; and
domestic responsibilities of financial obligations.

18. The matter in issue in the present external review consists solely of the names of other patients as they appear in clinical notes created by the Authority in respect of the applicant. The context in which the names of the other patients appear in the clinical notes is in descriptions of interaction between the applicant and the other patients. In each case, the applicant has been granted access to the description of the interaction, but not the names of the other patients.
19. I indicated in paragraph 79 of my decision in *Re Stewart* that a person's health or ill-health fell within the core meaning of the term "personal affairs". Disclosure of the names of the other patients in this instance would reveal that they had received treatment for psychiatric illness in the facilities operated by the respondent. Consequently, the matter is *prima facie* exempt from disclosure to the applicant under s.44(1), subject to the application of the countervailing public interest test contained within s.44(1). In this instance, I am not satisfied that the public interest considerations favouring disclosure outweigh the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1). I am not aware of any public interest considerations of any appreciable weight which tell in favour of the disclosure of the names of other psychiatric patients.
20. The applicant, in various written submissions, has made cogent arguments about the public interest in a patient having access to his or her medical records, but has raised no argument of any substance as to why it would be in the public interest for the names of other psychiatric patients to be disclosed to the applicant. The applicant is not able to obtain assistance from s.6 of the FOI Act, as the names of the other patients do not concern his personal affairs.

21. The Queensland Parliament has recognised that individuals are entitled to privacy in relation to their health care. The *Health Rights Commission Act 1991 Qld* provides, at s.39(3)(e), that the principles to which the Health Rights Commissioner is to have regard in determining the content of a Code of Health Rights and Responsibilities (which is presently being developed by the Health Rights Commissioner) include:

... that the confidentiality of information about an individual's health should be preserved

22. A number of authorities support the conclusion that a person's name, where it appears in medical records, is information which concerns that person's personal affairs.
23. In *Re Knight & Medical Board of Victoria* (1991) 5 VAR 171 the Victorian Administrative Appeals Tribunal held (at p.182) that the disclosure of the names of patients contained in documents in the Board's possession which concerned an inquiry conducted by the Board into the conduct of a particular doctor, would involve a disclosure of the patients' personal affairs - the fact that they had attended the particular doctor for treatment.
24. Similarly, in *Re F and Health Department* (1988) 2 VAR 458, the Victorian Administrative Appeals Tribunal determined that clinical notes containing information about a person other than the applicant (including that person's name) were exempt under s.33 of the *Freedom of Information Act 1982 Vic*.

Conclusion

25. I am satisfied that the names of other patients, which have been deleted from the documents to which the applicant has been given access, comprise exempt matter under s.44(1) of the FOI Act. As indicated in paragraphs 9-12 above, during the course of my review, the Department agreed to release a number of documents that were initially in issue. The appropriate decision, therefore, is that I affirm that part of the decision under review, being the decision of Ms Taylor made on 21 May 1993, by which it was determined that the matter in issue contained in folios 105 and 93 of file 1, and in folios 51, 13, 12, 11, 10 and 9 of file 6, is exempt matter under s.44(1) of the FOI Act.

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