

Ubaldi and Royal Brisbane Hospital District Health Service

(S 109/99, 17 June 1999, Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

Paragraph 1 deleted.

REASONS FOR DECISION

Background

2. The Royal Brisbane Hospital District Health Service (the Health Service) has now provided me with copies of correspondence detailing the chronology of events relevant to the access application under the Freedom of Information Act 1992 Qld (the FOI Act) to which your 19 May 1999 application for external review relates. I have also been provided with copies of the medical records to which access is sought under the FOI Act. After reviewing the material supplied by the Health Service, I am satisfied that you do not have any legal entitlement to pursue an application for review of the abovenoted decision.
3. A careful review of the correspondence referred to above discloses that:
 - the initial access application, dated 22 January 1999, was lodged by Antonio Tropeano, Barristers & Solicitors, under "instructions to act for the trustee of now deceased [relative of Ms Ubaldi]";
 - in a letter to Antonio Tropeano, dated 4 February 1999, the Health Service's FOI Liaison Officer (Mr Bill Evans) stated, *inter alia*, that he assumed that Antonio Tropeano was "... acting as Trustee for the children nominated in the Will";
 - by letter dated 1 March 1999, Antonio Tropeano advised Mr Evans that the firm was authorised "to act on behalf of [AC], trustee and executor of the last will and testament of [a relative of Ms Ubaldi]", and enclosed a letter of authority from [AC] to that effect;
 - a further letter, dated 4 March 1999, from Antonio Tropeano to Mr Evans, reiterated that the firm was authorised to act on [AC's] behalf.
4. The specific requirements for an application for external review are set out in s.73(1) of the FOI Act. Relevantly, s.73(1)(d) sets out the time limits for making an application for external review, to be calculated "from the day on which written notice of the decision is given to the applicant ...". It is implicit in the requirements of s.73(1) of the FOI Act that "the applicant" seeking external review must be the person by whom, or on whose behalf, the initial access application was lodged.
5. Although a copy of your driver's licence was submitted with the initial access application as "proof of identity of the person seeking the information", Antonio Tropeano repeatedly asserted that the firm was acting on behalf of [AC]. Both the initial access application, and the subsequent application for internal review, were lodged with the Health Service on [AC's] behalf. Accordingly, the Information Commissioner does not have jurisdiction to entertain an application from you, or your children, for review (under Part 5 of the FOI Act) of the abovenoted decision of Dr John Menzies.
6. Section 77(1) of the FOI Act provides:

77.(1) The commissioner may decide not to review or not to review further, a decision in relation to which an application has been made under section 73 if the commissioner is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance.

7. In light of the circumstances set out above, I find that your application for external review is misconceived or lacking in substance, within the meaning of s.77 of the FOI Act. Accordingly, I am not prepared to deal further with your application for review and I decide not to review further Dr Menzies' internal review decision, dated 23 April 1999.
8. If you wish to pursue access, under the FOI Act, to the relevant medical records held by the Health Service concerning the late [relative of Ms Ubaldi], you would have to lodge a fresh access application with the Health Service, and then pursue the available avenues of internal and external review, if you were unsatisfied with the decision made by the Health Service in response to that access application.
9. However, I must advise that, on the basis of the information presently before me, I am of the preliminary view that the arguments which you have advanced in support of your claim of entitlement to gain access to the relevant records held by the Health Service are not sufficient to outweigh the prima facie exempt status of that matter under s.44(1) of the FOI Act, for the same reasons as those expressed by Dr Menzies in his 27 April 1999 internal review decision letter to Antonio Tropeano.
10. In that decision, Dr Menzies referred to one of my previous formal decisions, *Re Summers and Cairns District Health Service* (1997) 3 QAR 479, which involved similar considerations to those addressed by Dr Menzies in the present case (i.e., the confidentiality of medical records and personal privacy of a deceased person, weighed against a surviving relative's stated purpose of obtaining the deceased's medical records to assist in the grieving process, and to determine whether there has been any negligence in the medical care of the deceased. I enclose a copy of the decision in *Re Summers* for your information.
11. In the circumstances, your children may wish to take advantage of the kind offer made by Dr Menzies in his 27 April 1999 internal review decision, in response to the internal review application lodged by Antonio Tropeano, on [AC's] behalf:

In making this decision I have not, however, ruled out all chances of the family gaining information from the record. The Hospital has a policy of assisting where possible in matters relating to a deceased's treatment if it may assist the family in dealing with the death... . In addition, the Hospital is desirous of ensuring that the community has confidence that the best treatment is being provided to persons referred to it for treatment.

The Hospital would therefore be willing to provide information in the treatment to the family through the next of kin (not the Trustee/Executor) specifying the concerns they might have.

12. Dr Menzies has stated in a letter to me dated 4 June 1999 that this offer still stands, and he has requested that I bring it to your attention.