

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 01/2000

Application S 161/99

Participants:

MARY V BULTITUDE

Applicant

PRINCESS ALEXANDRA HOSPITAL AND

DISTRICT HEALTH SERVICE

Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - medical records of the applicant's deceased husband - information concerning the personal affairs of a person other than the applicant - whether disclosure would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992 Qld*.

Freedom of Information Act 1992 Qld s.44(1)

Workers Compensation Act 1987 NSW

Attorney-General (NSW) v Quin (1989-90) 170 CLR 1

Fotheringham and Queensland Health, Re (1995) 2 QAR 799

McPhedran and Minister for Health, Re (Australian Capital Territory Administrative Appeals Tribunal, Professor L J Curtis (President) and Mr N J Atwood (Member), No. C92/103, 2 June 1994, unreported)

Pemberton and The University of Queensland, Re (1994) 2 QAR 293

Sinclair v Mining Warden at Maryborough (1975) 132 CLR 473

Stewart and Department of Transport, Re (1993) 1 QAR 227

Summers and Cairns District Health Service, Re (1997) 3 QAR 479

Willsford and Brisbane City Council, Re (1996) 3 QAR 368

DECISION

I vary the decision under review (being the decision made on behalf of the respondent by Mr Lindsay Pyne on 14 July 1999) by finding that, with the exception of the matter in issue identified in paragraph 32 of my accompanying reasons for decision, the matter in issue in this review does not qualify for exemption from disclosure to the applicant under the *Freedom of Information Act 1992* Qld.

Date of decision: 20 April 2000

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F N ALBIETZ
INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicant seeks review of the decision of the Princess Alexandra Hospital and District Health Service ("the PA Hospital") to refuse her access to her late husband's medical records.
2. By letter dated 17 May 1999, the applicant's solicitors applied on behalf of their client to the PA Hospital for access, under the *Freedom of Information Act 1992 Qld* (the FOI Act), to:

... copies of all clinical notes, medical reports, X-Ray reports, pathology reports, treating doctors reports and any other documents of [the applicant's] late husband
3. By letter dated 25 June 1999, Ms B M Boel of the PA Hospital advised the applicant's solicitors that she had decided to refuse the applicant access to the 123 folios which had been identified as falling within the terms of the applicant's FOI access application, on the basis that those folios were exempt from disclosure under s.44(1) of the FOI Act.
4. On 2 July 1999, the applicant's solicitors wrote to the PA Hospital to apply for internal review of Ms Boel's decision. The applicant's solicitors provided further information as to why their client required access to her late husband's medical records. They stated that their client wished to investigate a potential claim under the *Workers Compensation Act 1987 NSW* based on the connection between her late husband's employment as a stock inspector, which involved prolonged exposure to various chemicals including arsenic and DDT, and his development of bladder cancer. They wished to brief a carcinogenicist or oncologist to provide an expert opinion on this issue, for the purpose of allowing their client to assess her prospects of bringing a workers compensation claim in respect of her husband's death.

5. By letter dated 14 July 1999, Mr Lindsay Pyne of the PA Hospital advised the applicant's solicitors that he had conducted a review of Ms Boel's decision, and that he had decided to affirm that decision. By letter dated 5 August 1999, the applicant's solicitors applied to me for review, under Part 5 of the FOI Act, of Mr Pyne's decision.

External review process

6. The Deputy Information Commissioner wrote to Mr Pyne on 6 August 1999 to advise him that I would be conducting a review of his decision. The Deputy Commissioner requested that copies of the matter in issue be provided for the purposes of my review. He also took the opportunity to advise Mr Pyne that he was concerned that there was nothing on the face of Mr Pyne's internal review decision to indicate that he had given consideration to the principles established in *Re Summers and Cairns District Health Service* (1997) 3 QAR 479 and *Re Willsford and Brisbane City Council* (1996) 3 QAR 368. The Deputy Information Commissioner set out the relevant extracts from those decisions, which refer to the public interest considerations which are to be taken into account where a dependant of a deceased person, wishing to pursue an action for damages for wrongful death, is able to demonstrate a reasonable basis for seeking to pursue the remedy, and disclosure of the deceased's medical records would assist the pursuit of the remedy, or the evaluation of whether the remedy is available, or worth pursuing.
7. In light of those decisions, and the information which the applicant's solicitors had provided regarding the background to their client's request for access to her late husband's medical records, the Deputy Information Commissioner asked Mr Pyne to reconsider the application of s.44(1) of the FOI Act to the matter in issue, in particular, the application of the public interest balancing test incorporated in s.44(1).
8. On 6 September 1999, Dr Mark Waters responded to the Deputy Information Commissioner's letter to Mr Pyne. Dr Waters advised that he "remained convinced" that the public interest arguments put forward by the applicant were not of sufficient weight to justify release of the medical records in issue.
9. The Deputy Information Commissioner wrote to the applicant's solicitors on 9 September 1999 and enclosed a copy of his letter to Mr Pyne dated 6 August 1999, as well as a copy of Dr Waters' response to that letter. He advised the applicant's solicitors that it was clear that, under the terms of s.44(1) of the FOI Act, the matter in issue was *prima facie* exempt from disclosure to the applicant (because it comprised information concerning the personal affairs of a person other than the applicant for access), subject to the application of the public interest balancing test incorporated in s.44(1). The Deputy Information Commissioner therefore invited the applicant's solicitors to lodge written submissions and/or evidence in support of their client's case that disclosure of the matter in issue would, on balance, be in the public interest.
10. By letter dated 17 September 1999, the applicant's solicitors provided written submissions and evidence in support of their client's case. Copies of that material were provided to the PA Hospital, which was again asked to reconsider its claim for exemption in light of the information provided by the applicant's solicitors. The PA Hospital advised that it was prepared to withdraw its claim for exemption in respect of folios 118-120, comprising histopathology results in respect of the deceased, but that it maintained that disclosure of the remaining documents would not, on balance, be in the public interest, and hence that they were exempt under s.44(1) of the FOI Act.

11. The Deputy Information Commissioner authorised the PA Hospital to give the applicant access to folios 118-120, and those folios are no longer in issue in this review. The applicant's solicitors then advised that, while they accepted that the histopathology results were probably the most important of the documents in issue, they considered that there were also many nursing notes, admission sheets, discharge sheets *et cetera* in issue which might contain information of "crucial importance" to their client's ultimate claim.
12. By letters to the applicant's solicitors and to the PA Hospital, dated 10 November 1999 and 16 November 1999 respectively, the Deputy Information Commissioner advised the participants that he had carefully reviewed the documents in issue and had formed the preliminary view that some of them (he identified the relevant folios) did not contain any information which could reasonably be expected to be of relevance to a consideration of the likely cause of the deceased's bladder cancer, and which therefore would not assist a carcinogenicist or oncologist to provide an opinion on that issue. He was of the preliminary view that disclosure of those documents would not, on balance, be in the public interest, and that they therefore qualified for exemption under s.44(1) of the FOI Act. However, the Deputy Information Commissioner was also of the preliminary view that the remainder of the documents in issue did contain some information which could reasonably be considered to be of some use to a carcinogenicist or oncologist briefed to provide an opinion on the aetiology of the deceased's cancer, and that disclosure of those documents to the applicant would, on balance, be in the public interest.
13. In the event that the participants did not accept his preliminary view, the Deputy Information Commissioner invited each of them to lodge written submissions and/or evidence in support of their respective cases for disclosure or exemption of the matter in issue. In particular, he requested that the participants explain in those submissions/evidence precisely why disclosure of the documents in issue would or would not assist the applicant to pursue a remedy in respect of her husband's death, or to evaluate whether a remedy was available, or worth pursuing. In the event that the applicant's solicitors had already retained a specialist to give an expert opinion, the Deputy Information Commissioner advised the applicant's solicitors that evidence from that specialist as to the kind of documents that would assist with the formulation of an expert opinion, would be of assistance in reaching a final decision on the application of s.44(1).
14. The applicant's solicitors responded by letter dated 16 November 1999, in which they stated:

*Without prejudice to our rights to obtain the complete file under Subpoena,
we accept your preliminary views for the production under FOI and would
appreciate you making directions accordingly.*
15. The PA Hospital requested an extension of time in which to provide its response. By letter dated 6 December 1999, Dr Waters advised that the PA Hospital did not accept the Deputy Information Commissioner's preliminary view that some of the documents in issue did not qualify for exemption under s.44(1) of the FOI Act. He stated that "the solicitors have not raised any public interest arguments on behalf of [the applicant]" and that he continued to be unable to "see any self evidence of public interest in the release of the [deceased's] health records".
16. By letter dated 8 December 1999, the applicant's solicitors wrote to me enclosing a copy of a preliminary opinion on the likely cause of the deceased's bladder cancer, which had been prepared for their client by Professor John Levi, Director of the Department of Clinical

Oncology at Sydney's Royal North Shore Hospital. The applicant's solicitors stated that Professor Levi's preliminary opinion was based on an incomplete medical history of the deceased, due to the PA Hospital's refusal to disclose the matter in issue. The applicant's solicitors requested that I communicate with the PA Hospital in an attempt "to have a proper and reasonable provision of documents to enable Professor Levi to be appraised of the complete history" of the deceased's medical condition, "as opposed to the rudimentary patching together which he has been required to undertake for the purpose of his present opinion."

17. The PA Hospital advised that it was not prepared to review its position in light of Professor Levi's report, and that it maintained that all of the matter remaining in issue was exempt from disclosure under s.44(1) of the FOI Act. Hence it is necessary for me to give a formal decision in order to finalise this review. In my view, the relevant principles which apply to this case have already been established in my decisions in *Re Summers* and *Re Willsford* (referred to above). However, it has become clear to me from the submissions made by the PA Hospital during the course of this review (see paragraphs 35-36 below) that there may be some confusion amongst agency decision-makers regarding the application of the public interest balancing test incorporated in s.44(1) of the FOI Act, in cases such as this.
18. In addition to the contents of the matter in issue, I have taken into account the following material in making my decision in this review:
 - the PA Hospital's initial decision dated 17 May 1999, and internal review decision dated 14 July 1999;
 - the applicant's application for internal review dated 2 July 1999, and application for external review dated 5 August 1999;
 - written submissions on behalf of the applicant dated 17 September 1999, 28 October 1999 and 8 December 1999;
 - written submissions on behalf of the PA Hospital dated 6 September 1999, 20 October 1999 and 6 December 1999.

Application of s.44(1) of the FOI Act

19. Section 44(1) of the FOI Act provides:

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.
20. In applying s.44(1) of the FOI Act, one must first consider whether disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning the personal affairs of a person. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the matter in issue will be exempt, unless there exist public interest considerations favouring disclosure which outweigh all identifiable public interest considerations favouring non-disclosure, so as to warrant a finding that disclosure of the matter in issue would, on balance, be in the public interest.
21. I am satisfied that the matter in issue clearly comprises information concerning the personal affairs of the applicant's deceased husband (i.e., a person other than the applicant for access) and hence is *prima facie* exempt from disclosure under s.44(1) of the FOI Act. Information

concerning the health or ill-health of an identifiable individual falls within the core meaning of information concerning personal affairs: see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at pp. 256-257, paragraph 79. Moreover, the public interest in respecting the privacy of an individual's medical records is a strong one, which will ordinarily (subject to the existence of mitigating factors of the kind referred to in *Re Summers* at p.484, paragraph 19) be deserving of considerable weight in the application of a public interest balancing test, as has been recognised in my previous decisions (see, for example, *Re Summers* at p.484, paragraphs 18-19; *Re Fotheringham and Queensland Health* (1995) 2 QAR 799 at paragraphs 11, 24-25, 33) and in decisions of other tribunals (see, for example, *Re McPhedran and Minister for Health* (Australian Capital Territory Administrative Appeals Tribunal, Professor L J Curtis (President) and Mr N J Atwood (Member), No. C92/103, 2 June 1994, unreported) at paragraph 8).

22. Accordingly, the fact that the matter in issue comprises information concerning the personal affairs of a person other than the applicant for access will be determinative (in favour of non-disclosure of the matter in issue) in the absence of identifiable public interest considerations favouring disclosure of the matter in issue, which have sufficient weight to justify a finding that disclosure of the matter in issue would, on balance, be in the public interest.

Public interest balancing test

23. As explained above, the applicant has submitted that she requires access to her late husband's medical records in order to evaluate her prospects of pursuing a workers compensation claim in respect of her husband's death. She wishes to obtain access to those medical records in order to brief a carcinogenicist or oncologist to provide an expert opinion on the bladder cancer suffered by her husband and the likely cause of that cancer (with particular reference to exposure to chemicals occasioned by the deceased's employment as a stock inspector), so as to allow her to evaluate whether she has a reasonable chance of pursuing a workers' compensation claim in respect of her husband's death. The applicant submitted that it was necessary for the expert to be briefed with the deceased's full medical history in order to provide a considered opinion on the aetiology of the cancer.
24. At pp.372-373 (paragraphs 16-18) of *Re Willsford*, I said:

16. I consider that, in an appropriate case, there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances (cf. Re Cairns Port Authority and Department of Lands (1994) 1 QAR 663 at pp.713-714, paragraphs 103-104; p.717, paragraph 120; and p.723, paragraph 142). The public interest necessarily comprehends an element of justice to the individual: see Re Pemberton and The University of Queensland (Information Commissioner Qld, Decision No. 94032, 5 December 1994, unreported) at paragraphs 178 and 190, and the cases there cited. Although the public interest I have described is one which would apply so as to benefit particular individuals in particular cases, I consider that it is nevertheless an interest common to all members of the community and for their benefit.

17. *The mere assertion by an applicant that information is required to enable pursuit of a legal remedy will not be sufficient to give rise to a public interest consideration that ought to be taken into account in the application of a public interest balancing test incorporated into an exemption provision in the FOI Act (cf. Re Alpert and Brisbane City Council (1995) 2 QAR 618 at paragraph 30). On the other hand, it should not be necessary for an applicant to prove the likelihood of a successful pursuit of a legal remedy in the event of obtaining access to information in issue. It should be sufficient to found the existence of a public interest consideration favouring disclosure of information held by an agency if an applicant can demonstrate that -*

- (a) loss or damage or some kind of wrong has been suffered, in respect of which a remedy is, or may be, available under the law;*
- (b) the applicant has a reasonable basis for seeking to pursue the remedy; and*
- (c) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.*

18. *The existence of a public interest consideration of this kind would not necessarily be determinative - it would represent one consideration to be taken into account in the weighing process along with any other relevant public interest considerations (whether weighing for or against disclosure) which are identifiable in a particular case. On the other hand, it would ordinarily be true to say (to the extent that a decision-maker under the FOI Act is able to make an objective assessment of these matters from the material put forward by an applicant to establish (a), (b) and (c) above) that the greater the magnitude of the loss, damage or wrong, and/or the stronger the prospects of successfully pursuing an available remedy in respect of the loss, damage or wrong, then the stronger would be the weight of the public interest consideration favouring disclosure which is to be taken into account in the application of a public interest balancing test incorporated in an exemption provision of the FOI Act.*

25. In *Re Summers* at p.487 (paragraph 29), I said:

29. ... *Similarly, applying the principles which I stated in Re Willsford and Brisbane City Council (Information Commissioner Qld, Decision No. 96017, 27 August 1996, unreported) at paragraphs 16-18, if an executor wishing to sue on behalf of the estate of a deceased, or a dependent of the deceased wishing to pursue an action for damages for wrongful death, could demonstrate a reasonable basis for seeking to pursue the remedy, and disclosure of the deceased's medical records would assist the pursuit of the remedy (or the evaluation of whether a remedy is available, or worth pursuing), this could constitute a public interest consideration favouring disclosure which might outweigh the public interest in protecting the privacy of the deceased's medical records.*

26. The applicant's solicitors provided a significant amount of material in support of their client's case for disclosure of the matter in issue. In their letter dated 17 September 1999, the applicant's solicitors stated:

The applicant in this case has a reasonable basis for seeking to pursue the remedy. She is a surviving dependent of .. the deceased There are provisions under the Workers Compensation Act 1987 NSW providing for lump sum compensation to surviving dependants (s.25(1)(a)). Further, the death certificate outlines as a cause of death acute or chronic urinary tract infections over many years. This is in the context of recurrent bladder cancers requiring hospitalisation at St Vincent's Hospital, Lismore Base Hospital, Casino and Memorial District Hospital in addition to the Brisbane facilities as subject to this FOI application.

The information held by the decision maker contains histopathology results which are crucial for the establishment of the causal connection between the deceased's bladder cancers and his exposure to arsenic during the course of his employment in NSW. In this regard we refer the Commissioner to the numerous scientific abstracts connecting exposure to arsenic to the elevated incidence of bladder cancer in general. The specific types of bladder cancer (and hence the histopathology) are of crucial importance in order to provide carcinogenists and oncologists with the full brief in order to obtain a considered opinion as to causation. Please note in this regard that the provision of the Workers Compensation Legislation relating to diseases require only that there be an elevated risk of the contraction of the disease as a result of his work conditions. Such an expert cannot be qualified by us until a full medical history is obtained. The documents held by the decision maker comprise a significant and important part of those medical historical documents.

27. (As I mentioned above, the histopathology reports referred to in this passage have been disclosed to the applicant during the course of this review.) In a supporting affidavit, the applicant's solicitor, Mr Gerard Egan, explained that he had acted for the widows of other deceased stock inspectors in relation to those widows' claims for death benefits under the *Workers' Compensation Act*, arising from their spouses' exposure to tickicides during the course of their employment. Mr Egan annexed a substantial amount of material to his affidavit, including a number of articles from scientific journals *et cetera*, outlining the suspected link between exposure to various chemicals such as arsenic and DDT (used in dip sites) and the development of bladder cancer. He also provided a summary of "Assumed Facts" in which he explained the deceased's duties as a stock inspector, which included monitoring and replenishing the tickicide solution, cleaning the dip baths and overseeing the dipping of cattle, and stated that, as a result of those duties, the deceased had come into constant and prolonged contact with poisons such as arsenic and DDT.
28. In his preliminary opinion on the aetiology of the deceased's bladder cancer, Professor Levi concluded that the deceased's occupational exposure to arsenic was a contributing factor to the development of his cancer. Professor Levi also gave the preliminary opinion that the recurrent bladder cancer suffered by the deceased, and its associated debilitating effects, would have been a factor in the death of the deceased.

29. The PA Hospital has argued that disclosure of the matter in issue to the applicant would not, on balance, be in the public interest, because:

- the applicant has not suffered loss or damage of any kind;
- the "remedy" sought by the applicant, i.e., a potential workers compensation claim, could be pursued without obtaining access to the deceased's medical records under the FOI Act;
- in any event, disclosure of the matter in issue would not assist the applicant to pursue the remedy, or to pursue it more expeditiously;
- the applicant's potential claim under workers compensation legislation is only of personal interest to the applicant, and is not in the public interest.

30. In his letter dated 6 September 1999, Dr Waters stated:

I don't believe Mrs Bultitude has suffered loss or damage of any kind or that there is no other means by which the 'remedy', ie, potential claim under NSW Workers Compensation Legislation, may be obtained. Nor do I believe that release of the medical records would enable Mrs Bultitude to pursue that remedy any more expeditiously, or even if it would assist her, that this argument outweighs the obligation in s.44(1) to respect the privacy of the deceased patient.

31. I do not consider that the PA Hospital's position can be sustained, on the basis of the material before me. On the basis of the material provided by the applicant, and applying the principles from *Re Willsford* set out above, I am satisfied, firstly, that the applicant has suffered loss or damage as the result of the death of her husband, and, secondly, that there may be a legal remedy available to her in respect of that loss or damage. As to the third issue of whether disclosure of the particular matter in issue would assist the applicant to pursue that remedy, or to evaluate whether a remedy is available or worth pursuing, neither the applicant nor the PA Hospital has put forward any cogent submissions and/or evidence to persuade me that the preliminary view expressed by the Deputy Information Commissioner in his letters to the participants dated 10 November 1999 and 16 November 1999, is incorrect. I acknowledge the difficulties associated with a non-medically qualified person (albeit a lawyer with substantial experience in handling medico-legal issues in personal injuries litigation) assessing medical documents with a view to deciding whether or not those documents could reasonably be expected to be of use to a carcinogenicist or oncologist briefed to provide an expert opinion on the likely cause of a cancer. For that reason, both the applicant and the PA Hospital were specifically invited by the Deputy Information Commissioner to provide submissions/evidence in support of any claim they wished to make that disclosure of particular documents would or would not assist a carcinogenicist or oncologist to formulate an expert opinion. Neither did so, with the applicant accepting the Deputy Information Commissioner's preliminary view as to the relevance or otherwise of the documents in issue, and the PA Hospital simply continuing to argue that disclosure of any of the documents in issue would not, on balance, be in the public interest.

32. I find that the following documents do not contain any information which could reasonably be expected to be of relevance or assistance to a carcinogenicist or oncologist briefed to provide an opinion on the aetiology of the deceased's bladder cancer:

- Operation consent forms - folios 00116, 00101, 00082, 00057, 00043 and 00020.

- Anaesthetic records - folios 00113, 00112, 00097, 00096, 00078, 00077, 00054, 00053, 00038, 00037, 00016 and 00015.
- Temperature charts - folios 00110, 00093, 00073, 00050, 00039 and 00007.
- Discharge summary - folio 00108.
- Patient care plans - folios 00105, 00090, 00089 and 00070-00065.
- Medication charts - folios 00104, 00103, 00086-00084, 00062-00060, 00047-00045, 00014-00012 and 00003-00001.
- Nursing care histories - folios 00092, 00091, 00072, 00071, 00029 and 00028.
- Minimal care guide - folio 00027.

33. I find that the remaining documents in issue do contain some information which could be of assistance to a carcinogenicist or oncologist briefed to provide an opinion on the aetiology of the deceased's cancer. I am satisfied that disclosure to the applicant of those documents would assist her to pursue a legal proceeding in respect of loss consequent upon her husband's death, or to evaluate whether a legal proceeding is available, or worth pursuing.
34. Accordingly, for the reasons explained above, I find that the applicant has demonstrated, at least in respect of some of the matter in issue, that the three requirements necessary to found the existence of a public interest consideration favouring disclosure of that matter (as set out in paragraph 17 of *Re Willsford* and quoted above) are satisfied.
35. As I stated in paragraph 18 of *Re Willsford*, the existence of a public interest consideration of this kind is not necessarily determinative - it represents one consideration to be taken into account in the weighing process along with any other relevant public interest considerations (whether weighing for or against disclosure) which are identifiable in the particular case. However, the only public interest consideration of any weight which I am able to identify in favour of non-disclosure of the matter in issue is the public interest in protecting a person's privacy in respect of his/her medical records, particularly where that person is deceased and is unable to consent or object to disclosure of the records. I accept that that public interest is ordinarily a strong one (subject to the existence of mitigating factors of the kind referred to in *Re Summers* at p.484, paragraph 19). However, I do not accept the PA Hospital's argument that disclosure of the matter in issue would only assist the private interests of the applicant, such that disclosure to the applicant would not, on balance, be in the public interest.
36. The courts recognise that: "The public interest necessarily comprehends an element of justice to the individual" (per Mason CJ in *Attorney-General (NSW) Quin* (1989-90) 170 CLR 1 at p.18; to similar effect are the remarks of Jacobs J in *Sinclair v Mining Warden at Maryborough* (1975) 132 CLR 473 at p. 487, quoted in *Re Pemberton and The University of Queensland* (1994) 2 QAR 293 at p.372, paragraph 178). In *Re Pemberton* at pp. 368-377, I reviewed a series of cases decided by courts and tribunals under FOI legislation which have recognised that, in an appropriate case, there may be a public interest in a particular applicant obtaining access to particular documents. The PA Hospital is mistaken in asserting that there is no public interest consideration at stake here, only a private interest of the applicant. The s.44(1) exemption itself gives effect to a public interest in safeguarding the privacy of information concerning the personal affairs of an identifiable individual. It would be incorrect to assert that s.44(1) merely protects the private interests of particular individuals, even though it ordinarily applies for the benefit of particular individuals in particular cases. Rather, the public interest in safeguarding the privacy of information concerning the personal affairs of identifiable individuals, like the public interest consideration which I recognised in

Re Willsford, is an interest common to all members of the community, and for their benefit, even though it is ordinarily given practical effect through application for the benefit of particular individuals in particular cases. The question I must determine is which of those two public interest considerations should prevail in the particular circumstances of this case.

37. For the reasons given above, I am satisfied that, with the exception of the folios listed in paragraph 32 above, the public interest considerations favouring disclosure to the applicant of the matter in issue outweigh, on balance, the public interest in protecting the privacy of the deceased's medical records. In respect of the folios listed in paragraph 32 above, I find that those folios do not contain any information which could reasonably be expected to be of relevance to a consideration of the issue of the likely cause of the deceased's bladder cancer, and their disclosure to the applicant would not, on balance, be in the public interest.

Conclusion

38. I decide to vary the decision under review (being the decision made on behalf of the respondent agency by Mr Lindsay Pyne on 14 July 1999) by finding that, with the exception of the folios listed in paragraph 32 above, the matter in issue in this review is not exempt from disclosure to the applicant under the FOI Act.

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F N ALBIETZ
INFORMATION COMMISSIONER