Office of the Information Commissioner
Western Australia

Decision D0232026 – Published in note form only

Re LS3 and North Metropolitan Health Service [2026] WAICmr 23

Date of Decision: 22 October 2026

Freedom of Information Act 1992 (WA): section 28

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) confirmed a decision of North Metropolitan Health Service (Sir Charles Gairdner Hospital) (**agency**) to give the complainant access to the disputed documents through a suitably qualified person nominated in writing by the complainant, in accordance with section 28 of the *Freedom of Information Act 1992* (WA) (**FOI Act**).

Reasons

Access under section 28 of the FOI Act

2. Section 28 generally provides:

   - if a document contains medical or psychiatric information about an applicant; and
   - an agency's principal officer considers disclosing the information directly to the applicant may have a substantial adverse effect on the applicant's physical or mental health,

   the agency may give access to the document through a suitably qualified person nominated in writing by the applicant.

3. A 'suitably qualified person' is a medical practitioner registered under the *Health Practitioner Regulation National Law (Western Australia)*.[1]

4. Under section 28 an agency may also withhold access to the relevant documents until the applicant nominates a suitably qualified person.

5. There are three questions to consider when determining whether an agency may provide access to documents in accordance with section 28:[2]

   - Do the disputed documents contain medical or psychiatric information about the applicant?
   - Did the agency's principal officer, at the relevant time, form the opinion that disclosing the documents directly to the applicant may have a substantial adverse effect on the applicant's physical or mental health?
   - Were there reasonable grounds for the principal officer's opinion?

---

1 See *Freedom of Information Regulations 1993* (WA), r 7

2 See *Re H and Graylands Hospital* [1995] WAICmr 53, [10]; *Re R and Ministry of Justice* [1996] WAICmr 37, [15].

6. The agency must demonstrate the answer to all three questions is 'yes'.[3]

The disputed documents contain medical or psychiatric information about the complainant

7. The Deputy Commissioner examined the disputed documents and was satisfied the documents contain information of a medical or psychiatric nature concerning the complainant.

8. The Deputy Commissioner acknowledged the disputed documents were created primarily in the context of the treatment and care of another individual known to the complainant, and the complainant may not have been the patient of the agency at the relevant time. However, this did not mean the documents could not also contain medical and psychiatric information about the complainant. To the extent they did, that information is medical or psychiatric information concerning the complainant for the purposes of section 28.

The principal officer formed the relevant opinion

9. Having reviewed the agency's FOI file, the Deputy Commissioner was satisfied the agency's principal officer formed the opinion that direct disclosure of the disputed documents to the complainant may have a substantial adverse effect on the complainant's physical or mental health.

10. The principal officer had been specifically briefed on the issue of potentially giving access to medical or psychiatric information through a suitably qualified person under section 28 of the FOI Act.

There are reasonable grounds for the principal officer's opinion

11. The Deputy Commissioner was also satisfied the opinion was formed on reasonable grounds.

12. In particular, the Deputy Commissioner noted the principal officer is a qualified medical practitioner and had been briefed by two senior officers within the agency, both of whom are qualified medical practitioners.

13. The briefing also contained the medical recommendations of a medical clinician and consultant psychiatrist, one of whom had previously treated the complainant. While a history of psychiatric treatment does not, by itself, establish disclosure may have a substantial adverse effect on a person's mental health, in this case, the medical practitioners' recommendations took into account the nature of the disputed documents and the broader complexity of the complainant's circumstances at the relevant time.

14. The Deputy Commissioner also considered two assessments the complainant submitted, and undertaken around the same time as the matters referred to in the disputed documents. The complainant submitted these assessments did not support the principal officer's opinion. However, the Deputy Commissioner noted the assessments pre-dated the access application and did not address the specific information in the disputed documents or the potential effect of disclosing that information on the complainant's physical or mental health.

15. Accordingly, the Deputy Commissioner confirmed the agency's decision to give access to the disputed documents in accordance with section 28 by making the documents available through a suitably qualified person. The Deputy Commissioner noted the agency may withhold access to the disputed documents until the complainant nominates a suitably qualified person in writing.

---

[3] FOI Act, section 102(1).