

Request for deceased birth mother's medical records

Legislation	Official Information Act 1982, s 9(2)(a)
Agency	Auckland Healthcare
Ombudsman	Sir Brian Elwood
Case number(s)	A6722
Date	July 1998

Request by adult adopted woman for copy of late birth mother's medical records—information withheld to protect privacy—requester in contact with birth mother prior to her death—birth mother left no will, did not name executor of her estate—no other surviving relatives—information relevant to requester's own health—conditional release of information—Health Information Privacy Code

The requester asked Auckland Healthcare for copies of her late birth mother's medical files, held at two public hospitals. The requester had been adopted, but had traced her birth mother and had been a regular visitor to her home for some 5 years before the birth mother died. The requester's interest in obtaining the information lay in ascertaining whether her mother had any hereditary conditions which could have been passed on to her.

The mother did not leave a will or name an executor of her estate. Her next of kin (her husband) died some 3 months later. However, Auckland Healthcare did not consider that the requester could be considered to be her mother's 'personal representative' for the purposes of the Health Information Privacy Code, because she was not her mother's executor or administrator in terms of section 2 of the Property Law Act 1952. It therefore refused the request in reliance upon section 9(2)(a) of the OIA.

Notwithstanding the strong privacy interests attaching to health information, there were features in this case which distinguished it from others. First, the requester was the natural daughter of the person who was the subject of the information. She was already aware of her mother's medical problems, and had played a primary supportive role towards her mother during her final illness. Secondly, the requester sought to obtain the records for her own information rather than for any dissemination in the public arena. Thirdly, there was the possibility that the files might contain information relevant to the requester's own health. Fourthly, it was possible that if the requester had applied to a Court to be named as her

mother's legal '*personal representative*', such an application would have been granted, enabling her to obtain the files as of right. It seemed unnecessary to ask her to go to the expense of doing so when it was not required for any other purpose relating to her mother's affairs.

In these circumstances, and taking into account the contents of the file, it seemed unlikely that the mother would have objected to the records being made available to her natural daughter. After consultation with the Privacy Commissioner, the view formed was that it was not necessary to withhold the information from this particular requester in order to protect her birth mother's privacy. However, given that this view was specific to her request rather than one made by any other member of the public, the information was released subject to the condition that the requester not make it available to any other person except her doctor.

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