

Request for information relating to alleged violation of a hospital patient

Legislation	Official Information Act 1982, s 6(c)
Agency	Crown Health Enterprise
Ombudsman	Sir Brian Elwood
Case number(s)	W35205
Date	November 1996

Request for information relating to alleged violation of a hospital patient—right to a fair trial—information withheld under s 6(c) pending outcome of legal proceedings—information released after proceedings concluded

A journalist requested information about a former staff member of a public hospital who had allegedly violated a patient. The requester sought information about how such an incident could occur in a public hospital and the steps taken to deal with the incident. The Crown Health Enterprise (CHE) refused the request pursuant to sections 6(c), 9(2)(a), 9(2)(ba)(i), 18(c)(i) and 18(c)(ii) of the OIA.

The CHE's main concern was that at the time the request was received, criminal proceedings were being brought against the former staff member. It believed, on the advice of its solicitors, that disclosure of any information before the proceedings were finalised would be likely to prejudice the trial. The court had granted a suppression order as to the details of the alleged offence. The main concern was that disclosure of information by the CHE at that time would be likely to prejudice one of the interests which section 6(c) seeks to protect: the right to a fair trial. The CHE was also concerned that should the staff member be acquitted of criminal charges, there would be Employment Court proceedings as the staff member had been dismissed as soon as the allegations were made by the patient.

Notwithstanding its view that there was good reason to withhold the information in terms of section 6(c), the CHE recognised there was a public interest in disclosure of information as to its policies, practices and procedures relating to care of its patients against sexual misconduct

by staff members. In this context, the CHE was not so much refusing to make the information requested available, but rather considered itself unable to make available any information at that time because disclosure of the information would be likely to prejudice matters currently before the High Court and other Employment Court matters that might consequently ensue. Once the legal proceedings were resolved, the CHE believed it would be able to reconsider the request with a view to making available such information as could be disclosed without prejudice to interests protected under the OIA.

The requester accepted the CHE's concerns, but sought confirmation that the legal proceedings were in train and that once they were concluded the CHE would reconsider its decision without the need for a fresh request. The CHE confirmed that legal proceedings were being actively pursued and agreed to review its decision in light of the Court decision. Following the outcome of the legal proceedings the CHE provided the requester with the information requested.

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