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| Request for full internal report of health care |
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| Legislation Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i), 9(2)(g)(i)  Agency Crown Health Enterprise  Ombudsman Anand Satyanand  Case number(s) W38403, W39515, W39584  Date October 1998, January 1999 |

*Requests for full internal report by a Crown Health Enterprise following public tragedy—contents included personal health information conveyed in confidence, interviews with CHE staff and other individuals, peer review, conclusions and recommendations—confidentiality of personal health information—‘doctor/patient’ relationship—protection of free and frank opinions—some information released, some withheld—competing public interest considerations—accountability for public health care*

Two newspapers and a member of a victim’s family requested the full internal report produced by Capital Coast Health (CCH) after a public tragedy involving the death of several people at the hands of a person who had been a patient under the care of CCH at the time the tragedy occurred.

Some of the information in the report comprised details of the medical care given to the patient over a period of time and included information conveyed by the patient in confidence to doctors and other medical staff. This information was initially withheld in full, in reliance upon sections 9(2)(a) and 9(2)(ba)(i) of the OIA. After informal consultation with the Privacy Commissioner, it was found that section 9(2)(a) applied to some of the information at issue. Although there was a countervailing public interest consideration in terms of CCH’s accountability for the standard of care it provided, this consideration did not outweigh the need to protect the significant privacy interests of the patient, the patient’s family members and the privacy interests of medical staff who had been involved in the patient’s care.

However, a significant amount of information had in fact been made public in the course of the extensive media coverage preceding and during the patient’s trial. As a consequence, it was considered that it was not *‘necessary’* in terms of section 9(2)(a) to withhold information which had previously been published in order to protect the privacy interests which had been identified. It was suggested that a summary of the information which had already been made public be released.

Notwithstanding the previous publication of information, CCH believed that, with the passage of time and a change in the care being provided to the patient, release of the suggested summary would prejudice the future care of the patient. CCH argued that the information in the summary was information which the patient had *‘supplied in confidence’*. The patient had since been made the subject of a compulsory treatment order, and release of the summary *‘would be likely to prejudice the supply of similar information’*. Further, it was in the public interest that the patient continue to supply information in an on-going treatment situation and that the convention of *‘doctor/patient’* confidentiality be preserved.

These factors were balanced against the strength of the public interest in the accountability of CCH for the standard of care provided to the patient in this case. On balance, it was concluded that the need to withhold the information in question, both in its original form as well as in a summary, in reliance on section 9(2)(ba)(i) was not outweighed by the public interest consideration favouring disclosure.

For similar reasons, the view was also formed that section 9(2)(ba)(i) applied to information in the report which reproduced the substance of confidential interviews conducted by the reviewer with CCH staff and other individuals. No public interest considerations in terms of section 9(1) of the OIA were identified which outweighed the established need to withhold that information.

A factor in reaching this decision was that, during the course of the investigation and review, CCH agreed to release one of the appendices to the report which consisted of a letter from an independent adviser, auditing the report. The letter contained specific details relating to the medical condition and care of the patient and referred to the conclusions and recommendations contained in the report.

Initially CCH had released the recommendations made in the report but had withheld the conclusions in reliance upon section 9(2)(g)(i) of the OIA. This decision had been made on the basis that the doctor conducting the review had included in the conclusions a number of free and frank opinions relating to the decisions and procedures of the medical staff under review. It was argued that the effect of release of this information would be likely to inhibit reviewers from being so free and frank in future.

Although it was accepted that section 9(2)(g)(i) might apply to the information, an assessment had to be made in terms of section 9(1) as to whether there were countervailing public interest considerations favouring disclosure. The view was formed that there was a strong public interest in the public being assured that a comprehensive inquiry had been conducted by CCH and the information contained in the conclusions provided such an assurance. Notwithstanding the weight of the argument supporting the need to withhold the information, the countervailing public interest consideration tipped the balance in favour of disclosure of the conclusions. CCH released the information to the requesters.

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