

Request for psychiatric records of deceased sister

Legislation	Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i)
Agency	Hospital and Health Services
Ombudsman	Sir Brian Elwood
Case number(s)	W42031
Date	October 1999

Request for psychiatric records of deceased sister—records included notes from medical professionals and family members—privacy established—public interest considerations outweighed need to withhold all information

In this case, the sister of a deceased psychiatric patient sought a review of the refusal by Healthcare Hawkes Bay to provide her with the medical records for her sibling. Although the records in question dated from 13 years previously, the requester wanted the information to settle ongoing personal issues in relation to her late sister's medical condition, treatment and suicide.

The hospital withheld the information, which included comments from consultants and family members, in reliance upon section 9(2)(a) of the OIA in order to protect the privacy of the deceased, of family members and of those responsible for the patient's care.

In the course of the review a number of factors emerged as relevant. First, it was clear that any notes on file about the deceased made by medical specialists, consultants and nurses had been provided by those persons solely in their professional capacity. The argument that those persons have a privacy interest in the information at issue was therefore not persuasive. As a consequence, section 9(2)(a) could not be said to apply to that information.

The hospital also raised section 9(2)(ba)(i) of the OIA as a reason for withholding this information, on the basis of the obligation of confidence between patients and their medical advisers. It was accepted that an obligation of confidence may often be applicable to information by medical professionals concerning their patients. This is the first limb of the test required before section 9(2)(ba)(i) can be said to apply to any information. However, the second limb of the test requires that disclosure 'would be likely' to prejudice the supply of similar information or information from the same source in the future. This limb of the test was

not met in this instance. It was considered unlikely a medical professional would refuse to make available medical notes similar to those at issue in this matter, by virtue of this patient's notes being released to her sister. The views on this matter were very specific to the circumstances of the case and did not purport to establish any particular approach for the future.

A further relevant factor arose from the deceased having died intestate. Therefore, although it was clear that the deceased had a privacy interest in the information at issue, in the absence of a will there were no trustees or executors to be consulted with regard to the deceased's privacy interests. It was noted, however, that the requester had assisted with her sister's burial and been actively involved in the organisation of her sister's personal belongings.

The identity of the requester was clearly a relevant factor. It was also relevant that the medical notes indicated there had been a close relationship between the deceased and the requester, that the requester wanted the information for valid personal reasons, and that the medical records dated from over a decade previously.

In the particular circumstances, the view was formed that the privacy interests of the deceased were outweighed by the public interest in terms of section 9(1) of the OIA in family members being able to obtain sufficient information from hospital services to satisfy questions as to diagnosis and treatment of close family member. Following consultation, the Privacy Commissioner advised that he was in agreement with this view.

However, different considerations applied to the comments in the medical notes made by family members (other than the requester) and by friends of the deceased. These persons had not been (and in some cases could not be) consulted on the release of this information, and given the content of the specific comments involved, it was considered necessary to withhold those passages under section 9(2)(a). A summary was provided to the requester which indicated the nature of the information withheld. The Privacy Commissioner was in accord with the view that there was no clear public interest in releasing these passages.

The hospital made the medical records available to the requester with only minor deletions, and provided the requester with a summary of those deletions.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.