

## Request by parents for medical records of 13 year old daughter

<b>Legislation</b>	Official Information Act 1982, ss 9(2)(a), s 27
<b>Agency</b>	Area Health Board
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	C192
<b>Date</b>	Published April 1993

Note: This investigation took place prior to the enactment of the Privacy Act 1993. At that time Part 4 of the OIA and LGOIMA governed people's right to access personal information about themselves. 'People' in this context included both individuals and corporate entities.

When the Privacy Act came into effect, individuals' rights to access personal information about themselves became governed by that Act. This left Part 4 as a special code within the OIA and LGOIMA governing access by corporate entities to personal information about themselves.

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### *Request for medical records—information about parents and child refused under s 9(2)(a)—during review girl consulted—information released other than therapy transcripts*

A girl, aged 13 at the time of this investigation and review, had been subjected to sexual abuse on an ongoing basis some five to eight years previously. Her parents had not been involved in the abuse in any way. When the abuse was discovered, the girl received counselling and treatment as an inpatient at a public hospital. Her parents were seeking access to all the records about their daughter held by the area health board.

Her mother was particularly concerned to have access to records of physical examinations, so that she should be in a position to reassure her daughter on matters arising in the ordinary course of adolescence. She also felt that her daughter had difficulty in talking about what had happened to her, and that she would find this easier if her parents were in possession of all the facts. Both parents considered that they had not been sufficiently advised or consulted during the girl's stay in hospital.

The first response of the Board to the request was to decline it for privacy reasons. It transpired that the decision was made in the mistaken belief that the information was required for a television programme, and once the mistake was corrected, the Board released most of the information that was personal information about the parents.

It was then necessary for the Chief Ombudsman to consider how best to determine where the girl's privacy interests lay. In the case of a very young child, the Chief Ombudsman would normally consider an information request by a parent as being made on behalf of a child unless there was a conflict of interest between parent and child. Information should then be released unless there was good reason to withhold it under section 27 of the OIA.

In this case, however, the girl was now 13 years old. The Chief Ombudsman was advised by Board medical staff that she would be quite capable of holding an opinion on her privacy interests. While her opinion would only be one factor to be considered in reaching a view on the merits of the case, the Chief Ombudsman did not feel he could proceed without knowing how she felt about the information.

An investigating officer visited the girl and her mother and spoke with them both separately and together. It became apparent that the girl was quite keen for her parents to have access to most of the information, but that she had some reservations about information contained in the transcripts of therapy sessions. These had, after all, taken place some five years previously and although she remembered in general what had been said and done, she had no clear recollection of detail. She said she would like to see the material for herself before making up her mind how she felt about it.

At this point the Board decided to release to the parents all information other than the therapy transcripts, a small amount of similar information held on nursing notes and some references to other children. The last-mentioned items were not in dispute.

The Chief Ombudsman formed the view that the therapy transcripts were properly withheld for the time being to protect the girl's privacy. The Board was prepared to make arrangements for her to view the information under supervision of a counsellor, and the Chief Ombudsman concluded his investigation and review on the basis that when this had been done, the Board would reconsider the request.

At a later date, the parents decided that they did not wish their daughter to see a counsellor, and asked the Chief Ombudsman to recommend that the Board release the remaining information to them. Without their daughter's views on the information, however, the Chief Ombudsman did not feel able to form an opinion.

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