

Managing access to patient records after adverse outcomes

24 October 2016

What we will cover today

Document access over time

Pre-litigation

Litigation



Activity

Creation of documents

Discovery

Freedom of Information



Slater Gordon

12 January 2015

RECEIVED BY
FOI
13 JAN 2015

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Correspondence to:
Lawyer: Rachael Nevill
Legal Assistant: Kaiti Graham

I have been consulted by my client to investigate and advise in relation to a potential claim for damages.

My client was admitted to your hospital for treatment. Under the Freedom of Information Act, I request a copy of my client's complete hospital record and any health information relating to, or relating to my client, including, but not limited to complete copies of:

- all pathology investigations
 - Incident reports
 - Root cause analyses
 - all incoming, outgoing and internal correspondence (including all reports to and from all specialists, health professionals and/or health service providers as well as correspondence or information shared between hospital departments)
 - all patient liaison records
 - all theatre logs
 - all records and notes of any meetings regarding mortality or morbidity reviews
 - all copies of any photographs and videos (including those taken on smart phones)
- Please ensure that your response includes any radiological images, ideally via CD. If such copies are not available please forward the original films. If the information is held by another provider please contact my assistant on (03) 9602 6885.

Current FOI applications

Current FOI applications

Accessed

- Hospital record
- Pathology investigations
- Incident reports
- Patient liaison records
- All theatre logs
- Copies of photographs and videos
- All radiology investigations and reports

Freedom of Information Act

Section 25A

- Would 'substantially and unreasonably' divert resources

Section 25

- Information in the document is irrelevant to the request

Freedom of Information Act

Section 30(1)

- disclosure; would disclose matters in the nature of opinion, advice or recommendation prepared by hospital staff or consultation or deliberation that has taken place between hospital staff
- deliberative processes involved in the functions of the hospital or the government disclosure would be contrary to the public interest

Section 35(1)

- disclosure; would divulge information communicated in confidence
- such disclosure would be contrary to the public interest
- reasonably likely to impair the ability of the hospital to obtain similar information in the future.

A grayscale image of a human hand, palm facing forward, with a red rectangular stamp overlaid on the center. The stamp contains the words "ACCESS" and "DENIED" in white, bold, sans-serif capital letters, stacked vertically. The background features a blue geometric pattern of overlapping triangles on the right side.

**ACCESS
DENIED**

Case studies



Case studies



Case studies



Protection of documents



Caroners Court of Victoria
Victorian Institute of Forensic Medicine

Coronial processes

Image source: philipdalidakis.com.au



Root Cause Analyses



**Incident reports vs
Incident investigations**

Key messages

- persons participating expressly given the assurance information they provide will be confidential
- those participating actively sought a confidentiality guarantee before participating
- documents are kept separate from other medical records
- marked as CONFIDENTIAL
- no prior publication, e.g. through an FOI request or otherwise
- that the 'open disclosure' policy does not result in such disclosure that would prevent public interest immunity been claimed
- does not involve all RCA documents being released
- that disclosure will impair the ability of the hospital and risk management team to investigate and identify causation and system factors for specific adverse events

Thank you