

LEGISLATIVE DEVELOPMENTS

Information rights under the Private Hospitals Regulation

Another piece of legislation introduced since the start of the *FoI Act* aims to expand access to medical records for patients (and former patients) of private hospitals, including nursing homes.

The *Private Hospitals Regulations 1990* (under the *Private Hospitals and Day Procedure Centres Act 1988*) requires the licensee to make a patient's clinical records available for inspection at the hospital to the patient, or the patient's representative, or a person nominated by the patient or by the patient's representative and approved by the licensee.

When the patient disagrees with the clinical record, the licensee must attach a notation to the record if the patient wishes to do so.

The licensee may refuse access to the clinical record if:

- the medical practitioner in charge of the patient's care advises that the request should be refused; and
- the licensee is satisfied that access . . . would be prejudicial to the patient's physical or mental health.

In the case of the licensee refusing access, the reasons for the refusal must be in writing.

The patient (or representative) may appeal to the Director-General of Health about a refusal and, in determining such an appeal, the Director-General may direct that access be given, with or without conditions [Clause 1.6.3 (1)-(11)].

Source: FoI Update, NSW.

OVERSEAS DEVELOPMENTS

HUNGARY

A draft Bill on the protection of personal data and on the openness of public interest data, was introduced in the Hungarian Parliament on 20 June. A previous Bill from two years ago had been dropped due to some drafting problems and the view of the government that it was not yet ready for such legislation. Dr Pal Konyves-Toth of Budapest, who had been instrumental in the evolution of the Bill, told *Access Reports* that while the Bill has been considerably delayed it has been beneficial because some urgently needed changes have been made. The interesting thing about this first data protection/FoI Bill to emerge in Eastern Europe is that it combines the two concepts in one Bill. Toth told a data commissioners' meeting two years ago that the proposed Bill was modelled on Ontario's *Freedom of Information and Protection of Privacy Act*.

Though the Bill might be patterned on the Ontario concept, many of the similarities end there since the thrust in this Bill is data protection along the European model. Hungary signed the Council of Europe Convention on Data Protection last year and in this spirit the principles are mirrored in the proposed Bill. It covers both the public and private sector for data protection and creates a data protection registrar.

The proposed Bill sets up a data protection regime for the public and private sectors, referred to in the Bill as the self-governing sectors, while calling for access to documents in the public sector. Any citizen can access data except where it is exempt under the *Public Interest Act*. If a citizen fails to gain access then an appeal can be made to the court and the court can order release if it is satisfied with the terms of the request. There is a 15-day time limit in which the government must respond to the request and the time is measured from when the request is received or, in more anomalous language, the official responsible first has knowledge of the request. Fees can be set but no specifics on this are given.

A Data Protection Commissioner is to be elected by Parliament and a Data Protection Bureau set up under him/her. The Commissioner will not deal with freedom of information requests regarding refusals of access, since that is left to the courts, but may deal with complaints by citizens regarding administrative matters in the handling of their requests.

The Bill sets out all the data protection principles to be set up including: powers to prohibit the transfer of data abroad, security of data, the right of the citizen to access and correct data, the right to prevent the processing of data, except in special circumstances, the setting up of Registers and the process by which data handlers shall register data. It also spells out the methods whereby the Data Protection Commissioner shall administer the Act and cause the data to be registered and handle complaints. The proposed Registrar shall also have extensive investigatory powers.

Claims against the abuse of personal information or the improper handling of information can result in the individual going to court to seek damages. A limit is set on the damages to be set. Certain groups are exempted from registering their data and extensive exceptions are given for registering data if:

- (a) it contains data of persons, being with the data handler in labour membership, student or customer relation;
- (b) it is governed by the internal rule of a church, sect or religious community;
- (c) it contains personal data relating to the illness and state of health of the person being cared for by health services, for the purpose of medical treatment, preservation of health or justification of social security claim required by the European Draft Directive on Data Protection.
- (d) it contains data serving the purpose and registry of material and other social assistance of the person concerned;
- (e) it contains personal data of persons subjected to official procedure, public or court prosecution, relating to the implementation of the procedure;
- (f) it contains personal data for the purpose of government statistics, provided that in the process of statistical prepara-