

**Murray C.J.
Denham J.
Hardiman J.
Fennelly J.
Macken J.**

BETWEEN/

THE GOVERNORS AND GUARDIANS OF THE HOSPITAL FOR THE RELIEF OF POOR LYING IN WOMEN, DUBLIN

APPELLANT

AND

THE INFORMATION COMMISSIONER

RESPONDENT

Judgment delivered the 19th day of July, 2011 by Denham J.

1. This appeal raises two questions. First, whether the Freedom of Information Acts 1997 and 2003 apply to records created in 1922. Secondly, whether the information sought is exempt from disclosure.
2. The information sought is contained in records created by the Rotunda Hospital in 1922 and it relates to a patient. The Rotunda Hospital refused a request for information, but the request was allowed by the Information Commissioner. The Rotunda Hospital appealed that decision to the High Court, unsuccessfully, and has now appealed to this Court.
3. Thus this is an appeal by the Governors and Guardians of the Hospital for the Relief of Poor Lying-In Women, Dublin, the appellant, referred to in this judgment as "the Rotunda", from the decision of the High Court (McCarthy J.) given on the 2nd July, 2009, when the High Court dismissed an appeal against the decision of the Information Commissioner, the respondent, referred to in this judgment as "the Commissioner".
4. A number of terms are used in this judgment. The Freedom of Information Acts, 1997 and 2003 are referred to collectively as "the Act". The Freedom of Information Act 1997 (section 28(6)) Regulations 1999 (S.I. No 47/1999) are referred to as "the Regulations". The records at issue are referred to as "the records". The information sought is the age of a patient in the Rotunda at the date when she gave birth in 1922 and is referred to as "the information". The request was made by Dawn Walsh for her father Thomas Joseph Walsh who sought to trace the identity of his birth mother, they will be referred to as "the requester".
5. A notice to vary was filed by the Commissioner, appealing the decision of the High Court on a number of grounds.
6. The Rotunda seeks an order quashing the decision of the Commissioner dated the 14th day of December, 2007, on the grounds that it is erroneous in law. The decision of the Commissioner followed a review by the Commissioner, under s.34 of the Act, of the Rotunda's decision to refuse to grant the request made by the requester for records relating to a Ms. Bridie or Ms. Brigid Walsh/Welsh (hereinafter referred to as "Bridie Walsh"), Thomas Joseph Walsh's mother. The Commissioner directed the Rotunda to grant access to the information, in the form of a copy of two entries in the Hospital's records stating the age of Bridie Walsh in 1922 on the date upon which she gave birth to Thomas Joseph Walsh.
7. On the 2nd day of July, 2009, the High Court delivered judgment and dismissed the Rotunda's appeal. At the conclusion of his reserved judgment, the learned High Court Judge summarised his position as follows:-
 - (a) I am entitled, and do, address a fresh or new issue of law even when not canvassed or dealt with by or before the Commissioner. I am not entitled to receive additional evidence since the appeal is on a point of law only.
 - (b) The new issue raised by the hospital is that of whether or not the record in question, created, as it was, before the commencement of the Act, falls within the Act's ambit. This is dependent on whether or not the information contained in the record is personal information which relates to Mr. Walsh.
 - (c) In as much as such information is personal information which relates to him, the Act is applicable.
 - (d) The question arises as to whether or not the record contains information of the same kind as that contained in the record in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significance size and is available to the general public: it is.
 - (e) Whether or not it was, in strictness, part of the Commissioner's decision I consider that Mr. Walsh as next of kin of the late Bridget Walsh has an entitlement to access by virtue of the provisions of s. 28(6)(b); falls within the class of persons entitled to disclosure by virtue of the regulations made by S.I. No. 47/1999.
 - (f) That the record does not enjoy the necessary quality of confidentiality for the purpose of prima facie prohibiting disclosure, under the provisions of s. 26 of the Act.
 - (g) No necessity arises to consider the discretionary disclosure of either personal information or confidential information but in as much as the latter was addressed by the Commissioner and at the hearing, I have sought to address certain principles which must be applied by the Commissioner when exercising the latter discretion."

Appeal

8. The Rotunda has appealed the judgment and order of the High Court. The grounds relied upon in the notice of appeal are set out below. It was submitted that the learned trial judge erred in law and in fact or on a mixed question of law and fact as follows:-

(a) In finding that the Act applies to the records in issue in circumstances where the creation of the records pre-date the commencement of the Act, and further, where the records do not come within any of the exceptions to section 6 of the Act.

(b) In holding that the information in question, namely the age of a patient of the Rotunda and, in particular, the age of that patient at the date she gave birth, relates to personal information about the individual who made the request, or her father, and generally in finding that the age of any one individual could be said to be personal information or to relate to personal information about another individual on the basis of the relationship between those individuals.

(c) In failing to hold that the information is personal information which is exempt from disclosure pursuant to the provisions of section 28(1) of the Act, in circumstances where the definition of personal information pursuant to section 2(1)(vi) of the Act includes information relating to the age of an individual.

(d) In holding that the records contain information of the same kind in respect of individuals generally, or a class of individuals that is, having regard to all of the circumstances, of significant size, is available to the general public.

(e) In holding that as information of the same kind as that contained in the records in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significant size, is available to the public, the provisions of section 28(2)(c) of the Act are applicable and the prohibition on disclosure of personal information contained in section 28(1) of the Act therefore does not apply.

(f) In holding that the information/the records does not possess the necessary quality of confidence for the purpose of prima facie prohibiting disclosure pursuant to the provisions of section 26 of the Act.

(g) In finding that what is advanced by the Rotunda is a claim for confidentiality within the terms of the Act.

(h) In failing to hold that the information was given to the Rotunda in confidence and on the understanding that it would be treated by the Rotunda as confidential.

(i) In failing to hold that disclosure of the information could prejudice the giving to the Rotunda of further similar information from other persons and that it is of importance to the Rotunda that such further similar information should continue to be given to the Rotunda.

(j) In finding that no right to privacy exists in deceased persons.

(k) In finding that the requestor was entitled to establish a right of access pursuant to the provisions of section 28(6)(b) of the Act and pursuant to the provisions of the Regulations.

(l) In holding that the Rotunda was in a position to determine as a matter of fact or probability, whether an individual was deceased for the purpose of considering whether the requestor could establish a right of access pursuant to the provisions of section 28(6) of the Act and the regulations and/or in considering (whether implicitly or otherwise) that the Rotunda was entitled as a matter of law to make that assumption.

(m) The learned trial judge erred in law in his application of section 28(6) of the Act as the requestor is unable to establish:

(i) that the individual to whom the records relate is deceased; and

(ii) that she is a member of the class of individuals specified in the regulations.

(n) In holding that the standard of proof required in respect of identity and/or in respect of the relationship between two individuals and/or in respect of death is on the balance of probabilities.

(o) In failing to apply or in incorrectly applying the balancing test pursuant to section 26(3) of the Act without any due regard to the highly confidential and sensitive nature of the information.

(p) In all of the circumstances, the learned trial judge erred in law in making a decision that requires the Rotunda to release the records.

Notice to Vary

9. The Commissioner filed a notice to vary. The Commissioner advanced the following grounds:-

(a) That the learned trial judge erred in fact and/or in law in failing to award to the Commissioner the entirety of the costs of and incidental to the High Court appeal.

(b) That the learned trial judge erred in fact and/or in law in awarding to the Commissioner one half only of the costs of the High Court appeal.

(c) That the learned trial judge erred in fact and/or in law in holding that the Rotunda was entitled to address a new issue of law before the High Court to impugn the correctness in law of the decision of the Commissioner the subject matter of the High Court appeal, in circumstances when same was not canvassed before the Commissioner at first instance in the course of the Commissioner's review under section 34 of the Freedom of Information Acts 1997 and 2003.

(d) That, in permitting the Rotunda to raise an issue of law not canvassed before the Commissioner at first instance in the course of the Commissioner's review under section 34 of the Act the learned High Court Judge erred in law in failing to have any, or any adequate, regard to the burden of proof placed on public bodies such as the Rotunda to show to the satisfaction of the Commissioner that a decision to refuse to grant a request for access is justified, and in failing to have any, or any adequate, regard to the presumption of non-justification of a refusal to grant access required by that section to be observed by the Commissioner.

(e) That the learned trial judge erred in fact and/or in law in holding that personal information coming within the non-exhaustive list set out at sub-paragraphs (i) and (xii) in the definition of "personal information" at section 2(1) of the Act was not also required to satisfy the requirements of paragraphs (a) and (b) of that definition in order to come within the said statutory definition.

Decision of Commissioner

10. On the 14th day of December, 2007, the Commissioner made the decision which is in issue on this appeal. The background was set out, which included the following. On the 21st September 2004, Dawn Walsh made a Freedom of Information request on behalf of her father to the Rotunda for information about his mother, Dawn Walsh's grandmother, Bridie Walsh, who gave birth to Thomas Joseph Walsh on the 10th May, 1922, in the Rotunda. The requester sought an address, date of birth and age of Bridie Walsh. On the 21st October, 2004, the Rotunda informed the requester that a search of its records had confirmed an entry in the Labour Ward Book for 1922 showing that a "Bridie Walsh" had been admitted on the 10th May, 1922, had given birth to a male child on the same day and had been discharged from the hospital on the 18th May, 1922. The requester was told that the Labour Ward books do not record the patients' home address or date of birth and that access to this information was being refused on the basis that the record did not exist (s.10(1)(a) of the Act). While the Rotunda record did contain Bridie Walsh's age, access to her age was refused on the basis that such information was personal to her (s.28(1) of the Act).

There was an application for an internal review of this decision. This review was undertaken by the Master of the Rotunda, who upheld the refusal to give the information.

On the 11th of May, 2005, the requester applied to the Commissioner to review the matter. During the review by the Commissioner the Rotunda stated that it had located in the "Porter's Lodge Book", which is held in the National Archives, an entry which appeared to relate to Bridie Walsh's admission in 1922. It was stated that the address on that record matched that on Thomas Joseph Walsh's birth certificate and this was confirmed to the requester by letter dated the 6th July, 2005. The Rotunda informed the Commissioner's office that that information regarding the birth of Thomas Joseph Walsh was given to Thomas Joseph Walsh in response to a separate request. Bridie Walsh's marital status, as recorded, was also disclosed by the Rotunda.

The requester provided copies of Thomas Joseph Walsh's birth and baptismal certificates. The requester stated that he had been "boarded out" or placed "at nurse" at various addresses in the Dublin area from 1922.

11. The scope of the review by the Commissioner was limited. It was pointed out that Bridie Walsh's age in 1922 when she gave birth (and not her date of birth) was the only new information which the requester would receive if the records involved were to be released. The Commissioner stated:-

"This review is concerned solely with the question of whether the [Rotunda] is justified under the FOI Act, in its decision to refuse access to the two records (from the Labour Ward Book and the Porter's Lodge Book) which contain an entry for the age (in 1922) of Bridie Walsh. As my staff have clarified for you, the records provided to my Office contain limited information about Ms Walsh and do not include her date of birth. You appear to have accepted the [Rotunda's] position that no additional records can be found concerning your grandmother and your father's birth. Accordingly, this review will focus on the two records identified."

The Commissioner pointed out that the complex process has been undertaken in order to determine whether the then 85 year old John Joseph Walsh should be told the age of his mother as stated on the records when she gave birth to him in 1922.

The Commissioner stated:-

"One would have expected that commonsense would prevail and that this information could have been conveyed to your father, if necessary outside of the complexities of the FOI Acts, when the request was first made in 2004. Regrettably, this did not happen and it is now necessary to finalise the review through the issue of this formal binding decision."

12. Before the Commissioner, the Rotunda relied on exemptions under the Act. The Rotunda's argument was that those records should be refused on the basis that their release would involve the disclosure of personal information of an individual other than the requester (s.28(1) of the Act). Also, in the course of the review, the Rotunda argued that the information contained in the records had been obtained in confidence and that the records were exempt from release on this basis also (s.26(1)(a) and (b) of the Act).

13. As to the issue of the age of Bridie Walsh, the Commissioner reviewed the position of the General Register Office on births, deaths and marriages and the availability of information as to a person's age from that source. It was found that s.28(2)(c) of the Act applied in relation to the age of Bridie Walsh, this had the effect of overturning the exemption of s.28(1), and so it was not therefore necessary to make findings on other exemptions.

14. The Commissioner pointed out, regarding s.28(6)(b) of the Act, that where a next of kin seeks records relating to a deceased person, he or she will generally have an entitlement to gain access to such records within the terms of s.28(6)(b) of the Act and article 3(1)(b)(iii) of the Regulations, subject to there not being any other statutory exemption which prohibited release of the records. In this case the Commissioner found that s.28(1) did not apply, by virtue of s.28(2)(c), and so it was unnecessary to address the issue in this case. But was stated:-

"However, I think it is relevant to note that, even if the section 28(1) exemption were found to apply, it is likely that the records relating to your late grandmother would fall to be released under the FOI Act to you and your father in accordance with the section 28(6)(b) provisions."

15. The Commissioner considered also the issue of information obtained in confidence. The issue for the Commissioner was the age of

Bridie Walsh in 1922. The Commissioner referred to the terms of s.26 of the Act. The Rotunda had submitted that the records (which disclose the age of Bridie Walsh when she gave birth in 1922) were exempt by virtue of s.26(1)(a) and (b) of the Act. The Commissioner held that in light of the other information which the requester has of Bridie Walsh, that the information about her age could not be treated as having the necessary quality of confidence. Thus the Commissioner did not accept that either of the provisions of s.26(1) applied and found accordingly. However, it was stated:-

"Even if one were to find that s.26(1)(a) applies, this is one of the exemptions which is subject to a public interest override, s.26(3). I am satisfied that if the public interest had to be considered, I would find that on balance the public interest would be better served by releasing the records than by their being withheld. The fact that one of the requesters in this case is the son of Ms. Walsh is a circumstance to which it is legitimate to have regard in applying the public interest test. Were it the case that the requester has no close personal tie to the person whose information is at issue (Ms. Walsh), then the public interest conclusion might be otherwise. However, the public interest in persons generally having the fullest possible information on their origins is a very strong one. In the circumstances of this case, I take the view that the public interest, on balance, would favour disclosure of the information to your father and yourself."

16. The decision of the Commissioner, having reviewed s.34(2) of the Act, was to annul the decision of the Rotunda and to direct the Rotunda to grant access in the form of a copy of the two entries in the records identified showing the age of Bridie Walsh in 1922.

17. The Rotunda appealed that decision on a point of law to the High Court, and has now appealed the dismissal of the appeal by the High Court to this Court on a further appeal.

Decision

New issue of law

18. The first matter is whether the High Court was entitled to consider whether the Act applied to records made in 1922, although that issue had not been raised before the Commissioner. I am satisfied that once an issue as to the jurisdiction of the Court arose the learned trial judge was correct to consider the matter and to make a determination. The record in issue was created in 1922, long before the passing of the Act. Thus the Court was entitled, and indeed had a duty, to consider whether it had jurisdiction. Jurisdiction may not be conferred by consent of parties to litigation, even if it is given. It is thus a matter for the court, when such an issue is raised, to decide whether or not it has jurisdiction. Further, the issue was not an isolated issue, but is one which affects other cases. Also, it is an issue fundamental to the analysis of the Act, and to the question as to whether the Act applies in this case. Consequently, I am satisfied that the learned trial judge was entitled to address the question as to whether the records, created in 1922, before the commencement of the Act, fall within the ambit of the Act. I would dismiss this ground of appeal.

The temporal issue

19. The next issue on this appeal is whether the Act applies to records created in 1922, in other words whether the Act applies to information recorded long before the commencement of the Act. This was referred to as "the temporal issue".

20. The long title of the Act of 1997 describes it as:-

"An Act to enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and, accordingly, to provide for a right of access to records held by such bodies, for necessary exceptions to that right and for assistance to persons to enable them to exercise it, to provide for the independent review both of decisions of such bodies relating to that right and of the operation of this Act generally (including the proceeding of such bodies pursuant to this Act) and, for those purposes, to provide for the establishment of the Office of Information Commissioner and to define its functions, to provide for the publication by such bodies of certain information about them relevant to the purposes of this Act, to amend the Official Secrets Act, 1963, and to provide for related matters."

Thus the expressed purpose of the Act is to enable the public to have access to information held by public bodies, to the greatest extent possible consistent with the public interest and the right to privacy.

21. Subject to the provisions of the Act, a person has a right, on request, to be offered access to any record held by a public body, this is called the right of access. A public body has a duty to give reasonable assistance to a person seeking a record under the Act.

22. The records to which this Act applies are described in s.6(4), as:-

"(4) The records referred to in subsection (1) are records created after the commencement of this Act and—

(a) records created during such period (if any), or after such time (if any), before the commencement of this Act, and

(b) records created before such commencement and relating to such particular matters (if any), and

(c) records created during such period (if any) and relating to such particular matters (if any),

as may be prescribed, after consultation with such Ministers of the Government as the Minister considers appropriate.

(5) Notwithstanding subsections (1) and (4) but subject to subsection (6), where—

(a) access to records created before the commencement of this Act is necessary or expedient in order to understand records created after such commencement, or

(b) records created before such commencement relate to personal information about the person seeking access to them,

subsection (1) shall be construed as conferring the right of access in respect of those records.

...

(7) Nothing in this section shall be construed as applying the right of access to an exempt record."

[emphasis added]

23. Section 6 was amended by s.4 of the Freedom of Information (Amendment) Act, 2003. However, it does not appear to have any relevance to this case

24. Thus s.6 of the Act applies to records created after the commencement of the Act and to certain records created before the commencement of the Act. Section 6(5)(b) states that there is a right of access to records created before the commencement of the Act which "relate to personal information about the person seeking access to them". The Minister is given power to prescribe records.

25. Therefore, on the temporal issue, the Act may apply to information recorded before the commencement of the Act. However, this is limited as described in the Act. There is a right of access to records created prior to the commencement of the Act which relates to personal information about the person seeking access. Thus there is a right of access by the requester to records created prior to the commencement of the Act which relates to personal information about him.

Personal Information

26. The next question is whether the information requested is personal information about the person seeking access to the records.

27. Section 28(1) related to personal information and prohibits access in the following terms:-

"Subject to the provisions of this section, a head shall refuse to grant a request under section 7 if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual)."

28. "Personal information" is a term defined in s.2 as:-

"personal information" means information about an identifiable individual that—

(a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or

(b) is held by a public body on the understanding that it would be treated by it as confidential,

and, without prejudice to the generality of the foregoing, includes—

(i) information relating to the educational, medical, psychiatric or psychological history of the individual,

(ii) information relating to the financial affairs of the individual,

(iii) information relating to the employment or employment history of the individual,

(iv) information relating to the individual in a record falling within section 6 (6) (a),

(v) information relating to the criminal history of the individual,

(vi) information relating to the religion, age, sexual orientation or marital status of the individual,

..."

[Emphasis added]

29. Thus, in general, personal information means information about a specific person. In this case the information is about Bridie Walsh. The information is held by a public body, the Rotunda, on the understanding that it would be treated as confidential.

30. The definition of "personal information" in the Act moves from the general to the particular. Included in the definition of "personal information" in s.2 of the Act are a number of specifics, including information relating to the age of the individual. As the only information sought is the age of Bridie Walsh at the date of the birth of Thomas Joseph Walsh, this information is prima facie personal information to Bridie Walsh.

31. However, there is an additional matter in issue. While the age of Bridie Walsh is personal information to her, the question is whether it is personal information to Thomas Joseph Walsh, her son? The request for the information was made by Dawn Walsh, but it was in essence on behalf of her father Thomas Joseph Walsh – son of Bridie Walsh.

32. Subject to s.28(1) of the Act, a request for information will be refused if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information, which includes that relating to age, and this includes personal information relating to a deceased individual.

33. We do not have specific information as to whether Bridie Walsh is deceased. She gave birth in 1922. In these civil proceedings I consider that the appropriate onus of proof to apply in assessing this issue is the probability test. Applying that test the probability is that she is deceased. Section 28(1) of the Act expressly includes personal information relating to a deceased individual. Thus it appears that this is personal information about Bridie Walsh, who is probably deceased, and so should be refused to a requester under s.28(1) of the Act. Therefore, it is necessary to see if any of the exemptions apply, including a request by a next of kin in relation to a deceased person.

Exemptions

34. Section 28(2) of the Act provides exemptions to the rule in s.28(1). Section 28(2) states that subsection (1) does not apply, subject to subsection (3), (which does not arise in this case), if, amongst other exemptions, it is:-

"information of the same kind as that contained in the record in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significant size, is available to the general public."

The Commissioner applied s.28(2)(i) in relation to the age of Bridie Walsh on the basis of the information in the Register of Births, Marriages and Deaths, and decided that s.28(1) did not apply. Consequently no further findings on the exemptions were made by the Commissioner.

35. I respectfully disagree with this analysis. It is of course true that the Register of Births, Marriages and Deaths provides information on the births, and hence the age, of individuals. However, while the Register is open to the public it does not mean that the information "is available to the general public". If there was a person with an unusual name then perhaps it might be possible to find the age of such a person from this public register. But with a name such as Bridie Walsh, I expect that there were many persons born who were given that name in the first decade or so of the nineteenth century. I am satisfied that the information as to the age of Bridie Walsh in 1922 is not "available to the general public". Specific information is necessary to avail of the information. The concept behind the exemption is that the information "is available to the general public" and therefore there is no need for an exemption.

36. Indeed, if it were possible to access the information in this way it is reasonable to assume that the requester would have already obtained the information years ago. For, while the register of births is open to the public, the information may not be available to the general public. Thus I do not consider that s.28(2)(i) applies to this case.

Deceased Person

37. There are specific provisions in relation to requests by next of kin. The next issue is whether the information would be released to the requester under s.28(6)(b). Section 28(6) of the Act provides that the Minister may make regulations for the grant of a request where:-

"(b) the individual to whom the record concerned relates is dead and the requester concerned is a member of a class specified in the regulations."

38. Under the Regulations, by 3(1), it is provided that:-

"Notwithstanding section 28(1), a request under section 7 in relation to a record access to which involves the disclosure of personal information (including personal information relating to a deceased individual) shall, subject to the other provisions of the Freedom of Information Act, 1997, be granted where:

...

(b) the individual to whom the record concerned relates is dead ("the individual") and

the requester concerned belongs to one of the following classes of requester :

...

(iii) the spouse or a next of kin of the individual or such other person or persons ..."

39. As found earlier, in all the circumstances of this case, it is probable that the individual, Bridie Walsh, is dead and that Thomas Joseph Walsh is her son, and next of kin. There was no contest on these facts. Thus this is a request for access which involves the disclosure of personal information of the deceased Bridie Walsh to her next of kin, the requester.

40. I would apply this provision accordingly and disclose the personal information of Bridie Walsh to her next of kin Thomas Joseph Walsh, by way of his daughter (granddaughter of Bridie Walsh), Dawn Walsh. This decision is sufficient to determine the appeal. However, two further important issues were raised and determined in the High Court upon which I express an opinion.

Confidentiality

41. The Rotunda submitted that these records were confidential. Section 26(1) provides that a request shall be refused if the record concerned contained information given in confidence and on the understanding that it would be treated as confidential. Further, that in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from persons and that it is important to the body that further similar information should continue to be given to the body.

42. I am satisfied that the information in issue was given in confidence, on the understanding that it would be treated as confidential. It is of understandable importance to the Rotunda that further similar information should continue to be given to the hospital. I am satisfied that this information is confidential. However, that is not the end of the matter. The Act provides that a discretion may be exercised.

Public interest balance

43. Section 26(3) provides for a discretion, stating:-

"Subject to section 29 , subsection (1) (a) shall not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under section 7 concerned."

Opinion

The "public interest" issue was not fully argued before the Court. I await another case to hear detailed submissions on this matter. However, my opinion on the issue at this time is as follows. There is discretion to be exercised under the statute. A balance has to be struck between the confidentiality of the document and the public interest. There is no doubt that the confidentiality of medical records is important for an individual, an institution, and the public. Such information requires protection. It is a matter of importance also that a hospital receives all the necessary information, from a medical aspect, and this would include the age of a patient. It is appropriate that a strong emphasis be placed on medical confidentiality.

However, the circumstances of each case require to be considered. Each case should be determined on its own facts. Consequently, it is necessary to consider the facts of this case. The facts of the case are clear. The information requested is the age of Bridie Walsh in 1922 when she gave birth to her son Thomas Joseph Walsh. The probability is that Bridie Walsh is dead and so I am

addressing this issue as personal information of a deceased person. Thomas Joseph Walsh is Bridie Walsh's son, and next of kin, he is in his eighties. He has already received information from the Rotunda. He knows her address, it matches that on his birth certificate, he knows her marital status. The information he seeks is the age of his mother at his birth in 1922. He seeks this information in his search for further information about his mother. While the information is confidential, and thus inherently protected, there are no significant countervailing factors.

The public interest is a factor which may be raised by an individual as well as by an institution. Balancing all the circumstances I am satisfied that the public interest favours the requester. On balance I would release the records in this case. The requester is the son and next of kin of the deceased. This is a factor which carries significant weight. It is an entirely different situation to a request from a person who has not got such kinship connections. In this case the requester seeks information of his mother and on balance, in all the circumstances, I am satisfied that the public interest would be better served by granting him the request.

Conclusion

44. Consequently, I would dismiss the appeal and for the reasons given would order that the information be disclosed by the Rotunda to the requester.