

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97015
Application S 51/94

Participants:

ROCHELLE MARGARET JESSER
Applicant

UNIVERSITY OF SOUTHERN QUEENSLAND
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - amendment of information - construction of s.53 of the *Freedom of Information Act 1992 Qld* - whether the entitlement to apply for correction or amendment of information in a document is confined to the information which relates to the personal affairs of the applicant for amendment, or whether it extends to other information in the document which does not relate to the personal affairs of the applicant for amendment - whether the information in issue can be properly characterised as information relating to the personal affairs of the applicant - whether the information in issue is inaccurate, incomplete, out-of-date or misleading - application of Part 4 of the *Freedom of Information Act 1992 Qld*.

Freedom of Information Act 1992 Qld s.5(1)(c), s.44(1), s.53, s.55, s.88(1)
Acts Interpretation Act 1954 Qld s.14A
Freedom of Information Act 1982 Cth
Freedom of Information Regulation 1992 Qld s.6, s.6(1)
Judicial Review Act 1991 Qld

Baldwin and Department of Education, Re (Information Commissioner Qld, Decision No. 96008, 10 May 1996, unreported)
Banks and Queensland Corrective Services Commission, Re (1995) 2 QAR 461
Brack and Queensland Corrective Services Commission, Re (1994) 1 QAR 414
Byrne and Gold Coast City Council, Re (1994) 1 QAR 477
Doelle and Legal Aid Office (Queensland), Re (1993) 1 QAR 207
Dyki and Federal Commissioner of Taxation, Re (1990) 22 ALD 124
Ryder and Department of Employment, Vocational Education, Training & Industrial Relations, Re (1994) 2 QAR 150
Stewart and Department of Transport, Re (1993) 1 QAR 227
Toomer and Department of Primary Industries and Energy, Re (1990) 20 ALD 275
Williams and Registrar of the Federal Court of Australia, Re (1985) 8 ALD 219

DECISION

1. In respect of applications 4, 5 and 6 (as identified in paragraphs 49, 52 and 55, respectively, of my accompanying reasons for decision), I affirm the decisions under review.

2. In respect of applications 1, 2, 3 and 7 (as identified in paragraphs 34, 41, 46, and 62, respectively, of my accompanying reasons for decision), I set aside the decisions under review. In substitution for them, I decide that the following amendments should be made to the documents identified in paragraph 4 of my accompanying reasons for decision as the Pearson document and the Barnett document:
 - (a) in respect of the Pearson document, add to page 2 the notations set out in paragraphs 45 and 66 of my reasons for decision, and add to page 6 the notation set out in paragraph 40 of my reasons for decision; and

 - (b) in respect of the Barnett document, amend point 3 on page 1 in the manner set out at paragraph 48 of my reasons for decision.

Date of decision: 8 October 1997

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F N ALBIETZ
INFORMATION COMMISSIONER

TABLE OF CONTENTS

	Page
<u>Background</u>	1
<u>External review process</u>	2
<u>General issues in the interpretation and application of s.53 of the FOI Act</u>	3
<u>Application 1</u>	9
<u>Application 2</u>	11
<u>Application 3</u>	11
<u>Application 4</u>	12
<u>Application 5</u>	13
<u>Application 6</u>	13
<u>Application 7</u>	15
<u>Conclusion</u>	16

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REASONS FOR DECISION

Background

1. Mrs Jesser seeks review of the respondent's refusal to amend information (recorded in two documents authored by staff members of the respondent) in the manner requested in seven applications for amendment lodged by her pursuant to s.53 of the *Freedom of Information Act 1992 Qld* (the FOI Act). (At the time the two documents in issue were created, the respondent's title was the University College of Southern Queensland, but I will refer to it throughout these reasons for decision as "the University".) The University contends that none of the information sought to be amended in the seven applications is information which relates to Mrs Jesser's personal affairs, and that the University is therefore not required to amend the letters under the FOI Act.
2. In November 1991, the University advertised a number of positions within the School of Management (which later became the Faculty of Business, and will be referred to in these reasons for decision as "the Faculty"). Mrs Jesser applied for one of two advertised positions of Tutor/Senior Tutor. On 19 December 1991, Mrs Jesser spoke to a staff member of the University concerning the possible supply of a referee report in respect of her application, and as a result of that conversation formed the view that she may be discriminated against in the selection process for the advertised positions because of her marriage to a Lecturer in the Faculty. On 20 December 1991, Mrs Jesser reported her concerns to an Equal Employment Opportunity (EEO) officer of the University. The EEO officer subsequently reported those concerns to a Personnel Department representative on the selection panel for the advertised positions.
3. The selection panel went on to assess applications for the purpose of shortlisting the best candidates for the advertised positions, and interviews with the shortlisted candidates were arranged. By letter dated 13 January 1992, Mrs Jesser was notified that she had not been shortlisted, and that she had until 5 pm on 16 January 1992 to lodge an appeal. Mrs Jesser

then delivered a letter dated 15 January 1992 to the Personnel Manager of the University (Mr Pearson), in which she requested counselling on her failure to be shortlisted, written reasons for that decision, and details of procedures followed in the shortlisting process so that she could consider whether to lodge an appeal. The University contends that, prior to the delivery of Mrs Jesser's letter dated 15 January 1992, the Dean of the Faculty (Professor Barnett) lodged with the Personnel Manager a memorandum dated 14 January 1992, withdrawing the advertised positions because of changed staff needs. Mrs Jesser disputes that the decision to withdraw the advertised positions took place before her letter was delivered.

4. By letter dated 16 March 1992, Mrs Jesser made a complaint to the Vice-Chancellor about discrimination in the selection process, and the handling of the matter by staff of the Faculty and the Personnel Manager. The Vice-Chancellor initially assigned responsibility for investigation of the complaint to the Acting Registrar, who sought a response to Mrs Jesser's complaint from the Personnel Manager, Mr Pearson. Mr Pearson provided his response by way of a memorandum to the Acting Registrar dated 7 May 1992. That memorandum (which I will refer to as the Pearson document) contains the information which Mrs Jesser sought to amend in her first, second, fourth, sixth and seventh applications for amendment. The Acting Registrar then made a report to the Vice-Chancellor, who in turn sought comments on the Acting Registrar's report from the Dean of the Faculty, Professor Barnett. The Dean responded by a memorandum dated 4 June 1992 (which I will refer to as the Barnett document) which contains the information which Mrs Jesser sought to amend in her third and fifth applications for amendment.
5. By a series of letters dated between 2 November 1993 and 14 February 1994, Mrs Jesser made seven applications for amendment in respect of different segments of information contained in one or other of the Pearson or Barnett documents. By various decisions dated between 22 December 1993 and 3 March 1994, Dr W K Timmins, FOI Co-ordinator of the University, decided that Mrs Jesser was not entitled to make those applications for amendment under the FOI Act, because the information she sought to amend did not relate to her personal affairs.
6. Mrs Jesser made applications for internal review, under s.60 of the FOI Act, in respect of each of Dr Timmins' decisions. Five of the applications for internal review were not dealt with inside the statutory time limit, thereby resulting in a deemed refusal to amend: see s.60(6) of the FOI Act. In any event, by letter dated 22 March 1994, Mr A Finch, Registrar of the University, communicated his decision to Mrs Jesser, confirming each of Dr Timmins' initial decisions to refuse amendment. On 24 March 1994, I received from Mrs Jesser an application for review, under Part 5 of the FOI Act, of the University's decisions refusing her seven applications for amendment.

External review process

7. I first obtained from the University copies of the documents which Mrs Jesser sought to amend, and other relevant correspondence relating to Mrs Jesser's complaints of discrimination against her in the relevant selection process.
8. Throughout the course of this external review, efforts have been made to resolve each application for amendment by a negotiated agreement. Possible amendments (including notations for addition to documents) which my staff considered may be acceptable to both participants were put forward for consideration by Mrs Jesser and the University. For its part,

the University, while not resiling from its position that there was no requirement for amendment under the FOI Act, indicated that it was willing to consider making amendments outside the framework of the FOI Act. In some instances, it indicated that it would have no objection to amendments proposed by my staff, and in others it suggested alternative notations, making submissions as to why the alternatives were more appropriate. Mrs Jesser agreed to consider possible alternative amendments, but, in the final outcome, declined to accept any of the amendments proposed, and made submissions as to why it was her right to have amendments made in the terms she had sought.

9. In the course of the review, I also expressed preliminary views to the participants about the manner in which s.53 applies, whether the information sought to be amended relates to Mrs Jesser's personal affairs, whether that information is inaccurate, incomplete, out-of-date or misleading, and the appropriate form any amendments might take. The participants have, in due course, provided submissions and/or evidence in response to my preliminary views.
10. In addition to her amendment applications to the University, and arguments raised in her application for external review, Mrs Jesser has put before me the following submissions and evidence in support of her case:
 - statutory declaration of Leone Carol Cameron dated 4 December 1992
 - statutory declaration of Peter Stewart Jesser dated 6 December 1993
 - statutory declaration of Rochelle Margaret Jesser dated 22 November 1993
 - statutory declaration of Rochelle Margaret Jesser dated 7 December 1993
 - letter dated 29 August 1994
 - letter dated 30 December 1994
 - letter dated 17 July 1995
 - letter dated 25 September 1995
 - letter from Peter Stewart Jesser dated 2 June 1997
 - statutory declaration of Peter Stewart Jesser dated 1 July 1997
 - letter dated 3 July 1997.
11. Mrs Jesser also met with a member of my staff on 9 September 1997, at which time she made a number of oral submissions and provided possible alternative notations for addition to the Pearson and Barnett documents.
12. In addition to the initial and internal review decisions made on its behalf, the University has provided me with the following submissions in support of its case:
 - letter dated 21 November 1994.
 - letter dated 3 May 1996.

General issues in the interpretation and application of s.53 of the FOI Act

13. Section 53 of the FOI Act provides:

53. If a person has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to—

- (a) the person's personal affairs; or*

- (b) *the personal affairs of a deceased person to whom the person is next of kin;*

the person is entitled to apply to the agency or Minister for correction or amendment of any part of the information if it is inaccurate, incomplete, out-of-date or misleading.

14. I have previously considered the application of s.53 in *Re Doelle and Legal Aid Office (Queensland)* (1993) 1 QAR 207; *Re Brack and Queensland Corrective Services Commission* (1994) 1 QAR 414 at p.426, paragraphs 48-50; and *Re Banks and Queensland Corrective Services Commission* (1995) 2 QAR 461. In *Re Doelle* (at p.212, paragraph 16), I said:

16. *Prior to considering the form which any correction of, or amendment to, information in a document of an agency or Minister may take, the following elements of s.53 of the FOI Act must be satisfied:*

- (a) *the applicant must have had access to a document of an agency or Minister, whether under the provisions of the FOI Act or otherwise;*
- (b) *the document must contain information relating to the applicant's personal affairs, or the personal affairs of a deceased person to whom the applicant is next of kin; and*
- (c) *the information or some part of the information referred to in (b) must be inaccurate, incomplete, out-of-date or misleading.*

15. Mrs Jesser has argued that she is entitled to amendment on three bases. First, she says that s.53 is so worded that as long as some part of a document relates to her personal affairs, she is entitled to seek amendment of any part of the document. Secondly, she argues that each of the documents as a whole relates to her personal affairs. She says that a "*complaint made by myself concerning my treatment by the University cannot be other than my 'personal affairs'. The response is undeniably a document which concerns or affects myself and therefore undeniably a document relating to my personal affairs*". Thirdly, she contends that each segment of information which she seeks to have amended comprises information relating to her personal affairs.

16. For the reasons set out below, I do not agree with the first or second arguments advanced by Mrs Jesser. I will consider her arguments in relation to individual segments of information when dealing with her separate applications for amendment later in these reasons for decision.

17. In *Re Stewart and Department of Transport* (1993) 1 QAR 227, I identified the various provisions of the FOI Act which employ the term "personal affairs" and discussed in detail the meaning of the phrase "personal affairs of a person", and relevant variations thereof in the FOI Act. I held that information concerns the "personal affairs of a person" if it is about the private aspects of a person's life, and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:

- family and marital relationships
- health or ill health
- relationships with and emotional ties with other people
- domestic responsibilities or financial obligations.

Whether or not information contained in a document is information relating to an individual's personal affairs (within the terms of s.53 of the FOI Act) is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

18. As to Mrs Jesser's first argument, I do not consider that a finding that some information contained in a document relates to the personal affairs of the applicant for amendment means that the applicant is entitled to apply for amendment of other information in the document which does not relate to the applicant's personal affairs. In construing s.53 of the FOI Act according to the ordinary and natural meaning of the words employed, I consider it clear beyond doubt that, in the phrase "the person is entitled to apply to the agency or Minister for correction or amendment of any part of the information", the words "the information" must refer to the only kind of information mentioned earlier in s.53, i.e., information relating to the personal affairs of the applicant for amendment (or to the personal affairs of a deceased person to whom the applicant for amendment is next of kin). Thus, Mrs Jesser's entitlement to apply for correction or amendment of information contained in the Pearson document or the Barnett document is confined to such information in those documents as can be properly characterised as information relating to Mrs Jesser's personal affairs.
19. Mrs Jesser has urged that reference be had to s.14A of the *Acts Interpretation Act 1954* Qld. I consider that the construction of s.53 of the FOI Act which I have stated above is the only construction which is logically open, giving the words their natural and ordinary meaning, and I can see no ambiguity in the wording of s.53 in that respect. Moreover, the ordinary meaning of the provision does not lead to a result that is absurd or manifestly unreasonable. Rather, I consider that it clearly achieves the purpose of the FOI Act in respect of amendment applications. In that regard, I note that s.5(1)(c) of the FOI Act provides:

Reasons for enactment of Act

5.(1) Parliament recognises that, in a free and democratic society—

...

(c) members of the community should have access to information held by government in relation to their personal affairs and should be given the ways to ensure that information of that kind is accurate, complete, up-to-date and not misleading. (my underlining)

20. Section 5(1)(c) cannot be said to envisage any wider entitlement with respect to amendment of government-held information than an entitlement for an individual to seek correction or amendment of information relating to that individual's personal affairs. I do not believe that Parliament intended that a reference to someone's personal affairs in a small part of a document should render the whole document subject to amendment under the FOI Act at the behest of that person. Otherwise, a brief reference to a person's personal affairs in a lengthy report on a variety of subjects would give that person an opportunity to seek amendment of other aspects of the report which might be in no way related to the person, or to his or her personal affairs.
21. As to Mrs Jesser's second argument, I do not consider that the fact that the Pearson document and the Barnett document were created in response to her complaint of discrimination, or that those documents concern or affect her, is sufficient in itself to justify a finding that all of the information contained in those documents relates to Mrs Jesser's personal affairs. Information can concern or affect a person even though the information itself does not relate to that person's personal affairs: *cf. Re Stewart* at pp.266-267, paragraphs 112-114.

22. Moreover, it cannot necessarily be said of every complaint made to an agency that the making of it was a personal affair of the complainant. Hence, the making of a complaint in a representative capacity, e.g., by a union official, would not be a personal affair of the union official, and the making of some kinds of complaints by an individual employee of an agency about some aspects of his or her working conditions or treatment at work may not be capable of being properly characterised as part of the individual employee's personal affairs (as opposed to his or her employment affairs). A proper characterisation of the information in issue must be made in each case. In *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 at p.489, paragraph 36, I found that the fact that a citizen, acting in a private capacity, had made a complaint to an agency was information concerning that citizen's personal affairs, and hence eligible for protection from disclosure under the FOI Act by virtue of s.44(1) of the FOI Act. However, I also observed that the subject matter of the complaint could not itself be characterised as information concerning the personal affairs of the complainant. Thus, even if the fact of the applicant having made her particular complaint to the University can be properly characterised as information relating to her personal affairs, that would not necessarily mean that the subject matter of the complaint, or of any response to it by the University, must comprise information relating to the applicant's personal affairs. In each instance, the authorised decision-maker under the FOI Act must decide whether the particular information sought to be amended can be properly characterised as information relating to the personal affairs of the applicant for amendment.
23. Mrs Jesser has cited a number of cases, principally cases decided under the *Freedom of Information Act 1982* Cth, which consider the meaning of the term "personal affairs". I discussed those cases in *Re Stewart*, and I have considered them in assessing the information in issue in the present case. However, in my view, the Pearson and Barnett documents cannot be said to be composed entirely, or even chiefly, of information relating to Mrs Jesser's personal affairs. While each contains some information relating to Mrs Jesser's personal affairs, there is also much information detailing administrative procedures and general points, which cannot, in my view, be properly characterised as information relating to Mrs Jesser's personal affairs.
24. Mrs Jesser has sought to rely on the fact that she was not charged a \$30 application fee for obtaining access to the Pearson document and the Barnett document, on the basis that they concerned her personal affairs. This is a case of confusing the proper interpretation and application of another provision, s.6 of the *Freedom of Information Regulation 1992* Qld (the FOI Regulation), with the proper interpretation and application of s.53 of the FOI Act. The focus of s.6 of the FOI Regulation is on whether a document, to which access has been requested under the FOI Act, concerns the personal affairs of the applicant for access, whereas s.53 of the FOI Act focuses on the particular information (contained in a document to which access has previously been obtained) in respect of which correction or amendment is sought, and requires an assessment of whether that information relates to the personal affairs of the applicant for amendment. Section 6(1) of the FOI Regulation requires payment of an application fee if no part of a requested document can be said to concern the personal affairs of the applicant for access: see *Re Ryder and Department of Employment, Vocational Education, Training & Industrial Relations* (1994) 2 QAR 150 at pp.155-156, paragraph 19. As both the Pearson document and the Barnett document contain some matter which concerns the personal affairs of Mrs Jesser, the University was correct in determining that Mrs Jesser was not required to pay a \$30 application fee to obtain access to those documents under the FOI Act. But that does not mean that the entire contents of both documents can therefore be regarded as information relating to Mrs Jesser's personal affairs for the purposes of s.53 of the FOI Act.

25. Mrs Jesser has cited the decision of the Commonwealth Administrative Appeals Tribunal in *Re Toomer and Department of Primary Industries and Energy* (1990) 20 ALD 275, in support of a wide interpretation of s.53 of the FOI Act. In my decision in *Re Stewart* (at p.264, paragraph 102), I expressed doubts about the decision in *Re Toomer*:

102. *Re Toomer enters more difficult territory, and is difficult to reconcile with Re Jones. In essence, it was there held that an assessment of work capacity or performance containing criticism of a person's personality or an attack on professional or technical reputation is personal, and falls within the meaning of "personal affairs" in s.48 of the Commonwealth FOI Act. I have difficulty in seeing how it is possible, ordinarily, to undertake an assessment of an employee's work performance and capacity, or vocational competence, without dealing in that person's reputation for the performance of employment duties. There may be a line to be drawn between assessments which reflect on reputation for the conduct of employment duties, and assessments which reflect on a person's general reputation or personality, though I expect that in many instances it could prove a difficult line to draw. Whether the Tribunal's approach in Re Toomer is correct and ought to be followed in Queensland is a matter on which I prefer to reserve my opinion until an appropriate occasion arises to give the matter detailed consideration.*

26. In any event, the decision in *Re Toomer* recognised that the information which could be amended was limited to information relating to the personal affairs of the applicant (see p.277, paragraph 10). In that case, the tribunal made a factual finding that the entire contents of the two documents in issue comprised "*information relating to Mr Toomer's personal affairs*" (p.287, paragraph 65). I certainly do not regard the Pearson document and the Barnett document as being similar in nature to the documents dealt with in *Re Toomer*. Mrs Jesser does not contend that all of the information in the documents in issue is critical of her, but rather that the information in those documents (including allegedly inaccurate and misleading statements) has been used by the University for an administrative purpose, to Mrs Jesser's detriment. Even if that is the case, it does not necessarily make the contents of those documents, or any particular information within them, information which relates to Mrs Jesser's personal affairs. Whether or not the particular information sought to be amended relates to the personal affairs of the applicant for amendment is a question of fact which must be determined according to the relevant circumstances in each particular case. I do not consider that the decision in *Re Toomer* is of particular assistance in dealing with the issues for my determination in the present case.
27. In her submission dated 17 July 1995, Mrs Jesser has contended that the fact that the documents in issue do not relate to any other person, and would not have been created but for her complaint, supports her argument that the whole of the documents relate to her personal affairs. However, those factors cannot be determinative of an issue which depends on the proper characterisation of the particular information sought to be amended.
28. In addition, Mrs Jesser has claimed that her status as an "aggrieved person" under the *Judicial Review Act 1991 Qld* is important in creating the context in which the information in the documents relates to her personal affairs. I make no comment as to what decision the applicant considers might be challenged under the *Judicial Review Act*, or whether she would be a person aggrieved by such a decision. I merely state that I do not consider that factor to be relevant to my consideration of whether the particular information sought to be amended can be properly characterised as information relating

to Mrs Jesser's personal affairs.

29. Mrs Jesser also sought to adapt the 'reasonableness of disclosure' test, used in the privacy/personal affairs exemptions in the FOI legislation of other Australian jurisdictions, for use in the application of s.53 of the Queensland FOI Act, citing the decision of Beaumont J in *Re Williams and Registrar of the Federal Court of Australia* (1985) 8 ALD 219. As a matter of statutory interpretation and application, that submission was entirely misconceived. Such a test has no place in the application of s.53 of the FOI Act, either in respect of the question of whether information relates to the personal affairs of the applicant for amendment, or whether information is inaccurate, incomplete, out-of-date or misleading.
30. Mrs Jesser has criticised my approach to the interpretation of s.53 (as explained in correspondence to her during the course of my review) as being overly technical, and has contended that there are ethical grounds on which a wider view should be taken. She stated her belief that any information which is inaccurate, incomplete, out-of-date or misleading should be amended. While I am sympathetic to the view that an agency should not maintain inaccurate or misleading information in its records, my jurisdiction is confined to that which is conferred by Part 5 of the FOI Act, and it is not possible, or desirable, for me to hold wide-ranging inquiries into matters beyond the scope of my jurisdiction. Parliament has confined the statutory entitlement to seek amendment of government-held information (conferred by Part 4 of the FOI Act) to information relating to the personal affairs of the applicant for amendment. Thus, my role in a review, under Part 5 of the FOI Act, of an agency decision refusing amendment is confined to investigating and deciding whether the information in issue relates to the applicant's personal affairs and, if so, whether it should be amended to ensure that it is accurate, complete, up-to-date and not misleading.
31. Mrs Jesser has also contended that if I find that the information she seeks to amend is inaccurate, incomplete, out-of-date or misleading, I must accept her proposed form of amendment. I do not consider that to be the case. If the pre-conditions to making an amendment set out in paragraph 14 above are satisfied, I have jurisdiction to decide the form of amendment most appropriate to ensuring that the relevant segments of the respondent agency's records are accurate, complete, up-to-date and not misleading. Section 55 of the FOI Act confers on agencies and Ministers the power to decide on the form of any amendment to be made in response to an application under s.53 of the FOI Act, and, when a matter reaches the stage of external review, I have the power under s.88(1) of the FOI Act to decide any matter which could have been decided by the agency or Minister whose decision is under review. In deciding on the form of amendment which should appropriately be made to information which I have found to be inaccurate, incomplete, out-of-date or misleading, I consider it proper to take into account the function or purpose for which the document containing the information was created, or is held, by the agency, and the information necessary to enable the agency to properly carry out its functions. I also consider it proper to have regard to any relevant views expressed by the respondent agency as to the appropriate form of amendment, as well as the views expressed by the applicant for amendment.
32. Mrs Jesser has contended that alteration would not be an adequate remedy in the circumstances of her case, and that a notation should be added to each segment of information that is altered. She has submitted that a simple alteration would not indicate when the amendments had been made or who they were made by. I have taken Mrs Jesser's comments into account in considering the appropriate form of amendment to any information relating to her personal affairs which is inaccurate, incomplete, out-of-date, or misleading.
33. On the material before me, I am satisfied that Mrs Jesser has had access to two documents (the Pearson document and the Barnett document) from the University, and that each of those documents contains some information relating to Mrs Jesser's personal affairs (see requirements (a))

and (b), set out at paragraph 14 above). I must therefore consider:

- (a) whether the particular information sought to be amended relates to the applicant's personal affairs; and if so
- (b) whether it is inaccurate, incomplete, out-of-date, or misleading; and if so
- (c) what form of amendment should appropriately be made to the information.

Application 1

34. Mrs Jesser seeks to add the following notation to the Pearson document:

Contrary to the statement on page 6 of this document that "Action to stop the process had been completed by the Personnel Department before any allegations of discrimination against Mrs Jesser were received", the selection process referred to was not stopped until after Mrs Jesser had written two letters and had a lengthy interview with Mr Pearson in which her concerns about discrimination had been discussed.

35. The information which Mrs Jesser seeks to amend, on the basis that it is inaccurate and misleading, is the statement which appears in quotation marks in her proposed notation set out above. Mrs Jesser has attempted to connect that statement with a later suggestion, in a letter to her from the Vice-Chancellor of the University dismissing her complaint of discrimination, that there were inaccuracies in her version of events. She regards the suggestion that her account contained inaccuracies as a "*slur on [her] character*", and argues that the statement sought to be amended in application 1 therefore concerns and affects her so as to relate to her personal affairs. I have difficulty in seeing the connection. The statement sought to be amended in application 1 is not, in its terms, a statement that Mrs Jesser has made an inaccurate claim. Even if such a connection could be established, I do not accept (for the reasons indicated in paragraph 21 above) that the statement sought to be amended in application 1 relates to Mrs Jesser's personal affairs merely because it concerns or affects her. Moreover, the fact that someone has made a statement that does not accord with an applicant's version of events cannot, merely for that reason, mean that the statement is to be properly characterised as information relating to the applicant's personal affairs.
36. If the sentence in question did no more than refer to a particular date on which action to stop the selection process had been completed, it would be difficult to argue that the information relates to Mrs Jesser's personal affairs. It would merely be a statement about a procedure adopted by the Personnel Department of the University in relation to a particular selection process. However, in this case, the timing of the cessation of the selection process is linked to the timing of Mrs Jesser's allegations of discrimination, and so the information can be said to concern the relative timing of Mrs Jesser's complaint of discrimination.
37. The discrimination that Mrs Jesser complained about was two-fold. First, she alleged that it was suggested that she may be discriminated against because her husband already worked for the Faculty, and some people did not think having a husband and wife working in the same faculty was a good idea. Secondly, she alleged that it was suggested that she may find difficulties because the Dean of the Faculty had had differences of opinion with her husband. It is no part of my function to make findings as to the merits of Mrs Jesser's allegations of discrimination in the relevant selection process, but I have indicated the general nature of Mrs Jesser's allegations of discrimination as information relevant to the issue of characterisation which I have to determine.

38. The fact that Mrs Jesser unsuccessfully applied for appointment to another position in the University (notwithstanding that it was merely a different position with the same employer) is information which concerns Mrs Jesser's personal affairs: see *Re Dyki and Federal Commissioner of Taxation* (1990) 22 ALD 124 at pp.134-135, *Re Stewart* at pp.262-263 (paragraph 97), and *Re Baldwin and Department of Education* (Information Commissioner Qld, Decision No. 96008, 10 May 1996, unreported) at paragraphs 21-23. In its context, I consider that the making of complaints by Mrs Jesser concerning discrimination against her in the selection process, and the detail of those complaints, is properly to be characterised as information relating to Mrs Jesser's personal affairs. But can the same be said of information about the relative timing of the lodgement of Mrs Jesser's complaint of discrimination? While the issue is not free from doubt, I consider that the information sought to be amended in application 1 has a sufficient connection with the making by Mrs Jesser of her complaints of discrimination in the selection process, to be properly characterised as information "relating to" Mrs Jesser's personal affairs.
39. I find that the statement sought to be amended in application 1 is inaccurate. A staff member of the University (the EEO Officer) was first notified of Mrs Jesser's concerns on 20 December 1991. The University's EEO Officer made a record of Mrs Jesser's concerns in a document headed "Staff Complaint Record", and dated 20 December 1991. The EEO Officer subsequently discussed those concerns with the Personnel Department representative on the relevant selection panel on 6 January 1992. There is also before me evidence that shortlisted applicants for the advertised positions were not informed of the cancellation of their interviews until 17 January 1992, two days after Mrs Jesser's first letter of complaint had been lodged with the Personnel Manager. The University does not dispute that evidence, although it asserts that Mr Pearson had instructed Personnel Department staff on 14 January 1992 to inform all shortlisted applicants that the interviews had been cancelled. I therefore consider that the information in issue in application 1 should be amended by adding an appropriate notation to accurately record the position disclosed by the agency records and other evidence before me.
40. Having considered the views expressed to me by both the applicant and the respondent concerning the appropriate form of any amendment to be made, I decide that the following notation should be added to page 6 of the Pearson document:

The second sentence in the third-last paragraph on this page is inaccurate. Action to stop the selection process for the position was not completed by the Personnel Department before any allegations of discrimination against Mrs Jesser were received. Mrs Jesser initially complained to the University's EEO Officer on 20 December 1991, and Mrs Jesser's concerns about discrimination against her in the relevant selection process were recorded in a Staff Complaint Record dated 20 December 1991. Mrs Jesser's concerns were made known to the Personnel Department representative on the selection panel on 6 January 1992. Mrs Jesser also set out her complaint in a letter dated, and received by Mr Pearson on, 15 January 1992. She then had a meeting with Mr Pearson on 16 January 1992 to discuss her complaint and delivered a further letter. Candidates shortlisted for interview were not advised of the cancellation of interviews until 17 January 1992.

Application 2

41. Mrs Jesser seeks to add the following notation to page 2 of the Pearson document:

The statement on page 2 of this document that "As part of the selection process involves the notification of internal candidates who were not successful in the shortlisting process, a letter was forwarded to Mrs Jesser's home address, informing here [sic] that she had been unsuccessful" is inaccurate and misleading. The letter was not forwarded to Mrs Jesser's home address. Mrs Jesser signed for the letter at the Personnel Department at 4.35 pm on 14 January 1992, in accordance with normal University procedures for internal applicants. The signed receipt for this letter is held by the Personnel Department.

42. The information which Mrs Jesser seeks to amend is that which appears in quotation marks in her proposed notation set out above. Mrs Jesser makes a similar claim regarding a "*slur on [her] character*" to that described in paragraph 35 above, as support for her argument that the information sought to be amended in application 2 relates to her personal affairs. For similar reasons to those set out in paragraph 35 above, I do not accept that claim.
43. As noted at paragraph 38 above, the making of an unsuccessful application for a position of employment concerns Mrs Jesser's personal affairs. The information sought to be amended in application 2 concerns the method by which Mrs Jesser was notified that her application for an advertised position in the University had been unsuccessful, and I consider that it has a sufficient connection with Mrs Jesser's personal affairs to be properly characterised as information "relating to" Mrs Jesser's personal affairs.
44. Mrs Jesser has provided evidence that establishes to my satisfaction that she did indeed collect the letter from the Personnel Department on 14 January 1992, and the University has not disputed this. I therefore find that the information sought to be amended in application 2 is inaccurate. I consider that the information should be amended by adding an appropriate notation to accurately record the position disclosed in the evidence before me.
45. I decide that the following notation should be added to page 2 of the Pearson document:

The first sentence in the third paragraph on this page is inaccurate. The letter notifying Mrs Jesser was not forwarded to her home address. Mrs Jesser signed for the letter at the Personnel Department at 4.35 pm on 14 January 1992, in accordance with normal University procedures for internal applicants.

Application 3

46. Mrs Jesser seeks to add the following notation to the Barnett document:

*The statement in point 3 of page 1 of this document that "... Mrs Rochelle Jesser applied for a position ... and **simultaneously** lodged an appeal ..." is inaccurate and misleading. No appeal was ever lodged by Mrs Jesser and no such document exists. Mrs Jesser simply used normal University procedures to inform the University's Equal Opportunity Officer of her concerns of possible bias by senior personnel who might be members of the forthcoming selection panel.*

47. The information which Mrs Jesser seeks to amend consists of the words "simultaneously lodged an appeal". As indicated in paragraph 38 above, I consider that the fact that Mrs Jesser made a complaint to the University's EEO Officer is information relating to her personal affairs. I find that the information sought to be amended in application 3 is inaccurate, in that Mrs Jesser's complaint to the University's EEO Officer cannot correctly be described as an "appeal", and it is not accurate to describe Mrs Jesser's complaint to the EEO Officer, and her application for the advertised position, as having been simultaneously lodged. I therefore consider that the information should be amended to accurately record the position disclosed by the agency records and other evidence before me.
48. Having considered the views expressed to me by both the applicant and the respondent concerning the appropriate form of any amendment to be made, I have decided that alteration of the inaccurate words in point 3 on page 1 of the Barnett document is the most precise and appropriate form of amendment. I decide that point 3 on page 1 of the Barnett document should be amended by altering the information as follows:
- ruling through the word "simultaneously"; and
 - ruling through the words "an appeal" and substituting the words "a complaint".

Application 4

49. Mrs Jesser seeks to add the following notation to the Pearson document:

The following statement, on page 3 of this document, is misleading:

"Mrs Jesser's claims regarding her qualifications for the position rested with her public administration experience. In reflecting the needs of the School, the shortlisting panel considered a background in human resource management and marketing as highly desirable."

The advertisement for the position was not limited to applicants with a background in human resource management and marketing. The advertisement also listed public administration as a desirable area.

The panel shortlisted at least one applicant whose specialisation was in the field of public administration. The panel must have therefore considered a background in public administration as equally desirable.

50. The information which Mrs Jesser seeks to amend, on the basis that it is inaccurate and misleading, is that which appears in quotation marks in her proposed notation set out above. In a similar manner to that discussed in paragraph 35 above, Mrs Jesser contends that the statement concerns and affects her as an individual, because it is misleading and relates to the subject matter of her complaint. I do not accept her contention. The statement in issue relates to the general approach taken by the shortlisting panel in assessing some 28 applicants for the advertised positions. The fact that Mrs Jesser was an applicant for the advertised positions does not mean that a statement about the general approach taken by the shortlisting panel relates to her personal affairs. I find that the information sought to be amended in application 4 does not relate to the applicant's personal affairs, and hence the applicant is not entitled to apply for amendment of the information under s.53 of the FOI Act. On that basis, I affirm the decision under review in respect of application 4.

51. I might add that I do not consider that the last sentence of the applicant's proposed notation represents a logical conclusion to be drawn from the fact stated in the penultimate sentence of the applicant's proposed notation. The selection panel's decisions on shortlisting would have been based on relative assessments against a number of selection criteria, not just its views on the desirability of candidates with a particular specialisation. A candidate without a desired specialisation had a chance of rating sufficiently well against other selection criteria to be shortlisted. On the material before me, I would not have been satisfied, in any event, that the information sought to be amended in application 4 was inaccurate, incomplete, out-of-date or misleading.

Application 5

52. Mrs Jesser seeks to add the following notation to the Barnett document:

The statement in point 5 of page 1 of this document, that Mrs Lesley Beames (Personnel) was a member of the selection panel is inaccurate. Ms Janelle Martin was the Personnel representative on the panel.

53. I note that the University does not dispute that Ms Janelle Martin, rather than Mrs Lesley Beames, was the Personnel Department representative on the relevant selection panel. The University was prepared to agree to amend the inaccurate statement outside the framework of the FOI Act (indeed, it may already have done so of its own accord) but it was not prepared to resile from its decision that the information does not relate to the applicant's personal affairs, and hence cannot be the subject of an application for amendment by Mrs Jesser under s.53 of the FOI Act.
54. The fact that Mrs Jesser was an applicant for the advertised positions does not mean that the composition of the shortlisting panel appointed to assess all applications for the advertised positions can properly be characterised as information relating to Mrs Jesser's personal affairs. I find that the information sought to be amended in application 5 does not relate to the applicant's personal affairs, and hence the applicant is not entitled to apply for amendment of the information under s.53 of the FOI Act. On that basis, I affirm the decision under review in respect of application 5.

Application 6

55. Mrs Jesser seeks to have the following notation added to the Pearson document:

Investigation has shown the following statement, on page 5 of this document, to be inaccurate and misleading:

"I further pointed out that the University processes were designed to reduce this occurring through the use of panels, objective selection criteria and training of all panel members in interviewing skills and raising their awareness of interview deficiencies. Some how Mrs Jesser saw this as a "pathetic response" and a lack of commitment to Equal Employment Opportunity.

I am disappointed that Mrs Jesser took these comments about the selection process and confused them with the commitment the Personnel Department and the University has to Equal Employment Opportunity principles."

Mrs Jesser has never suggested that the intentions of the University selection processes, as set out in the University's Personnel Policy Guide are a "pathetic response" or show lack of commitment to Equal Employment Opportunity.

Mrs Jesser considers the false allegation contained in this document to be damaging to her reputation within the University.

56. I consider that, given the nature of Mrs Jesser's complaint of discrimination (see paragraph 38 above), the detail of what she complained about, or is said to have complained about, is information relating to Mrs Jesser's personal affairs. I consider that the information sought to be amended in application 6 is eligible for amendment, if it is found to be inaccurate, incomplete, out-of-date or misleading.
57. In my opinion, Mrs Jesser's assertion that the passage sought to be amended is inaccurate and misleading is not based on a fair and objective reading of the relevant parts of page 5 of the Pearson document. To put my findings below in their proper context, I consider it useful to quote a larger segment of page 5 of the Pearson document than appears in Mrs Jesser's proposed notation. On page 5 of his memorandum dated 7 May 1992, responding to Mrs Jesser's letter of complaint to the Vice-Chancellor dated 16 March 1992, Mr Pearson said:

A lengthy discussion relating to selection processes took place [with Mrs Jesser on 9 March] during which I commented about the reliability of interviews as a selection tool. My comments were generally based upon interviewer errors and the fact that all interviewers carried biases, prejudices and stereotypes and therefore lacked the ability to be totally objective and completely fair to others.

I explained that these situations can cause some degree of discrimination in light of these errors. I further pointed out that the University processes were designed to reduce this occurring through the use of panels, objective selection criteria and training of all panel members in interviewing skills and raising their awareness of interview deficiencies. Somehow Mrs Jesser saw this as a "pathetic response" and a lack of commitment to Equal Employment Opportunity.

I am disappointed that Mrs Jesser took these comments about the selection process and confused them with the commitment the Personnel Department and the University has to Equal Employment Opportunity principles.

58. In her letter of complaint to the Vice-Chancellor dated 16 March 1992, Mrs Jesser said:

I discussed my concerns with Mr Pearson on 9 March. He has said that he will go back to the selection panel and speak to them about their unsatisfactory performance, but the evidence indicates that he has known all along that I was discriminated against. Mr Pearson has suggested to me that there is little that can be done about such matters, except for an ongoing education programme for staff on selection panels. However, all the members of this panel were supposed to have received training already. Mr Pearson also expressed the opinion that it is not possible to get rid of discrimination, and I take that to indicate that there is no real commitment to EEO in the University. I think this is a pathetic response from a Personnel Manager who appears to be overly concerned with placating management at the expense of staff rights. [my underlining]

As I have pointed out to Mr Pearson, there are any number of avenues open to the University to ensure that policies are more than words on paper, and all that is required is the will to act. Not taking the necessary action only reinforces to staff, including senior staff, that the University approves of discrimination.

59. In her proposed notation (see paragraph 55 above), Mrs Jesser quotes a segment from page 5 of the Pearson document and asserts that it is inaccurate and misleading because she has never suggested that the intentions of the University selection processes, as set out in the University's Personnel Policy Guide, are a "pathetic response" or show lack of commitment to Equal Employment Opportunity. However, I consider that, on a fair and objective reading of the whole of the passage set out in paragraph 57 above, the passage does not convey that Mrs Jesser suggested the things set out in the preceding sentence of this paragraph. I think it is reasonably clear that Mr Pearson was saying that Mrs Jesser saw the totality of his response to her complaint (during the lengthy discussion on March 9) as a "pathetic response" and lacking in commitment to Equal Employment Opportunity, including the part summarised by Mr Pearson in the second and third sentences of the passage quoted at paragraph 57 above, and not just Mr Pearson's reference to University selection processes.
60. I consider that it was open to Mr Pearson to interpret the words of Mrs Jesser, which are underlined in the passage quoted at paragraph 58 above, in the manner which he did when responding to them in the statements that are sought to be amended in application 6. I am not satisfied that those statements, read in their full context, are inaccurate and misleading in the manner asserted by Mrs Jesser.
61. In any event, those statements accurately reflect Mr Pearson's interpretation of Mrs Jesser's words, and his responses to them, when asked to record his response to Mrs Jesser's complaint to the Vice-Chancellor. Given the context in which, and the purpose for which, the information in issue was created and kept as an agency record, I am satisfied that the information sought to be amended in application 6 is not inaccurate, incomplete, out-of-date or misleading. I find that the applicant is not entitled to apply for amendment of that information under s.53 of the FOI Act, and I affirm the decision under review in respect of application 6.

Application 7

62. Mrs Jesser seeks to have the following notation added to the Pearson document:

Investigation has shown the following statements, on page 2 of this document, to be inaccurate and misleading:

She [Mrs Jesser] also commented on a conversation with Professor Littler which she believes was discriminating. ...

While I held some concerns over the alleged discrimination, it did not, in my opinion, impact upon the selection process, as Professor Littler was not involved in the shortlisting process.

Mrs Jesser did not believe that her conversation with Professor Littler was discriminating, nor has she ever made any allegation against Professor Littler. Mrs Jesser states that Professor Littler simply warned her of the likelihood that she would face discrimination in a forthcoming selection process and Mrs Jesser subsequently reported this to the University's Equal Employment Opportunity Officer.

63. For the same reasons stated in paragraph 56 above, I consider that the information sought to be amended in application 7 relates to Mrs Jesser's personal affairs. In that segment of the Pearson document, the Personnel Manager has briefly referred to statements which Mrs Jesser made in the third paragraph of a letter to him dated 15 January 1992, where Mrs Jesser said:

I would also like to point out that the comments made in a conversation I had with Professor Craig Littler of the School of Management on 19 December 1991, give me some reason for believing I may have been discriminated against in my application. In discussing my decision to apply with Professor Littler, he observed that it was not a good idea to have a husband and wife employed in the same School, and that such matters were usually discussed by selection committees. He also said that I should bear in mind that my husband had had a difference of opinion with the Dean of the School. I brought this matter to the attention of your Equal Employment Opportunity Officer on 20 December.

64. I consider that it was clearly open to Mr Pearson to interpret this passage of Mrs Jesser's letter in the way that he did, i.e., to conclude that Mrs Jesser was suggesting that Professor Littler had made discriminatory comments. After saying that her conversation with Professor Littler gave her cause to believe she may have been discriminated against, Mrs Jesser went on to say that Professor Littler had himself "*observed that it was not a good idea to have a husband and wife employed in the same School*". I am not satisfied that the information sought to be amended in application 7 is an inaccurate or misleading representation of the contents of the third paragraph of Mrs Jesser's letter to Mr Pearson dated 15 January 1992.
65. However, I do consider that the information sought to be amended in application 7 is misleading in one respect, in that it would lead a reader to believe that the only complaint from Mrs Jesser was of possible discrimination by Professor Littler. I consider that it is clear, on an objective interpretation of the words used in Mrs Jesser's letter dated 15 January 1992, that she was also concerned about possible discrimination within the selection committee. I consider that the information in issue in application 7 should be amended by adding an appropriate notation to reflect an interpretation of the contents of Mrs Jesser's letter to Mr Pearson, dated 15 January 1992, which is not misleading.
66. I decide that the following notation should be added to page 2 of the Pearson document:

The last paragraph on this page is misleading in that it suggests that the only allegation made in Mrs Jesser's letter to Mr Pearson dated 15 January 1992, was of discrimination on the part of Professor Littler. In her letter, Mrs Jesser referred not only to Professor Littler, but also to possible discrimination by the selection committee. She also referred to a difference of opinion between her husband and the Dean.

Conclusion

67. For the foregoing reasons, I affirm the decisions under review in respect of applications 4, 5 and 6. In respect of the information sought to be amended in applications 1, 2, 3 and 7, I decide that the following amendments should be made in accordance with Part 4 of the FOI Act:
- (a) in respect of the Pearson document, add to page 2 the notations set out in paragraphs 45 and 66 above, and add to page 6 the notation set out in paragraph 40 above; and

(b) in respect of the Barnett document, amend point 3 on page 1 in the manner set out in paragraph 48 above.

68. I should add that my findings do not preclude the University from making amendments outside the framework of the FOI Act to the information that was in issue in applications 4, 5 and 6, if it considers that its records are inaccurate, incomplete, out-of-date or misleading. It is no doubt in the public interest that agencies ensure that the records of their operations are accurate, complete, up-to-date and not misleading. However, these are matters for the University to consider, as I have no jurisdiction in relation to them.

.....
F N ALBIETZ
INFORMATION COMMISSIONER