



Decision and Reasons for Decision

Application Number: 210565

Applicant: KLE

Respondent: Department of Health

Decision Date: 19 May 2009

Catchwords: **FREEDOM OF INFORMATION – sections 53 and 54E of the *Freedom of Information Act 1992 (Qld)* – amendment of medical records – whether information is inaccurate, incomplete, out-of-date or misleading**

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REASONS FOR DECISION

Summary

1. I set aside the decision under review and find that:
 - the information which is the subject of the 'Amendment Requests' (see paragraph 20) and remains in issue in this external review, is not inaccurate, incomplete, out-of-date or misleading for the purposes of section 54E of the *Freedom of Information Act 1992* (Qld) (**FOI Act**)
 - no further amendments should be made to the applicant's medical records.

Background

2. By application dated 14 April 2008, the applicant wrote to the Department of Health, also known as Queensland Health (**QH**) and requested amendment of the following (**Amendment Application**):

*Letter from Dr J Flanagan to challeng emergency department record 06001225 date 12 Jan 06 3.50 am
I request to inform person on day with file & letters of misleading material
As a counsellor the recordings on my file are slanderess and against character. Terms for legal action.*

3. On 27 May 2008, QH decided (**Original Decision**):
 - that although the applicant's Amendment Application meets the requirements of section 53 of the FOI Act, it does not satisfy sections 54(e) and (f) of the FOI Act
 - not to exercise its discretion to amend the information by alteration under section 55(a) of the FOI Act or by notation under section 55(b) of the FOI Act.
4. By application dated 29 May 2008, the applicant applied for an internal review of the Original Decision (**Internal Review Application**).
5. On 19 June 2008, Mr Bill Beresford, Clinical CEO at QH affirmed the Original Decision (**Internal Review Decision**).
6. By letter dated 16 July 2008, the applicant applied to this Office for an external review of the Internal Review Decision (**External Review Application**).

Decision under review

7. The decision under review is the Internal Review Decision (referred to at paragraph 5 above).

Steps taken in the external review process

8. By letters dated 23 July 2008, I informed the applicant and QH that the External Review Application had been accepted.
9. In a telephone conversation on 27 October 2008, a member of this Office spoke with the applicant in relation to her Amendment Requests.

10. During the period November 2008 to February 2009 the applicant provided further submissions and information by telephone and written correspondence.
11. By letter dated 20 January 2009, I informed QH that it was my preliminary view that the information which was the subject of Amendment Request 9 is partially inaccurate and should be amended under section 55 of the FOI Act.
12. In a telephone conversation with a member of this Office, QH confirmed it accepted my preliminary view above and would amend the document which is the subject of Amendment Request 9 by way of alteration.
13. By letter dated 3 February 2009, I informed the applicant of my preliminary view on the matters remaining in issue in the external review.
14. By letter dated 9 February 2009, the applicant indicated her dissatisfaction with certain aspects of my preliminary view at paragraph 13 above.
15. By letter dated 29 April 2009, Acting Information Commissioner Kinross informed QH that it was this Offices' further preliminary view that the information which is the subject of Amendment Request 1 and part of Amendment Request 7 was also misleading. In that letter Acting Information Commissioner Kinross proposed that each of those documents be amended by way of notation in accordance with sections 55 and 56 of the FOI Act.
16. In a telephone conversation with a staff member of this Office on 19 May 2009, QH confirmed it accepted the preliminary view at paragraph 15 above.
17. By letter dated 19 May 2009 to QH, I confirmed the form of notation to be made to the documents which are the subject of Amendment Requests 1 and 7 and requested that QH provide the applicant with a copy of the amended documents.
18. In making my decision in this matter, I have taken the following into consideration:
 - the Internal Review Application and External Review Application
 - the Original Decision and Internal Review Decision
 - file notes of telephone conversations between staff members of this Office and the applicant
 - file notes of telephone conversations between staff members of this Office and QH
 - written correspondence provided to this Office by the applicant throughout the course of the external review
 - written correspondence provided to this Office by QH throughout the course of the external review
 - relevant sections of the FOI Act
 - previous decisions of the Information Commissioner of Queensland and decisions and case law from other Australian jurisdictions as identified in this decision.

Amendments sought

19. In a telephone conversation with a staff member of this Office on 27 October 2008, the applicant confirmed that the amendments she seeks to have made to her medical records, are set out as issues 1-10 in her letter to QH dated 11 May 2008.

20. I have summarised those 10 issues as Amendment Requests 1 to 10 below:

Amendment Request 1	<u>Letter from Hayley Horan dated 21 February 2006</u> ¹ The applicant submits that the following statement is misleading/inaccurate: "Unfortunately, all offers of assistance were refused including social worker services."
Amendment Request 2	<u>Letter from Ms Thomson to [applicant's husband] dated 21 February 2006</u> The applicant submits that the following statement is injurious: "We are pleased to hear that [the applicant] is now accepting treatment for ongoing anxiety."
Amendment Request 3	<u>Incident involving Dr Etherington</u> The applicant questions why an accident and incident report form wasn't filled out or reported on her file.
Amendment Request 4	<u>Absence of pre-operative tests and examination</u> The applicant considers that pre-operative testing and internal examinations should have been recorded on her medical file.
Amendment Request 5	<u>Dr Etherington's letter to Dr J Davies dated 10 January 2006</u> The applicant submits that the following statement made by Dr Etherington is inaccurate and misleading: "she was particularly perturbed about the fact that I had to leave the country to renew my visa when she would have been 38 to 39 weeks pregnant".
Amendment Request 6	<u>Dr Etherington's letter to Dr J Davies dated 10 January 2006</u> The applicant states the following statement is false and inaccurate: "Had major issues about being examined internally and because of this situation I felt that an elective caesarean section was justifiable and they took the offer." In addition, the applicant alleges the statement made to her GP "If she wants to have a delivery by CS then I will do this on Friday this week" is misleading.
Amendment Request 7	<u>Dr Etherington's letter to Dr J Davies dated 10 January 2006</u> The applicant submits that the following statements are misleading and inaccurate: "I would be grateful if you could look out for signs of post natal depression in Eleanor's case and institute therapy accordingly" and "All offers for help were refused."
Amendment Request 8	<u>Antenatal care booking visit dated 3 June 2005</u> The applicant submits that the following notation made by Jenny Cox on 3 June 2006 is misleading and injurious: "Declined any further support with her anxiety." The applicant also states that there is no record of her meeting with Ms Cox on 21 November 2005 and Dr Etherington failed to maintain accurate recordings in relation to the advancement of her foetus from 34 weeks gestation.
Amendment Request 9	<u>Rockhampton Hospital emergency department record dated 12 January 2006</u> The applicant states that the following comment is insulting and misleading about her mental health: "Had post natal depression & currently seeing a psychiatrist."
Amendment Request 10	<u>Rockhampton Hospital emergency department record dated 12 January 2006</u> The applicant states recordings made about her PV bleeding are misleading. The applicant also states that information concerning her blood loss was not recorded by Dr Scott & that blood tests performed by Dr Scott were not recorded by the pathology department.

¹ Although the applicant refers to this letter as a letter from Hayley Horan, I note the relevant letter was authored by Ms Sandra Thomson, District Manager at QH. Accordingly, for the purposes of this review I will refer to it as a letter from Ms Thomson.

21. As previously mentioned, during the course of this review QH has agreed to:
- alter part of the information which is the subject of Amendment Request 9
 - add a notation to the information which is the subject of Amendment Request 1 and part of Amendment Request 7.
22. In view of the above, Amendment Request 1 and parts of Amendment Requests 7 and 9 are no longer in issue in this review.

Findings

Burden of proof

23. In submissions to this Office the applicant has indicated that she considers the role of this Office should be to consult with medical practitioners on her behalf in order to determine whether the medical records are inaccurate, incomplete, out-of-date or misleading.
24. The Information Commissioner has previously indicated that during an external review, an applicant is burdened with a practical and evidentiary onus to provide evidence to support his/her entitlement to relief under Part 4 of the FOI Act.² This means that the applicant must provide evidence to support her belief that the information is inaccurate, incomplete, out-of-date or misleading and warrants amendment or notation. I conveyed this information to the applicant in the course of this review.
25. The role of this Office in the current review is therefore limited to determining whether the information in question should be amended in accordance with the provisions of Part 4 of the FOI Act.
26. Accordingly, this Office does not have jurisdiction to:
- comment on or otherwise deal with the applicant's complaints concerning her treatment by persons employed by QH
 - source information to support the applicant's Amendment Requests.

Sections 53 and 54E of the FOI Act

27. Part 4 of the FOI Act provides for the amendment of information held by government departments and agencies. Section 53(1) of FOI Act provides:

53 Person may apply for amendment of information

- (1) *A person who has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the person's personal affairs is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.*

28. Section 54E of the FOI Act gives an agency discretion to amend information and sets out a non-exhaustive list of the grounds under which the agency may refuse to amend relevant information, including that:

² *Doelle and Legal Aid Office (Queensland)* (1993) 1 QAR 207 at paragraph 18.

54E Discretion to amend information

...

(2) ...

(a) *the agency or Minister is not satisfied –*

(i) *the information is inaccurate, incomplete, out-of-date or misleading ...*

29. Section 55 of the FOI Act allows an amendment to be made by one of two methods, that is, by:

- a) altering the information; or
- b) adding an appropriate notation to the information.

Application of sections 53 and 54E of the FOI Act

30. The effect of sections 53 and 54E³ is that for QH to be required to amend the applicant's medical records, the following elements must be satisfied:

- a) the applicant has previously obtained access to her medical records from QH
- b) the information which the applicant seeks to amend is information which relates to her personal affairs
- c) the information which the applicant seeks to amend is inaccurate, incomplete, out of-date or misleading.

Entitlement to apply to amend the information

31. On the basis of information available to me in this review, I am satisfied that the first two of the above three elements of section 53 of the FOI Act have been met because the:

- applicant has previously accessed her medical records
- applicant's medical records contain information relating to her personal affairs

32. As to whether the third element has been met in relation to each of the Amendment Requests, see the discussion below.

Information that is inaccurate, incomplete, out-of-date or misleading

33. The terms 'inaccurate, incomplete, out-of-date or misleading' are not defined in the FOI Act and are accordingly to be understood in terms of their usual or ordinary meaning.

34. However, there is some guidance as to the interpretation of the term 'misleading' in the case of *G v Health Commission of Victoria*, where Rendit J observed:⁴

A misleading statement or impression is one which is untrue or is likely to lead to an erroneous conclusion ... whether there would be misleading impressions ... is objective.

³ as explained in *Dimitrijevic and Education Queensland* (Unreported, Queensland Information Commissioner, 31 May 2000).

⁴ (Unreported, County Court of Victoria, 13 September 1984) at pages 10-11.

35. To determine whether the Amendment Requests relate to information that is inaccurate, incomplete, out-of-date or misleading, I have considered each of the Amendment Requests in turn below.

Amendment Request 2

36. The applicant submits that the statement “We are pleased to hear that [the applicant] is now accepting treatment for ongoing anxiety” contained within Ms Thomson’s letter is injurious because:

- she does not consider that she has anxiety nor has she ever had treatment for anxiety
- she is unhappy that Ms Thomson has liaised with other health professionals without her consent.

37. The applicant believes that a letter to her from her psychologist Dr Gray-James is evidence that she does not have anxiety or is being treated for anxiety. I have reviewed this letter and note in it Dr Gray-James:

- refers to the applicant’s last session with Dr Gray-James
- suggests that the applicant and her husband speak with a psychiatrist.

38. The letter does not indicate why the applicant consulted Dr Gray-James nor does it contain any discussion about her having or being treated for anxiety. In any event I am reluctant to attribute any importance to this letter given that parts of it have been amended by someone and the content contains no information which disproves Ms Thomson’s statement.

39. Having examined the medical records in detail, I note the following observations were noted in the applicant’s record in relation to anxiety:

*Pt. extremely anxious.*⁵

*Towards the end of the pregnancy [the applicant’s] anxiety was heightened...*⁶

*...she remained quite anxious*⁷

*Anxious*⁸

*Extremely anxious*⁹

40. Having regard to the context in which these statements were made, I am satisfied that they comprise observations made by health professionals as to the applicant’s state of mind at that time and do not necessarily give rise to an inference that she currently suffers from anxiety or has an anxiety disorder.

41. In addition to the above, in a statutory declaration signed by the applicant’s spouse at the time (as provided to this Office by the applicant) the following comment is made:

⁵ nursing entry of 25 November 2005.

⁶ letter from Dr Etherington to Dr J Davies dated 10 January 2006.

⁷ letter from Dr Etherington to Dr J Davies dated 10 January 2006.

⁸ antenatal visit entry of 22 November 2005.

⁹ emergency surgery booking form dated 23 November 2005.

During the course of this consultation, I said to Dr Etherington that my wife had had periods where she had become deeply anxious in the past, particularly at times where she had sudden, unnecessary stress placed on her when dealing with people she did not know well. I asked that this be taken into account during her pregnancy, especially around the time of our baby's expected arrival perhaps to make her feel safe and comfortable.¹⁰

42. It would appear from the information above that a number of clinicians and the applicant's ex-partner were of the view that the applicant was an anxious person and that certain circumstances triggered her anxiety. This is supported by the applicant's own diary notes, parts of which have been extracted below:

Today I had my first anxiety attack.¹¹

Before this information was given to us I was already feeling a bit anxious about meeting Ian to discuss my first anxiety attack...I'm ready feeling stressed and anxious about birthing.¹²

I become quite anxious about my consultation visit with Ian. I was feeling stressed and concern...I became so stressed...My feelings started to overwhelm me and I started to freak out.¹³

I was completely overwhelmed at this point by what had just occurred and started to cry uncontrollably.¹⁴

43. On the information available to me and having regard to the matters discussed above, I am of the view that there is insufficient evidence to support a finding that the statement in the last sentence of paragraph 4 of Ms Thomson's letter:

- is inaccurate, incomplete, out-of-date or misleading
- therefore, the information should not be amended.

44. The fact that the applicant is unhappy that Ms Thomson has liaised with other health professionals without her consent is not a matter I can take into account in determining whether the above entry is inaccurate as it concerns how information was obtained not whether it is inaccurate, incomplete, out-of-date or misleading.

Amendment Requests 3, 4, part of 8 and 10

45. I will deal with Amendment Requests 3, 4, part of 8 and 10 together because each of these concern the absence of recordings.

46. Specifically the applicant:

- questions why an accident and incident report form wasn't filled out by Dr Chan or reported on her file
- considers that pre-operative testing (which she states did occur) and internal examinations should have been performed and recorded on her medical file¹⁵

¹⁰ Statutory declaration signed by the applicant's spouse on 2 May 2006.

¹¹ from the applicant's diary note for 11 November 2005.

¹² from the applicant's diary note for 15 November 2005.

¹³ from the applicant's diary note for 22 November 2005.

¹⁴ from the applicant's diary note for 25 November 2005.

¹⁵ The applicant asserts that the absence of this information led to her experiencing a difficult delivery.

- submits that information concerning her blood loss was not recorded by Dr Scott and that blood tests performed by Dr Scott were not recorded by the pathology department.
- states there is no record of her meeting with Ms Cox on 21 November 2005 and Dr Etherington failed to maintain recordings in relation to the advancement of her foetus from 34 weeks gestation.

47. None of the above Amendment Requests seek the amendment of inaccurate, incomplete, out-of-date or misleading information in the sense envisaged by the FOI Act. They are more correctly categorised as criticisms about particular aspects of the applicant's medical care or the medical record keeping of the facility. Accordingly, I am satisfied that there is no amendment to be made in accordance with the FOI Act.

48. I note that although the FOI Act gives a person a legally enforceable right to documents of agencies¹⁶ (subject to the provisions of the FOI Act) it *'is not an Act which gives (a person) a legally enforceable right to obtain answers to questions asked of government agencies, or even to have government agencies extract answers to questions from documents in their possession.'*¹⁷ Nor does it oblige an agency to create a document where none exists.

Amendment Request 5

49. The applicant submits that a statement made by Dr Etherington in his letter of 10 January 2006 about the duration of her pregnancy is inaccurate and misleading.

50. The relevant part of Dr Etherington's letter is extracted below:

...she was particularly perturbed about the fact that I had to leave the country to renew my visa when she would have been 38 to 39 weeks pregnant.

51. In her letter of 9 February 2009, the applicant confirms:

In relation to my gestation for when Dr Etherington would be away mathematically:

- *I had [name of applicant's child] on 25.11.05 at 38 ½ wks gestation*
- *On Monday 28th November 2005 my gestation would have been 39 wks. This was Dr Etherington's first wk away and he recorded that I would be 38 wks.*
- *Monday 5th December 2005 would have been my due date (EDD) for [name of applicant's child] at 40 wk gestation. This was Dr Etherington's second wk away and he recorded that I would have been 39 wks. Dr Etherington is a week out.*

52. Dr Etherington's letter, to which the applicant refers, is dated 10 January 2006 and addressed to Dr Davies (the applicant's General Practitioner). The letter:

- provides Dr Davies with a background of Dr Etherington's obstetric care of the applicant during her pregnancy
- advises Dr Davies that the applicant and her spouse at that time have (in a clinic appointment that day) provided Dr Etherington with a list of complaints and have instituted a formal complaints procedure
- requests that Dr Davies monitor the applicant for signs of post natal depression.

¹⁶ Section 21 of the FOI Act.

¹⁷ *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at paragraph 30.

53. I have reviewed Dr Etherington's letter in detail and consider his statement is not meant to be a precise calculation about the applicant's gestational age, rather it is a retrospective observation by Dr Etherington (given the letter is dated 10 January 2006) about what the applicant's gestational age was likely to have been when he would have been absent from the country.
54. Even if the timing given by Dr Etherington were considered to be mathematically incorrect, this will not necessarily mean the information is inaccurate because consideration must be given to the context in which the information was created. The information in this case was presented in an approximated format and should be interpreted as such.
55. Therefore on the information available to me, I am satisfied that:
- the information which is the subject of this amendment request is not inaccurate, incomplete, out-of-date or misleading
 - this part of Dr Etherington's letter should not be amended.

Amendment Requests 6 and 7

56. The applicant states that the following statements made by Dr Etherington in his letter dated 10 January 2006¹⁸ are false and inaccurate or misleading:

Had major issues about being examined internally and because of this situation I felt that an elective caesarean section was justifiable and they took the offer.

I would be grateful if you could look out for signs of post natal depression in [the applicant's] case and institute therapy accordingly

57. I have summarised the applicant's concerns in respect to the above statements as follows:
- a) Dr Etherington did not obtain the applicant's consent prior to him discussing his concerns with the applicant's GP
 - b) there is no evidence on the medical records which indicates that the applicant ever refused an internal examination or that an internal examination was ever performed or offered to her.

58. As previously indicated in this decision, the applicant's displeasure about not being consulted about communications between health professionals about her is irrelevant to a determination of whether a document should be amended. In any event I note that it is common for medical practitioners to liaise with fellow practitioners who are treating the same patient, particularly in circumstances where the patient's care is to be continued by a GP.

59. In respect of the applicant's comments about the internal examination noted at b) above, the applicant has diarised the following:

I stressed that I did not want to be touched by another doctor and that I was feeling uncomfortable about the thought of being examine by Dr O'Connor.¹⁹

I said to Ian that I did not feel comfortable with another Doctor touching me.²⁰

¹⁸ See paragraph 52.

¹⁹ Diary note dated 15 November 2005.

*An overwhelming emotion was flooding my body. I started stressing that I did not want any more strangers touching me, and the thought of having the drip placed into my hand scared me.*²¹

60. Having regard to the applicant's own notes above, it is clear the applicant felt very uncomfortable about being examined or touched by doctors. Although the applicant's observations do not mention any internal examinations they nonetheless lend weight to a conclusion that Dr Etherington's comment on this point is correct. Additionally, the statement is based on his professional opinion and as a consequence of his personal dealings with the applicant and, as there is no evidence which directly contradicts the statement it should be given credibility.

61. As stated in the case of *Leverett and Australian Telecommunications Commission*:²²

It may be one thing to establish that factual information of the "personal data" kind is "incomplete, incorrect, out-of-date or misleading": it may be quite another when one is dealing with matters that depend upon professional judgement or opinion or upon subjective evaluation of an individual.

62. On the information available to me, and having regard to the above commentary I am satisfied that:

- in the absence of anything to the contrary, the information is not inaccurate, incomplete, out-of-date or misleading
- no further amendments should be made to Dr Etherington's letter.

Amendment Request 8

63. The applicant submits that the following statement made by Ms Cox is misleading:

Declined any further support with her anxiety.

64. The applicant requests that the above statement be amended because she does not agree that it accurately reflects her conversation with Ms Cox. With reference to a letter from the applicant's spouse dated 9 May,²³ the applicant submits that in contrast to that reported by Ms Cox, she did not decline assistance, rather, it was agreed between her and Ms Cox that she did not require further support at that stage of her pregnancy.

65. I have considered the letter provided by the applicant²⁴ which states in part:

...
It is noted that the registered nurse at the Rockhampton Base Hospital had marked in the Routine Ante-Natal Booking Visit form dated 3 June 2005 in the Special Needs section that [the applicant] did not require assistance in relation to anxiety or a similar condition. This did not mean that [the applicant] had denied assistance be provided in relation to this issue later in her pregnancy, it was agreed with the nurse that this was not required at this early stage of her pregnancy.
...

²⁰ Diary note dated 22 November 2005.

²¹ Diary note dated 25 November 2005.

²² (1985) 8 ALN N135 (**Leverett**) as accepted in *Re Kevin Place Crawley and Centrelink* [2006] AATA 571 at paragraph 12.

²³ The year of this letter appears to have been amended by overwriting the year in handwriting to read 2008. I am unable to see the year of the typed date.

²⁴ As written by her spouse.

66. I note the relevant part of the antenatal care booking visit form is intended to be a tool whereby the health professional assesses and briefly notes any variances to the routine antenatal care provided to a patient. Similarly, if a patient has any special needs these too would also be recorded.
67. In this context it is evident that the statement reflects that no support further to that provided routinely in antenatal care was required by the applicant at the time the form was completed. Accordingly, I do not consider the statement is at variance with the applicant's view of events.
68. Having regard to the purpose of the antenatal care booking visit form, I am satisfied that:
- the information is not inaccurate, incomplete, out-of-date or misleading
 - the antenatal care booking visit form should not be amended.

Amendment Request 9

69. The applicant submits that the following comment made by a doctor in her medical records on 12 January 2006 is misleading about her mental health:

Had post natal depression

70. To support her request to have the above information amended, the applicant has provided this Office with a copy of a letter from Dr S Cooling dated 19 December 2008 which states:

This letter is to certify that I have seen [the applicant] on a number of occasions since the 16th of January 2007. None of these consultations have been for mental health issues.

71. The above letter is dated 19 December 2008 and confirms that a year after the applicant's presentation at the emergency department of Rockhampton Hospital she started seeing Dr Cooling for matters other than mental health issues.
72. Given that Dr Cooling's letter does not contemplate matters relating to the time period when the comment was made in the applicant's medical record above, it does not assist in the applicant's claim that the medical record dated 12 January 2006 is misleading.
73. Given the context in which the statement was made in the emergency department records, I consider that the comment was based either on that doctor's own assessment of the applicant and professional opinion or other information contained within the medical records. Such as for example the concerns expressed by Dr Etherington in his letter to Dr J Davies dated 10 January 2006:

...I would be concerned in case she slips into post natal depression.

I would be grateful if you could look out for any signs of post natal depression...

74. In any event the applicant has not provided me with any evidence which demonstrates that the above comment is misleading.

75. Accordingly, I am of the view that:

- there is insufficient evidence upon which to base a finding that the information which is the subject of Amendment Request 9 is inaccurate, incomplete, out-of-date or misleading
- this portion of the medical records should not be amended.

Notation in accordance with section 59 of the FOI Act

76. During the course of the review QH confirmed that (in accordance with section 59 of the FOI Act) it had attached a document setting out the applicant's version of events (which she refers to as her "version of notations") to her medical records.

77. Section 59 of the FOI Act relevantly provides that:

59 Certain notations required to be added

...

- (2) *If an agency has refused to amend information, the applicant may, whether or not the applicant has applied to the commissioner for review of the decision, by written notice, require the agency to add to the information a notation—*
 - (a) *specifying the respects in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading; and*
 - (b) *if the applicant claims the information to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the information or to bring it up-to date.*
- (3) *An agency must comply with the requirements of a notice under this section, and must cause written notice of the nature of the notation to be given to the applicant.*

78. Although a request for notation in accordance with section 59 of the FOI Act operates separately from the applicant's entitlement to seek external review under section 53 of the FOI Act,²⁵ in this case I am satisfied that QH's action under section 59 of the FOI Act has been appropriate.

²⁵ *Banks and Queensland Corrective Services Commission* (Unreported, Queensland Information Commissioner, 13 April 1995).

DECISION

79. For the reasons stated above, I set aside the decision under review by finding that:

- the information which is the subject of the Amendment Requests and remains in issue in this external review is not inaccurate, incomplete, out-of-date or misleading for the purposes of section 54E of the FOI Act
- no further amendments should be made to the applicant's medical records.

80. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

Assistant Commissioner Corby

Date: 19 May 2009