



Decision and Reasons for Decision

Application Number: 210254

Applicant: Mr A Ward

Respondent: Queensland Corrective Services

Decision Date: 3 March 2008

Catchwords: **FREEDOM OF INFORMATION – Section 53 of the *Freedom of Information Act 1992* – amendment of information – whether the applicant is entitled to apply for amendment of information**

FREEDOM OF INFORMATION – Section 54E of the *Freedom of Information Act 1992* – amendment of information – whether the information is inaccurate, incomplete, out-of-date or misleading

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REASONS FOR DECISION

Summary

1. On the information available to me, I am satisfied that the information in the relevant documents which the applicant seeks to amend:
 - is not inaccurate, incomplete, out-of-date or misleading
 - does not require amendment under Part 4 of the *Freedom of Information Act 1992 (FOI Act)*.

Background

2. On 14 February 2006, the Honourable Chief Justice de Jersey of the Supreme Court of Queensland issued Orders in matter BS551/06 directing Crown Law to forward certain documents to Queensland Corrective Services (**QCS**) to enable a decision to be made under Part 4 of the FOI Act and for the applicant to be notified of that decision (**Orders**).
3. By letter dated 15 March 2006, Mr C Thomas, Manager, FOI & Privacy of QCS wrote to the applicant acknowledging the Orders and particularising what he perceived the applicant alleged was false and misleading information. Mr Thomas also invited the applicant to provide further clarifying information which he would take into account before issuing a decision under Part 4 of the FOI Act.
4. By letters dated 30 April 2006 and 12 July 2006, the applicant provided QCS with further information relevant to a decision under Part 4 of the FOI Act.
5. By letter dated 1 November 2006, Mr Thomas advised the applicant that QCS had made a decision in relation to the fourteen amendments sought to the following documents:
 - 'SOTP Withdrawal Summary (Psychological)' dated 22 March 2002
 - letter from Ms G Sinclair to the applicant dated 5 October 2004
 - email from Ms E Sky to Mr C Thomas dated 23 July 2004.
6. By letter dated 21 November 2006, the applicant:
 - notified QCS that he accepted its decision in relation to eight of the amendments (one of the amendments was subject to the addition of a small amount of information)
 - sought internal review of Mr Thomas' decision with respect to five of the requested amendments
 - notified QCS that he intended to commence civil defamation proceedings in relation to the final amendment (but did not request internal review of that amendment).
7. By letter dated 29 May 2007, Ms S Barker, Manager, FOI & Privacy of QCS advised the applicant that an internal review decision had been made. Ms Barker decided to exercise the discretion conferred by section 54E of the FOI Act in relation to each of the five remaining amendments and add notations to the relevant documents.

8. By letter dated 24 June 2007, the applicant advised QCS that he did not accept Ms Barker's internal review decision (in relation to the wording of the five notations) and intended to seek external review of that decision.
9. By letter dated 11 June 2007 which was received by this Office on 26 June 2007, the applicant sought external review of the internal review decision.

Decision under review

10. The decision under review is the internal review decision of Ms Barker dated 29 May 2007.

Steps taken in the external review process

11. By email dated 27 June 2007, this Office wrote to QCS to obtain copies of certain documents relevant to the review.
12. By letter dated 28 June 2007, QCS provided the requested documents.
13. By letter dated 4 July 2007, the applicant was invited to provide submissions setting out any additional reasons for his assertions that the relevant information is inaccurate, incomplete, out-of-date or misleading.
14. By letter dated 28 July 2007, the applicant provided this Office with these submissions.
15. By letters dated 8 August 2007, I communicated a preliminary view to both the applicant and QCS and proposed that the matter might be informally resolved if the parties were agreeable to the suggested notations.
16. By letter dated 19 August 2007, the applicant advised this Office that he did not accept the preliminary view and disagreed with the form of the suggested notations. The applicant also provided this Office with further submissions in support of his case.
17. By letter dated 29 August 2007, QCS advised this Office that it accepted the preliminary view set out in the letter dated 8 August 2007 and was prepared to add the suggested notations which would informally resolve the matter.
18. By letter dated 7 January 2008, I wrote to the applicant to:
 - advise that on the information available to me, none of the relevant information was inaccurate, incomplete, out-of-date or misleading
 - confirm that in an attempt to informally resolve the matter, various notations to the relevant information had been proposed and were still open for the applicant to accept, if he wished to do so
 - invite him to make further and final submissions to this Office on any matters not previously addressed by him in his submissions.
19. By letter dated 7 January 2008, I informed QCS that I had advised the applicant that it was still open to him to informally resolve this matter by way of agreed notations to the relevant material and I again set out those proposed notations for its information. I also asked QCS to advise whether it had any objection to the matter being informally resolved on this basis.

20. By letter dated 5 February 2008, QCS advised that it was prepared to resolve the matter by adding the proposed notations to the relevant documents.
21. By letter dated 7 February 2008, the applicant advised that he wished to contest the further preliminary view and made further submissions in support of his case. The applicant also advised that he would be willing to resolve part of his application by accepting the notation proposed in relation to amendments 1 and 2 if QCS agreed to add seven words to that notation.
22. By letter dated 18 February 2008, I advised QCS that the applicant was willing to informally resolve part of his application and I asked QCS to advise whether it agreed to add the additional seven words proposed by the applicant.
23. By letter dated 22 February 2008, QCS advised that the notation proposed by the applicant in relation to amendments 1 and 2 was not acceptable to QCS.
24. Ultimately, this Office's attempts to informally resolve this matter were unsuccessful.
25. In making my decision in this matter, I have taken the following into consideration:
 - the Orders made by His Honour Chief Justice de Jersey in Supreme Court matter BS551/06 on 14 February 2006
 - transcripts of these proceedings
 - applicant's affidavit sworn 13 January 2006 (including exhibits A–R)
 - addendum to the applicant's affidavit made on 30 August 2005 and sworn on 11 October 2005 (including exhibits Q–W)
 - decision of *Ward v Bottomley* [2006] QSC 006
 - Mr Thomas' initial decision dated 1 November 2006
 - applicant's internal review application dated 21 November 2006
 - Ms Barker's internal review decision dated 29 May 2007
 - applicant's external review application dated 11 June 2007 (including attachments)
 - applicant's submissions dated 28 July 2007 (including attachments)
 - applicant's submissions dated 19 August 2007 (including the attachment)
 - letter from QCS dated 29 August 2007
 - letter from QCS dated 5 February 2008
 - applicant's submissions dated 7 February 2008
 - letter from QCS dated 22 February 2008
 - the documents which the applicant seeks to amend
 - relevant legislation, cases and previous decisions of this Office.

Issue on external review

26. The issue on external review is whether information in the relevant documents is inaccurate, incomplete, out-of-date or misleading and should be amended under Part 4 of the FOI Act.
27. The relevant documents comprise:
 - 'SOTP Withdrawal Summary (Psychological)' dated 22 March 2002 (**SOTP Withdrawal Summary**)
 - letter from Ms G Sinclair to the applicant dated 5 October 2004 (**Ms Sinclair's Letter**).

Findings

Order by His Honour Chief Justice de Jersey

28. In his submissions to this Office, the applicant refers to the Orders made by His Honour Chief Justice de Jersey on 14 February 2006 in matter BS551/06 and the transcripts of these proceedings.

29. In his application for external review, the applicant states:

The purpose of the order was for the correction of inaccurate and misleading material that had been placed on the public record by various staff of the Department of Corrective Services under the FOI Act 1992.

...

The purpose of the review as ordered by His Honour Chief Justice de Jersey remains that the inaccuracies be reviewed and corrected under part 4, Section 53 of the Freedom of Information Act 1992, regardless of how the inaccuracies came about.

30. In his submissions dated 19 August 2007, the applicant states:

Before proceeding further I would again draw to your attention that the review of the material disputed in this matter was at the direction of Chief Justice de Jersey in his order made on the 14th February 2006, a copy of that order is enclosed for you information as EX21. I would also respectfully request that you should perhaps also take the time to peruse a copy of the transcript of the proceedings before the court on that date when the order was made in matter BS 551/06 and thus acquaint yourself with the purpose and intent of that order being made.

I would suggest that perusal of the transcript will indicate that the purpose of the order which I would note was sought by the Crown Law solicitor representing the Respondent, Ms L Edwards as an officer of the then Department of Corrective Services was that other remedies were available to rectify and correct the inaccurate and misleading material that had been placed upon the records of the Department of Corrective Services. The remedy that was proposed by Crown Law was by the utilisation of part 4, section 53 of the Freedom of Information Act 1992 rather than by means of the Judicial Review process, a point that his Honour agreed with.

31. Finally, in his submissions dated 7 February 2008, the applicant states:

I would also draw to your attention the fact as set out in the transcript of the court proceedings before his Honour Mr Justice De Jersey that the Department contended that there were other remedies available, an argument that his Honour accepted and as a consequence directed that that avenue be utilised as a means of increasing the accuracy of the documents. You will note that his Honour was more interested in the accuracy of the material than if it was appropriate.

...

I would remind you that the purpose of the application to the court was not as to if QCS considered the documents under consideration appropriate but rather to correct misleading, inaccurate, detrimental and prejudicial information contained in the material so that it reflected actual fact, this rather than expedient, misleading, assumption and unsupportable opinion.

32. I have carefully considered the Orders dated 14 February 2006, the transcripts of proceedings and the applicant's submissions on this issue.

33. On the information available to me, it appears that:

- matter BS551/06 was commenced by the applicant filing an application for judicial review which named Ms L Edwards, A/Sentence Management Co-ordinator of QCS, as the respondent
- the applicant sought that '*the use of... inaccurate and misleading material be discontinued and the inaccurate and misleading material be expunged from the record*'.

34. A review of the transcript reveals that His Honour considered the following issues in the course of the proceedings:

- whether it was appropriate in the circumstances for the applicant to bring an application for judicial review
- whether an application for amendment of information under Part 4 of the FOI Act was the most appropriate course in the circumstances
- who the appropriate respondent was given the orders sought by the applicant.

35. I note that the Orders provide that:

1. *The Respondent's solicitor forward the following documents to the Manager, Freedom of Information Unit, Department of Corrective Services, so that a decision may be made expeditiously under the Part 4 of the Freedom of Information Act 1992, and notified to the Applicant.*
 - (a) *Sex Offender Treatment Program Exit Summary regarding the Applicant;*
 - (b) *Affidavit of Allan William Ward sworn 13 January 2006;*
 - (c) *'Addendum to the Affidavit of Alan William Ward made on 30th day of August 2005 dated 11 October 2005*
2. *The Application to be adjourned to a date to be fixed.*

36. On the information before me, I find that there is no evidence to suggest that His Honour considered or made any finding (or indeed comment) that the information which the applicant seeks to amend:

- is inaccurate, incomplete, out-of-date or misleading
- requires amendment under Part 4 of the FOI Act.

37. On the basis of the matters set out above, I am satisfied that the purpose and intent of His Honour's Orders was to facilitate the making of an appropriate decision under Part 4 of the FOI Act.

Part 4 of the FOI Act

Section 53(1) of the FOI Act

38. Part 4 of the FOI Act provides for the amendment of information held by government departments and agencies. Specifically, section 53(1) of the 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.

39. Therefore, under section 53(1) of the FOI Act, an agency is not required to consider amendment of a document under Part 4 of the FOI Act unless:
- (i) the person seeking the amendment has previously obtained access to the document from an agency, whether under the FOI Act or otherwise
 - (ii) the information which the applicant seeks to amend is information which relates to the applicant's personal affairs
 - (iii) the information which the applicant seeks to amend is claimed by the applicant to be inaccurate, incomplete, out-of-date or misleading.
40. I will consider each of these requirements in turn.

Application of section 53(1) of the FOI Act

Access to documents

41. I note that the manner in which the applicant was provided access to the relevant documents was discussed in the initial decision. In this decision, Mr Thomas found that the documents in issue (which included the SOTP Withdrawal Summary and Ms Sinclair's Letter) were documents to which the applicant had been granted access by QCS in some form.
42. On the information available to me, I am satisfied that:
- the applicant was given partial access to the SOTP Withdrawal Summary under the FOI Act on a previous occasion
 - the applicant was permitted to inspect the SOTP Withdrawal Summary at the Correctional Centre
 - the applicant gained access to the SOTP Withdrawal Summary in Supreme Court proceedings
 - Ms Sinclair's Letter was sent to the applicant by QCS.
43. On the basis of the matters set out above, I am satisfied that the applicant has previously obtained access to the relevant documents.

Personal affairs

44. In *Stewart and Department of Transport*¹, the Information Commissioner stated that information relates to the 'personal affairs of a person' if it relates to 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 and emotional ties with other people
 - domestic responsibilities or financial obligations.

¹ (1993) 1 QAR 227 (**Stewart**) at paragraphs 79-114.

45. Whether or not matter contained in a document comprises information relating to an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.
46. The Information Commissioner decided in *Stewart*² that information concerning what happens to a prisoner while in prison is ordinarily to be characterised as information which concerns the prisoner's personal affairs.
47. The SOTP Withdrawal Summary which the applicant seeks to amend relates to his involvement with, and participation in, the Sexual Offender Treatment Program (**SOTP**) while in custody at Wolston Correctional Centre. The document sets out details of the circumstances surrounding the applicant's offences, psychosocial and psychosexual history, presentation and progress through the SOTP and psychometric and risk assessment.
48. Ms Sinclair's Letter relates to a recommended mediation between the applicant and SOTP facilitators while the applicant was in custody at Wolston Correctional Centre in relation to the SOTP Withdrawal Summary including complaints the applicant made about psychologists on the SOTP.
49. As both of the relevant documents relate to events which occurred while the applicant was in custody, I am satisfied that the information which the applicant seeks to amend is properly characterised as information relating to his personal affairs.

Information the applicant claims is inaccurate, incomplete, out-of-date or misleading

50. To meet this threshold requirement, an applicant need only *claim* that the information is inaccurate, incomplete, out-of-date or misleading.
51. I am satisfied that in the applicant's external review application and submissions to this Office, the applicant:
 - claims the information is inaccurate, incomplete and/or misleading
 - provides reasons in support of his claim
 - suggests amendments which he says are necessary to make the information accurate.

52. In summary, on the basis of the matters set out above, I am satisfied that the applicant was *entitled to apply* to QCS for amendment of relevant information under section 53(1) of the FOI Act.

Section 54E of the FOI Act

53. If the requirements of section 53(1) of the FOI Act are satisfied, an agency must consider whether it should amend the relevant document and, if it decides to do so, what form the amendment should take.
54. Section 54E sets out *some* of the grounds under which an agency may refuse to amend relevant information:

² At paragraph 80, citing with approval the decision of Jones J (President) of the Victorian Administrative Appeals Tribunal in *Re Lapidus and Office of Corrections (No 2)* (19 February 1990, unreported).

54E Discretion to amend information

- (1) *An agency or Minister to whom an application is made under section 53 may decide to amend the information to which the application relates.*
- (2) *Without limiting the grounds on which the agency or Minister may refuse to amend the information, the agency or Minister may refuse to amend the information because—*
 - (a) *the agency or Minister is not satisfied—*
 - (i) *the information is inaccurate, incomplete, out-of-date or misleading; or*
 - (ii) *the information sought to be amended is information relating to the personal affairs of the applicant or relating to the personal affairs of a deceased person; or*
 - (iii) *if the information sought to be amended is information relating to the personal affairs of a deceased person, that the applicant is a person entitled to apply for amendment under section 53(2)(b); or*
 - (b) *the information is not recorded in a functional record.*
- (3) *In this section—*

functional record, of an agency or Minister, means a record available for use in the day to day or ordinary performance of the agency's or Minister's functions.

Application of section 54E of the FOI Act

55. Accordingly, I must now consider whether QCS has correctly exercised its discretion under section 54E of the FOI Act in relation to its decision to add notations to the relevant documents.
56. In determining whether QCS has correctly exercised its discretion under section 54E of the FOI Act, I must consider:
 - a) whether the information which the applicant seeks to amend 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 that information.
57. As set out above, I am satisfied that the information which the applicant seeks to amend relates to his personal affairs. Therefore I must now consider whether that information is inaccurate, incomplete, out-of-date or misleading.

Amendments 1 and 2

Information to be amended

58. The applicant requests that the following information be amended:
 - part of paragraph 1 of page 1 of the SOTP Withdrawal Summary, under the heading 'Reason for Report' (**Amendment 1**)
 - part of paragraph 4 of page 12 of the SOTP Withdrawal Summary, under the heading 'Conclusion and Recommendations' (**Amendment 2**).

59. The relevant part of paragraph 1 of page 1 of the SOTP Withdrawal Summary, under the heading 'Reason for Report' states:

He completed only the first module of the assessment phase and some written work for the second module of the assessment phase before voluntarily withdrawing from the program on 21st February, 2002, for reasons detailed below.

60. The relevant part of paragraph 4 of page 12 of the SOTP Withdrawal Summary, under the heading 'Conclusion and Recommendations', states:

Unfortunately, for the reasons detailed earlier, Mr Ward voluntarily withdrew from the Sex Offender Treatment Program due to his unwillingness to progress through the program.

61. I will deal with Amendments 1 and 2 concurrently as they deal with the same subject matter.

Whether the information is inaccurate, incomplete, out-of-date or misleading

The applicant's submissions

62. In his internal review application, the applicant states:

Assumption or opinion of the Psychologists is exactly that, assumption or opinion and is misleading in that it is not fact and fails to advise the reader of the report that they are the assumption or opinion of the writer of the report and falsely misrepresents by inference that the reasons given are those of myself when in fact they are not and fails to present the reasons given by the person subject of the report (myself), which are as set out in the letters to the Program co-ordinator and Offender Development Manager.

63. In his external review application, the applicant states that the information in these paragraphs is misleading and inaccurate because:

[t]here is nothing to substantiate the statement that I withdrew from the SOTP because I was unwilling to progress through the program which is factually inaccurate, the reasons for my withdrawal were those set out in my letter of resignation from the program and the confirming letter to the Manager, Offender Development dated 25th February 2002.

64. Further, in his submissions to this Office dated 28 July 2007, the applicant states:

Neither of these passages indicate in any way that they are the personal opinions held by the psychologists who compiled the report nor with the full knowledge of the reasons given by myself in writing for my withdrawal from the program do they acknowledge my reasons in any way at any time in that document despite the inference to any reader of that document that the reasons contained therein are those of myself.

...

At question at this point is the inaccurate presentation seemingly intended to misleads the reader of the report by intending to convey the inference that the reasons presented in the report for my withdrawal from the program are those of myself when it is quite evident that they are not my reasons and there is no acknowledgment either of my reasons or that the reasons presented are the personal belief of the psychologists who compiled the report.

65. The applicant also refers to comments made by Ms Sky and Ms Butler (the authors of the SOTP Withdrawal Summary) to the Psychologists Board of Queensland and also

before Justice Muir³. In his submissions to this Office dated 28 July 2007, the applicant suggests that these comments indicate that the reasons given in the report were 'assumption, conjecture or personal opinion of the Psychologists who compiled the report'. The applicant states that:

The Psychologists who compiled [the SOTP Withdrawal Summary] have since acknowledged in submissions made by themselves to the Psychologists Board of Queensland and in evidence given under oath to the Supreme Court of Queensland that the report does not give my reasons for my withdrawal from the program but rather presents the perceptions and personal opinions of the Psychologists who compiled that document.

66. I note one of the paragraphs the applicant refers to under the heading 'Conclusions' in Ms Butler's Complaint Response Report dated 21 November 2003 states that:

Finally, in regard to the complaint that I reported inaccurate information in his SOTP Withdrawal Summary in regard to conjecture and assumption regarding reasons for withdrawal from the SOTP program, I refute Mr Ward's assertions. I feel that I was drawing conclusions based on my professional knowledge and experience and inferences from my, and other psychologists', observation of Mr Ward's behaviour. The report that I compiled was a psychological report and, as such, I feel that psychological assessment, interpretation and rationales for such interpretations are a vital component. Ms Sky concurred with my assessment of Mr Ward's participation in the program based, it would seem, on her observations and knowledge of the offender.

67. I note Ms Butler's comments in the paragraph to which the applicant refers in the partial transcript of matter 9152/06 before Justice Muir:

Mr Ward's reasons were not included because it was a psychological report, we were writing our perceptions of why we felt Mr Ward had withdrawn, and we also felt that should, at any time, the issue arise again, Mr Ward was perfectly free to place forward his own reasons and his own documentation.

68. In his submissions dated 19 August 2007, the applicant states:

It remains documented fact that the psychologists who generated that report have themselves acknowledged in sworn testimony made both before the court and in their submissions made to the Psychologists Registration Board in their defence of a complaint of professional misconduct that the reasons for my withdrawal from the program are the opinion of the Psychologists who generated that report and not those of myself. As the purpose of the amendment sought is so that the document reflects fact rather than assumption.

69. In his final submissions to this Office, the applicant states:

I do not contest that the compilers of that document may have presented what they believed at the time of compiling that document to be their perceptions of my reasons for

³ I note that on the information available to me, the applicant made various complaints to the Psychologists Board of Queensland about Ms Butler (Psychologist, Sex Offender Treatment Program) and Ms Sky (Co-ordinator, Sex Offender Treatment Program), both of whom were signatories to the SOTP Withdrawal Summary and facilitators of the SOTP. It appears that Ms Butler and Ms Sky made submissions to the Psychologists Board of Queensland in response to the applicant's complaints and each prepared a Complaint Response Report. It seems that the complaints were also considered in a hearing before Justice Muir of the Supreme Court in matter 9152/06. The applicant has provided this Office with a partial transcript from the hearing that relates to evidence given by Ms Butler and copies of the submissions and Complaint Response Reports made by Ms Butler and Ms Sky to the Psychologists Board of Queensland.

withdrawal from the program, despite their full knowledge of my actual reasons for withdrawal, but I argue that there remains the inference that the reasons presented in the summary for my withdrawal from the program are those of myself and at no point is it acknowledged that they are the opinions of the compilers of the report and not those of myself.

...

I draw your attention to the following points,

1. *I was actively denied full and open access to the document by the compilers of the document until under the rules of disclosure I was provided with a complete copy of the document when the document was presented to the courts and the Department was then legally obliged to supply me with a full copy of the report. Previous access to the report had been on a restricted basis and I was denied access to some sections of that report including through FOI applications as it was deemed to be an assessment document.*
2. *Having been denied full access to the document as you have yourself noted, I was therefore denied the opportunity to have my reasons for my withdrawal included in the document despite the compilers of the report being fully aware of my reasons as submitted to them in writing for my withdrawal.*
3. *While it may be that the reasons given by the compilers of the report were their perceptions that was not stated nor were my actual reasons of which the compilers of the report had full knowledge and the highly misleading inference remains that the reasons for my withdrawal from the program as presented in the document were those of myself which they were not.*
4. *... there is an obligation on the part of those compiling such a document to ensure that it is noted that it is their opinion or perception and not the opinion of the offender, particularly when the offender has submitted his reason for withdrawal from such a program.*

...

The point in question is not as you infer a matter that the opinions presented as to why I withdrew from the program were not the belief, perceptions or professional opinion of the compilers of that document, nor is it argued that their opinions were inaccurately entered into the document, or indeed that their perceptions being their perceptions are incorrect. What is argued is that the manner in which that material which considerably conflicts with my documented reasons for my withdrawal is presented in the document in such a way as to infer that it is the reasons given by myself, this is totally misleading and it would appear that this has been its intent.

Decision by QCS

70. In his decision dated 1 November 2006, Mr Thomas addressed this point in the following manner:

As noted in Ms Butler's submission to the investigation conducted on behalf of the Psychologists Board of Queensland, Ms Butler is clear that nowhere in the report does she state the reasons detailed were those that you had provided. Ms Butler advises that in terms of the document being a psychological report, the reasons given were the author's professional opinion based on observations of your behaviour.

...

It is my view that in relation to a program designed to address the criminogenic needs of medium to high risk sex offenders, it is quite acceptable that suitably trained and qualified facilitators, such as the psychologists in issue, are capable of assessing and providing opinion in relation to a participant on such a program.

The views provided by the author on this issue were provided at the time of the report's creation and I am not satisfied that in this regard such views, when contrary to or omitting your own views, make the document inaccurate when it reflects a professional viewpoint or opinion that such a person is capable of making.

...

... both psychologists have submitted their concerns regarding your willingness to progress through the program and have provided evidence in support of their claims as well as opinion in terms of your motivation.

71. Mr Thomas decided that the information was not inaccurate and refused to exercise the discretion available under section 54E of the FOI Act to amend the information.

72. On internal review, Ms Barker addressed this point in the following manner:

I have read the submissions by Ms Butler and Ms Sky in relation to this matter, and I accept that the statement concerning your reasons for withdrawing from the SOTP in the Withdrawal Summary represents their views as to your motivation. There is nothing before me which indicates that that statement is inaccurate, incomplete, out-of-date or misleading insofar as it records the professional opinions of Ms Butler and Ms Sky. I am satisfied that they had formed certain views and recorded them in the Withdrawal Summary, in a manner which accurately represented their opinions at the time the document was compiled.

73. Ms Barker decided:

- that the information was not inaccurate
- it is arguable that the information may be considered incomplete as the applicant's own statement of reasons for withdrawal were not included in the document
- to exercise the discretion available under section 54E of the FOI Act to add a notation to the information.

74. The applicant sought external review of Ms Barker's decision based on his dissatisfaction with the wording of the notation drafted by Ms Barker.

Analysis

75. In considering whether the information the applicant seeks to amend is inaccurate, incomplete, out-of-date or misleading, I have considered each statement individually as well as the paragraphs as a whole. In addition, it is also appropriate for me to take into account the apparent function of the SOTP Withdrawal Summary in which the statements appear – it is a psychological report recording professional observations and assessments made by its authors in relation to the applicant's participation in, and withdrawal from, the SOTP.

76. I have carefully considered the applicant's submissions and the documents to which he refers. I agree with the comments made by Ms Butler and Ms Sky to which the applicant refers me, that the document is a psychological report which contains their professional opinions as to why the applicant withdrew from the program.

77. As the document is a psychological report containing conclusions based on the professional knowledge, experience and assessment of the authors, I am satisfied that the reasons for the applicant's withdrawal set out in that document reflect the professional opinions of the authors and that this is consistent with the apparent function of the document.

78. In my view, the following paragraph of the SOTP Withdrawal Summary supports the assertion that the reasons given in the document for the applicant's withdrawal reflect the professional opinions of the authors of the document and not the reasons given by the applicant:

Unfortunately, for the reasons detailed earlier, Mr Ward voluntarily withdrew from the Sex Offender Treatment Program due to his unwillingness to progress through the program. While, on the surface, this reluctance appeared to originate in Mr Ward's inability to accept the constraints of the program, there in fact appeared also to be a number of underlying reasons for his withdrawal. It could be hypothesised that Mr Ward was reacting to what he perceived as control by authority figure/s; that he was avoiding disclosing the details of his offences as required by his then-current work module; that his cognitive set is so rigid he is unable or unwilling to alter.

79. I consider that the bases for seeking amendment of an opinion are not as broad as those available when challenging factual matter. In *Crewsdon v Central Sydney AHS*, the New South Wales Court of Appeal commented that:

- an application for amendment of official records is '*not a vehicle for the determination of disputed questions of expert or other opinion when the recorded opinion was actually held and accurately entered in the official records*'⁴
- there is some support for the view that an accurate statement of opinion, expert or otherwise, that is genuinely held can be incorrect or misleading if it is based on information shown to be incorrect.⁵

80. There is no evidence before me to suggest that the opinions of the authors of the SOTP Withdrawal Summary were:

- not actually held
- inaccurately entered into the document
- based on information that is incorrect.

81. I am not satisfied that a plain reading of the document gives rise to an inference that the reasons given in that document for the applicant's withdrawal from the program are reasons provided by the applicant.

82. Furthermore, I am not persuaded by the applicant's submission that '*there is an obligation on the part of those compiling such a document to ensure that it is noted that it is their opinion or perception and not the opinion of the offender, particularly when the offender has submitted his reason for withdrawal from such a program*'.

83. In my view, a document with the apparent function of the SOTP Withdrawal Summary would not ordinarily contain an explanation to the reader that the subject of the psychological report does not agree with the comments made in it. Therefore, even if the applicant strongly disagrees with the professional opinions recorded in that document, there is no obligation on the authors of the document to acknowledge the applicant's view or the fact that the applicant does not agree with those opinions. The fact that the SOTP Withdrawal Summary does not indicate that the applicant disagrees with some of the content, does not, in my view, render the document inaccurate, incomplete, out-of-date or misleading. The function of the SOTP Withdrawal Summary is not to provide the reader with the applicant's views on the accuracy of the authors' professional opinions.

⁴ [2002] NSWCA 345 (*Crewsdon*) at paragraph 34.

⁵ *Crewsdon* at paragraph 36.

84. I note the applicant's submissions that he was denied full access to the SOTP Withdrawal Summary and the opportunity to have his reasons for withdrawal included in that document.

85. In response to this submission, it is relevant to note the last paragraph of the SOTP Withdrawal Summary states:

It should be noted that Mr Ward had this report read to him on 26.03.02 and he indicated that he did not agree with it. However, he was not specific about which areas were giving him concern, referring instead to the entire report as a "work of fiction".

86. I also note that on internal review, QCS agreed to add a notation to the SOTP Withdrawal Summary and attach copies of letters written by the applicant which the applicant maintains reflect his reasons for withdrawing from the SOTP (**Applicant's Withdrawal Letters**). Also, on two occasions during the external review process, the applicant was invited to resolve the matter informally by agreeing to a notation being added to the SOTP Withdrawal Summary and copies of the Applicant's Withdrawal Letters being attached to the document. On this basis, the applicant's assertion that he has been denied the opportunity to have his reasons included in the document is not correct.

87. For the reasons set out above, I am satisfied that:

- A plain reading of the information in the SOTP Withdrawal Summary that the applicant seeks to amend does not give rise to an inference that the reasons given in that document for the applicant's withdrawal from the SOTP are reasons provided by the applicant.
- It is clear on the face of the document that the reasons for the applicant's withdrawal from the SOTP which are set out in the document reflect the professional opinions of the authors.
- There is no evidence before me to suggest that the opinions of the authors of the SOTP Withdrawal Summary were:
 - not actually held
 - inaccurately entered into the document
 - based on information that is incorrect.
- Such a document would not ordinarily contain an explanation to the reader that the subject of the psychological report does not agree with the comments made in it.
- The information the applicant seeks to amend is not inaccurate, incomplete, out-of-date or misleading merely because it does not refer to the applicant's reasons for withdrawing from the SOTP.

88. On the basis of the matters set out above, I set aside the internal review decision of Ms Barker in relation to Amendments 1 and 2 and find that the information which the applicant seeks to amend:

- is not inaccurate, incomplete, out-of-date or misleading
- does not require amendment under Part 4 of the FOI Act.

Amendment 3

Information to be amended

89. The applicant seeks to amend part of paragraph 2 of page 10 of the SOTP Withdrawal Summary, under the heading 'Psychometric Assessment' (**Amendment 3**).
90. The relevant part of this paragraph states:

Mr Ward's responses to the PAI validity scales suggested that he answered in a manner which warrants cautious interpretation, as certain indicators fell outside normal range, raising the possibility of denial of problems with drink or drug use.

Whether the information is inaccurate, incomplete, out-of-date or misleading

The applicant's submissions

91. In his internal review application, the applicant states:

... there is available documented medical information from over a quite extended period that I have been physically unable to consume alcohol and regular blood testing has shown no traces of any drugs other than those administered for medical purposes. In the light of that information which was available to the writers of the report there is no justification for their insistence in publishing an outcome from a test based upon personal opinion or assumption from the PAI validity scales.

92. In his external review application, the applicant maintains that the information is misleading and inaccurate. He submits that:

The statement in the SOTP Withdrawal Summary in respect of the possibility of denial or problems with drink or drug use, is without foundation and a statement that I am not aware of any evidence held by Queensland Corrective Services which indicates that he had an alcohol or drug problem. My medical records over a number of years prior to my incarceration quite clearly indicate from blood test results that I do not use drugs other than those prescribed and due to the effects of viral hepatitis at the age of 18 I have no tolerance for alcohol.

93. In his submissions dated 28 July 2007, the applicant refers me to comments made by Ms Butler in her Complaint Response Report dated 21 November 2003 where she states:

It was not inferred that Mr Ward had a drink and drug problem. There is only one reference to alcohol in his report as alcohol and drugs were not a (self-reported) feature of his sexual offending. It appears that Mr Ward has taken this from the Psychometric Section of his Withdrawal Summary, where his Personality Assessment Inventory (PAI) results and interpretation (both computer generated) are recorded...

94. In his submissions dated 19 August 2007, the applicant maintains, in relation to Ms Butler's comment, that:

It would seem apparent that it is possible that there has been a lack of caution by the psychologist who carried out the interpretation of these results and may have misinterpreted them or there remains the probability that the assessment mythology or the computer scoring of this assessment is badly flawed thus the reluctance by the Psychologist involved and the Department of Corrective Services to allow them to be independently reviewed.

95. In his submissions dated 7 February 2008, the applicant states:

As there was available to the compilers of the report medical evidence that I had never been and had neither an alcohol or drug problem it was less than professional to raise the possibility that I had problems with either drink or drug use.

*If as it was stated to the Psychologists Board of Queensland by Ms Butler that “**It was not inferred that Mr Ward had a drink and drug problem**” then one must question what was the purpose of making that inference in the summary document in the light of the documented facts and prison medical records knowledge of the content of which has been acknowledged by both of the compilers of that document that such was not the case.*

...

As the document was compiled by staff members of the Department of Corrective Services with the full knowledge that it could be, as it in fact was, used in legal proceedings and as such would become a document released under the rules of disclosure and therefore to the world at large, it would as a consequence become available to lay persons.

As I do not and at no time have had either a drink or drug problem such an inference when made by the compilers of the report is misleading.

96. I note the applicant's submission in relation to the reference to the decision of the Administrative Appeals Tribunal (**Tribunal**) in *Mulder and Department of Immigration and Multicultural and Indigenous Affairs*⁶ in the further preliminary view:

In this case as the document has been prepared and used as a management report, is it to be then understood that the compilers of any such document can make misleading inferences in any such document which may then be used for other purposes to the ongoing detriment of the person the subject of such a document in the belief that they can then not be held accountable for the content of that document when as in this case it is further used by being presented in court as evidence, which was to my detriment, and having been presented in the court therefore becomes a document to which the world at large has lawful access.

Decision by QCS

97. In the initial decision, Mr Thomas explains that:

The matter in issue is a standardised clinical analysis of the validity scales (which examines protocol validity and response bias), as a result of a psychologist examining a computerised interpretation of the responses you gave to questions when completing the PAI. The program and resources to undertake such an analysis is only available to trained professionals such as a psychologist.

It is my view that the analysis does not mislead a reader to suggest or infer that you have an alcohol or drug problem. The assessment is written not for a lay person to interpret, and is based on a professional assessment that your “...responses to the PAI validity scales suggested that (you) answered in a manner which warrants a cautious interpretation...”. As suggested by the Professional Standards Unit of the Office of the Health Practitioner Registration Boards in their letter to you of 5 May 2005, the matter is “...reflective of a particular profile derived from your responses ...”

98. Mr Thomas decided that the information was not misleading but offered to add a notation to the document.

⁶ [2002] AATA 1347 (28 November 2002) (**Mulder**).

99. On internal review, Ms Barker addressed this point in the following manner:

It does not purport to be a statement based on evidence that you have, or have had, a drug or alcohol problem; it merely recognises that your responses to the relevant part of the PAI suggested that you fitted a certain profile which could include such behaviours.

100. I note that while Ms Barker did not consider that the statement required amendment, she decided to exercise the discretion under section 54E of the FOI Act to add a notation to the information.
101. The applicant sought external review of Ms Barker's decision based on his dissatisfaction with the wording of the notation drafted by Ms Barker.

Analysis

102. In considering whether the information which the applicant seeks to amend is inaccurate, incomplete, out-of-date or misleading, I have considered the statement in isolation and in the context of the relevant paragraph as a whole. In addition, it is also appropriate for me to take into account the apparent function of the SOTP Withdrawal Summary in which the statement appears.
103. In my view, the statement that: *'Mr Ward's responses to the PAI validity scales suggested that he answered in a manner which warrants cautious interpretation, as certain indicators fell outside normal range, raising the possibility of denial of problems with drink or drug use'* does not give rise to the inference that the applicant suggests.
104. I consider that the statement provides information about the manner in which the applicant responded to the Personality Assessment Inventory (**PAI**) and suggests that his responses indicate that he answered in a certain way which fits a certain profile. To that extent, I am not satisfied that the statement gives rise to any inference that the applicant currently has or ever has had problems with alcohol or drug use.
105. I note the applicant's submission that the results of the PAI are based on personal opinion or assumption. There is no evidence to suggest that this is the case. I consider that the results of the PAI are based on a professional interpretation by the SOTP facilitators and to that extent, can be characterised as their professional opinions.
106. I repeat and rely upon my comments set out above that the bases for seeking amendment of an opinion are limited and an application for amendment cannot be used as a *'vehicle for the determination of disputed questions of expert or other opinion when the recorded opinion was actually held and accurately entered in the official records'*⁷.
107. It is not clear from the applicant's submissions whether he contends that it is the results of the PAI or the interpretation of those results that is misleading and inaccurate. In any event, the applicant submits that there is evidence in the form of medical records that clearly demonstrates that he does not use drugs and has no tolerance for alcohol. Despite the applicant's assertion about the existence of such evidence, I am not satisfied that the statement warrants amendment given that:
- in my view, the statement does not give rise to an inference that the applicant has problems with drugs or alcohol

⁷ Crewsdon at paragraph 34.

- there is no evidence, apart from the applicant's belief, to suggest that the computer assessment is flawed or that the professional opinion recorded in the document was:
 - not actually held
 - inaccurately entered into the document
 - based on information that is incorrect.

108. In *Mulder*, the Tribunal made the following comments in respect of the meaning of the words 'incorrect', 'incomplete', 'out-of-date' and 'misleading' under the equivalent section of the *Freedom of Information Act 1982* (Cth)⁸:

One of the issues that I have had to consider in this matter is whether, in determining if a document is misleading, the test is purely objective or takes into account the document's likely audience. Mr Neely for the Department suggested that word "mislead" must be considered in the context of the class of persons who would have lawful access to documents, not the world at large. I accept this proposition.

109. I note that on the first page of the SOTP Withdrawal Summary there is a statement that says:

The content of this report is strictly confidential. Please contact the SOTP Coordinator prior to release or duplication of the contents.

110. I note the applicant's submission that the SOTP Withdrawal Summary has been prepared and used as a management report and, as it has been relied on as evidence in court proceedings, it is therefore a document to which the world at large has access.

111. I acknowledge that the SOTP Withdrawal Summary may have been considered in open court and therefore its contents may have been revealed to a broader audience than originally intended by its authors. However, in my view a psychological report such as the SOTP Withdrawal Summary, is a document available to a limited class of persons within QCS and would not ordinarily be available to the world at large or to lay persons.

112. For the reasons set out above, I am satisfied that:

- A plain reading of the statement in the SOTP Withdrawal Summary, even by a lay person, does not give rise to an inference that the applicant does in fact has, or has had, a problem with alcohol or drugs.
- The statement is based on a professional assessment of the applicant's responses to the PAI validity scales and a computerised interpretation of the responses he gave to questions when completing the PAI.
- There is no evidence before me to suggest that the opinions of the authors of the SOTP Withdrawal Summary were not actually held or accurately entered into the document or were based on information that is incorrect, nor is there evidence before me to suggest that the testing is flawed or inaccurate, or the results incorrect.
- The information is not incomplete or inaccurate merely because it does not address what the applicant says is an incorrect inference that he has or has had a drug or alcohol problem.

⁸ *Mulder* at paragraph 43.

- A psychological report such as the SOTP Withdrawal Summary is a document available to a limited class of persons within QCS and would not ordinarily be available to the world at large or to lay persons.
- The information the applicant seeks to have amended is not inaccurate, incomplete, out-of-date or misleading.

113. On the basis of the matters set out above, I set aside the internal review decision of Ms Barker in relation to Amendment 3 and find that the information which the applicant seeks to amend:

- is not inaccurate, incomplete, out-of-date or misleading
- does not require amendment under Part 4 of the FOI Act.

Amendment 4

Information to be amended

114. The applicant seeks to amend information contained in the SOTP Withdrawal Summary relating to his absences from the course.

115. The applicant does not identify which particular sentence he wishes to amend. However, I note that on internal review, QCS decided to add a notation to paragraph 3 of page 8 of the SOTP Withdrawal Summary under the heading 'Progress Throughout the Program' (**Amendment 4**) next to the penultimate sentence in the following paragraph:

Mr Ward attended sessions punctually. However, at the beginning of the course, he missed a number of sessions which he claimed was due to ill health. On the 12.06.01 (6 days after commencing the program), Mr Ward was individually counselled by a SOTP facilitator in regard to his concerns that the course may "harm (his) health". After examining his options, Mr Ward was asked to make his own careful evaluation of the situation. Mr Ward decided to continue with the program but did miss sessions due either to self-reported visits to the health centre or to his withdrawal to his cell because of self-reported health problems. The medical centre was contacted on 13.06.01 in an attempt to establish the current status of Mr Ward's health. It emerged that, while Mr Ward had genuine health problems, they did not appear to be as severe or as acute as Mr Ward himself seemed to believe. Initially Mr Ward was often given the 'benefit of the doubt' in regard to his health situation, although he was strongly encouraged to attend group even if he was feeling unwell. However, by the 23.10.01, Mr Ward's absences were beginning to reach an unacceptable level and he was issued with a warning that he had to provide a medical certificate when he absented himself from group or risk sanctions for tardy behaviour. Following this, Mr Ward's attendance rate improved markedly.

Whether the information is inaccurate, incomplete, out-of-date or misleading

The applicant's submissions

116. In his internal review application, the applicant states:

On this point the inference of the writer of the report is that my absences from the program were a deliberate act on my part to avoid participation in the program when in fact centre medical and hospital records show that I was either unfit to attend or absent from the centre attending the PAH for tests or treatment and thus unable to attend. The Psychologists acknowledge that my absences were for those reasons yet assert that my

absences were unacceptable and that a lack of progress through being unable to attend because of illness is unacceptable.

117. In his submissions dated 28 July 2007, the applicant states:

It would appear that the writer of the report was more concerned with justifying and supporting an allegation that I was not motivated to participate in the SOTP program despite the person compiling the report noting the availability of access to my medical file which clearly shows attendances by medical staff to attend myself in the unit, records of being transported to both the medical centre and PAH for treatment. It is of note that no mention is made in the report of instances where I collapsed or passed out while actually attending the course.

118. In his submissions dated 28 July 2007, the applicant refers me to comments made by Ms Sky in her Complaint Response Report dated 25 November 2003 where she states:

In conclusion, while I regret that inaccuracies occurred they were corrected when brought to our attention. It appears that some inaccuracies may have only now been identified but, as before, we are more than happy to correct these. We will not however make any further amendments to the SOTP Withdrawal Summary report until this complaint is resolved, in case we are accused by Mr Ward of tampering with the report – an accusation that he has made verbally to psychologists in the past. If there are further inaccuracies not yet revealed, I would appreciate your assistance in identifying same. Also if the issues I attempted to address in relation to the points pertaining to “Conjecture and assumption...” and “Inferences regarding rationale ...” do not relate to the complaints you have in hand please let me know. I am happy to respond to all complaints to resolve this matter.

119. The applicant submits in relation to Ms Sky’s comment set out above that:

In the light of the foregoing statement by Ms Sky it would seem that the reticence on the part of both Ms Sky the Corrective Services Department to correct the record in relation to these points which have been acknowledged as being inaccurate or misleading is most concerning as the complaint referred to lodged with the Psychologists Board of Queensland has been finalised by that Board for in excess of three years.

120. In his submissions dated 19 August 2007, the applicant states:

It is of note that the Psychologists who compiled the report despite having full access to and one would presume knowledge of the contents of my medical file which clearly shows attendances by medical staff to attend myself in the unit, and the records of my being removed from the prison and being transported to PAH for treatment.

It is also of note that no mention is made in the report of instances where I collapsed or passed out while actually attending the course despite these instances being recorded in prison health centre records and also in my personal medical file and case files.

121. In the applicant’s final submissions to this Office, he states:

... the compilers of the report ... appear to have couched their report in such a manner as to infer that it was my deliberate intention to avoid participation in the program.

...

I would note that my absences from the program were mostly involuntary due to my health and my absences to attend PAH and the prison medical centre were at the direction of prison medical staff, a fact of which the compilers of the report would have been fully aware from both their discussions with medical staff and prison medical records to which they had access to and indeed acknowledge that they accessed.

...

Based upon the prison records, medical records and movement orders the implied inference that I sought to avoid or minimise my participation in the program is both untrue and misleading.

...

The documented prison medical and movement records clearly indicate that the inference made by the compilers of the document is unfounded and unsustainable in fact as in the majority of my absences from the program were in fact as a consequence of directions given to me by prison custodial and medical staff either in response to my medical condition at the time or to attend hospital for tests or treatment.

As these absences were as a consequence of official direction or actions and involuntary on my part any inference by the compilers of the document that that I was attempting to minimise my participation in the program is both inaccurate and misleading...

Decision by QCS

122. In his decision dated 1 November 2006, Mr Thomas refused to exercise the discretion available to him under section 54E of the FOI Act as he did not have a sufficient level of detail to enable him to consider the applicant's request. He noted that this matter was raised in the applicant's complaint to the Psychologists Board of Queensland regarding the professional conduct of Ms Sky and Ms Butler and that the applicant received the following response in relation to that complaint:

The Withdrawal Summary refers to an unacceptable level of absences by you, most due to health problems. The determination of your failure to progress throughout the program due to health issues may be a reflection of attendance criteria related to participation in the SOTP wherein a minimum attendance level is necessary to continue participation in the program.

123. Ms Barker further explained in the internal review decision that:

It is clear from this paragraph of the Withdrawal Summary that your absences were primarily due to health-related issues, including visits to the health centre. I do not consider that any further information is necessary to explain the reason for your absences.

It appears from the Summary that the SOTP facilitators were in some doubt as to your inability to attend sessions due to ill-health; that is, they appear to have doubted that your health concerns were as serious as you believed. I am not qualified to make a judgment on whether or not that was the case, although in the absence of any evidence to the contrary I accept that the paragraph is an accurate reflection of the SOTP facilitators' views and, to that extent, is not inaccurate or misleading.

124. Ms Barker was not persuaded that the information was inaccurate or misleading but decided to exercise the discretion under section 54E of the FOI Act to add a notation to the information.
125. The applicant sought external review of Ms Barker's decision based on his dissatisfaction with the wording of the notation drafted by Ms Barker.

Analysis

126. In considering whether the information the applicant seeks to amend is inaccurate, incomplete, out-of-date or misleading, I have considered the paragraph as a whole and

the statement next to which QCS agreed to add a notation. Again, as set out above, the function of the SOTP Withdrawal Summary is also relevant to this consideration.

127. I note the applicant's submission that *'[t]he Psychologists acknowledge that my absences were for [medical] reasons yet assert that my absences were unacceptable and that a lack of progress through being unable to attend because of illness is unacceptable'*. I am not persuaded by the applicant's submissions on this point. Rather, the SOTP Withdrawal Summary states that the applicant's levels of absenteeism were beginning to reach an unacceptable level and that he would be required to provide a medical certificate for future absences.
128. The applicant also maintains that prison medical and movement records show that he was either unfit to attend the SOTP or was absent for medical tests and treatment. The authors of the report state that they contacted the medical centre in an attempt to establish the current status of the applicant's health and they acknowledge that the applicant was suffering from genuine health problems.
129. To the extent that the paragraph may indicate that the SOTP facilitators had doubts as to the severity of the applicant's health problems and genuineness of the applicant's explanations for absenteeism, I am satisfied that this constitutes their professional opinion and is based on their professional knowledge, experience and assessment.
130. In this regard, I repeat and rely upon my comments set out above in relation to the limited bases for seeking amendment to a professional opinion.
131. On the information available to me, there is no evidence to suggest that the authors' relevant professional opinions were:
- not actually held
 - inaccurately entered into the document
 - based on information that is incorrect.
132. In relation to the applicant's interpretation of Ms Sky's comments as a general expression of her willingness *'to correct the record in relation to these points which have been acknowledged as being inaccurate or misleading'*, I am not persuaded that this constitutes an acknowledgment by Ms Sky that the information the applicant seeks to amend is incomplete, inaccurate, out-of-date or misleading. Rather, in my view, Ms Sky indicates that she is prepared to address inaccuracies if they are revealed or identified.
133. On the basis of the matters set out above, I am satisfied that:
- The relevant information reports on the applicant's level of absenteeism and the fact that the applicant was *'issued with a warning that he had to provide a medical certificate when he absented himself from group or risk sanctions for tardy behaviour'*.
 - There is no evidence before me to suggest that the opinions of the authors of the SOTP Withdrawal Summary (in relation to the severity of the applicant's health problems and genuineness of the applicant's explanations for absenteeism) were:
 - not actually held
 - inaccurately entered into the document

- based on information that is incorrect.
- The comments by Ms Sky (to which the applicant refers me) do not constitute an acknowledgment by Ms Sky that the information the applicant seeks to amend is incomplete, inaccurate, out-of-date or misleading. Rather, Ms Sky indicates that she is prepared to address inaccuracies if they are revealed or identified.
- The information the applicant seeks to have amended is not inaccurate, incomplete, out-of-date or misleading.

134. Therefore, I set aside the internal review decision of Ms Barker in relation to Amendment 4 and find that the information the applicant seeks to have amended:

- is not inaccurate, incomplete, out-of-date or misleading
- does not require amendment under Part 4 of the FOI Act.

Amendment 5

Information to be amended

135. The applicant seeks to amend part of the second sentence of paragraph 2 of Ms Sinclair's Letter (**Amendment 5**).

136. Paragraph 2 of Ms Sinclair's Letter states:

Prior to receipt of your letter, arrangements had already been initiated to implement the recommendations of the Ethical Standards Unit. I subsequently received advice that you did not accept the recommendations and were not willing to take part in mediation with the SOTP facilitators.

Whether the information is inaccurate, incomplete, out-of-date or misleading

The applicant's submissions

137. In his internal review application, the applicant refers to a large amount of correspondence between himself and various QCS staff. The applicant states that:

- this correspondence covers an extended period
- at no point in the correspondence does he refuse to participate in mediation
- it is more appropriately a case of QCS refusing to allow mediation.⁹

138. In his external review application, the applicant submits that:

⁹ On the information available to me, the applicant made several complaints to the Ethical Standards Unit of QCS in relation to the conduct of Ms Butler and Ms Sky. An investigation was carried out and a recommendation was made by the Ethical Standards Unit that a meditation be convened with the SOTP facilitators but that no further action be taken in relation to the applicant's complaints. The applicant then wrote to the Ethical Standards Unit (the relevant parts of his letter dated 15 March 2004 are set out in this decision) in response to the recommendations. Further extensive correspondence on the issue followed and resulted in the applicant filing an application for a statutory order of review in the Supreme Court of Queensland. The matter was heard by His Honour Justice Helman on 22 November 2005. The issue His Honour was asked to consider in those proceedings related to the statement made by Ms Sinclair in a letter to the applicant dated 5 October 2004, which is considered in this review under the heading 'Amendment 5'.

It would seem that this advice was provided to Ms Sinclair by Mr M Rallings who has selectively misrepresented out of context a statement made by myself in my letter dated 15th March 2004 to attempt to justify the continued refusal by the Department to provide mediation in respect of the SOTP.

*Perusal of the letter dated 15th March 2004 commencing 5th Paragraph page 7, **Your proposal that**, on, in respect of mediation clearly shows that I did not at any time or in any way refuse to participate in the independent mediation as proposed by Mr Watters of the Departments Ethical Standards Unit. The use by Mr Rallings of the second paragraph of (3) of page 8 advises him of advice that I had been provided by counsel based upon past experience in respect of interviews with Departmental staff.*

I would draw to your attention that this was to be mediation not an interview conducted by departmental staff and the mediation proposed by Mr Watters was to be conducted by an appropriately qualified independent mediator external to the Department.

...

It is however quite evident from the correspondence between the Department and myself that it is in fact the Department that has been unwilling to allow mediation to occur and at no time have I refused to participate in any form of mediation.

Regardless of the inaccurate advice that was provided to Ms Sinclair based upon the assumptions of Mr M Rallings while they may have been expedient for the Department remain inaccurate as was the statement made by Ms Sinclair in respect of my willingness to participate in independent mediation.

139. In his submissions dated 28 July 2007, the applicant again refers to a large amount of correspondence by way of background and context. I have carefully reviewed this correspondence and note the applicant's submission that:

I have repeated advice that I had received from counsel that it was considered in the light of previous experience that I should not participate in any interviews with departmental psychologists unless that interview was recorded and I was to be provided with a copy of that record immediately at the conclusion of the interview.

Mediation with an independent mediator is a vastly different situation to an interview either one on one or one with a number of psychologists and I would make the point that while I had been given that advice I gave no indication that it was my intention not to participate.

140. In his submissions dated 19 August 2007, the applicant states:

The most convenient and expedient assumption made by Mr Rallings is simply that, an assumption, not fact and if considered in the context of that entire letter an assumption without any reasonable foundation as the clear purpose and intent of that letter was to seek a response as to when after considerable delay the proposed mediation would take place. If one then also considers all of the related relevant correspondence (which His Honour did not have before him) it would seem readily apparent that the Psychologists involved, Ms E Sky and Ms A Butler and other senior staff of the Corrective Services Department were opposed to any form of mediation taking place, and opposition that was especially so if conducted in accordance with the recommendation made by Mr Watters following the investigation by Ms T Crosby and Ms C Grant, that the mediation be conducted by a mediator independent of the Department of Corrective Services.

141. In his final submissions to this Office, the application states:

It has been established that at no point have I at any time refused to participate in mediation.

It remains that in reference to the fact that I had received advice from counsel that it would be unwise, based upon previous misrepresentation by staff of Corrective Services of comments made or not made, for me to participate in any form of mediation unless in the presence of a credible independent witness, or the proceedings were recorded and I was provided with a copy of that recording at the conclusion of the interview.

It remains undisputable fact that despite my having advised Ms Sinclair that I had received such advice that at no time or at any point in the letter conveying that advice did I refuse to participate in mediation such as had been proposed.

...

In the letter referred to at no point did I advise Mr Watters or in any indicate to that I refused to participate in mediation, I did however report advice that I had received. The presumption that having received that advice that I would act in accordance with that advice was an unfounded, unsustainable and inaccurate assumption by Mr Rallings who then espoused an inaccurate opinion which he then communicated to Ms Sinclair.

...

The material is unquestionably advice received but there remains to this time no valid support that it is advice that has been or was to be followed.

Decision by QCS

142. In his original decision, Mr Thomas stated:

In my view the utilisation of your 15 March 2004 response within the letter to you from Ms Sinclair's on 5 October 2004 accurately reflects your unwillingness to proceed with mediation in line with the recommendations of the investigation. The letter from Ms Sinclair provides you with an opportunity to continue to participate in mediation if you accept the terms of the recommendations.

143. Mr Thomas decided that the information was not inaccurate or misleading and decided not to exercise the discretion under section 54E of the FOI Act to amend the information.

144. On internal review, Ms Barker stated:

You subsequently lodged a complaint with the ESB concerning Ms Sinclair's Letter dated 5 October 2004. Mr Bottomley, the Director of the ESB, subsequently informed you, in a letter dated 16 May 2005, that Ms Sinclair's reference to having received advice was to advice provided by an officer of the Department, who has interpreted your correspondence to indicate that you were not willing to participate in mediation with the SOTP facilitators. To the extent that Ms Sinclair's Letter reflects the advice that she was given, I am satisfied that it is not inaccurate.

145. On this basis, Ms Barker decided:

- that it was arguable that the letter was incomplete or may be misleading if the advice given to Ms Sinclair did not accurately reflect what the applicant intended to convey in his earlier correspondence
- to exercise the discretion under section 54E of the FOI Act to add a notation to the information.

146. The applicant sought external review of Ms Barker's decision based on his dissatisfaction with the wording of the notation drafted by Ms Barker.

Analysis

147. In considering whether the information which the applicant seeks to amend is inaccurate, incomplete, out-of-date or misleading, I have reviewed the following:

- the relevant statement made by the applicant in his letter dated 15 March 2004 to Mr Watters of the Ethical Standards Unit and the letter as a whole
- the relevant statement in Ms Sinclair's Letter to the applicant dated 5 October 2004
- the email from Mr Rallings to Ms Sinclair dated 29 April 2005
- the decision of *Ward v Bottomley* [2006] QSC 006
- correspondence provided by the applicant.

148. In the applicant's letter to Mr Watters dated 15 March 2004, the applicant states at page 8 paragraph (3):

This mediation is to be conducted by a facilitator external to Wolston Correctional Centre and familiar with current approaches to sex offender intervention. Advice from counsel on this matter is that I should not participate unless the mediator is of appropriate qualification and independent of the department such as Dr S Smallbone of Griffith University whose credentials are beyond question having been one of the creators of the presently used Sex Offender Treatment Program.

I was further advised that it would in the light of experiences to this time it is considered that my interests would be best served by refusing to participate in any interviews with or relating to departmental psychologists unless that interview is taped and a copy provided immediately.

149. In his submissions dated 28 July 2007, the applicant provided a copy of an email from Mr Rallings to Ms Sinclair dated 29 April 2005. In that email, Mr Rallings sets out the basis of his interpretation of the applicant's letter of 15 March 2004:

Given this statement was in context of his response to mediation, I took it to mean that mediation would have to be taped or he refused to participate. This is clearly not in the spirit of mediation, and not something Eli, or anyone else in her position for that matter, would agree to. As this was a blatantly unreasonable requirement, I took it as a refusal to participate.

150. In the preliminary view letter to the applicant dated 8 August 2007, I noted that the sentence in the document which the applicant seeks to amend was referred to by His Honour Justice Helman of the Supreme Court of Queensland in the matter of *Ward v Bottomley* [2006] QSC 006. I note that at paragraph 23 of that decision, His Honour comments:

The investigation the respondent was called upon to undertake, and did undertake, was into Ms Sinclair's statement that she had received advice that the applicant was not willing to take part in the mediation recommended and referred to in Mr Watters's letter of 2 March 2004. Ms Sinclair's statement was, it should be noted, as to the receipt of advice; she did not assert more than that she had received certain advice. The respondent investigated that assertion and found that she had received that advice. It could be argued that the advice may have been wrong in that it proceeded from a misinterpretation of (3) on p. 8 in the applicant's letter of 15 March 2004, but that is not an issue for determination on this application. I should say, however, that the reference to tape-recording and the provision of copies of tapes following as it does the passage

concerning mediation suggests that the advice was correct, or at least that a reasonable person reading the passage could think it was so.

151. In his submission to this Office dated 19 August 2007, the applicant states:

While in your preliminary opinion you chose to focus on His Honours remarks with regard to the most convenient and expedient assumption made by Mr M Rallings based upon one sentence misrepresented out of context. I would draw your attention to His Honours comment that you chose to ignore and which I have highlighted in yellow as to the nature and extent of the investigation conducted by Mr Bottomley of the Corrective Services Ethical Standards Unit, and also the comment by His Honour which I have highlighted in red with regard to the possibility that the advice given to Ms Sinclair may well have been wrong having been based upon a misinterpretation of the section of one unrelated sentence in respect of advice given by counsel that was related to general dealings with Departmental Psychologists and had no relation to not in respect of mediation.

152. The applicant highlighted the following sentence in yellow:

The investigation the respondent was called upon to undertake, and did undertake, was into Ms Sinclair's statement that she had received advice that the applicant was not willing to take part in the mediation recommended and referred to in Mr Watters's letter of 2 March 2004. Ms Sinclair's statement was, it should be noted, as to the receipt of advice;

153. The applicant highlighted the following sentence in red:

It could be argued that the advice may have been wrong in that it proceeded from a misinterpretation of (3) on p. 8 in the applicant's letter of 15 March 2004, but that is not an issue for determination on this application.

154. The applicant also submits that 'it has been established' that he has not, at any time, refused to participate in mediation. On the information available to me, I find no evidence to support this assertion other than the applicant's own assertions to this effect in his submissions and subsequent correspondence with QCS.

155. I further note the last paragraph of the applicant's letter to Mr Watters dated 15 March 2004 which states:

I await your response and supply of the investigation report with interest prior to the lodging of an application for a judicial review of this and other related matters which it seems inevitable will be taken before the bench for determination.

156. After carefully considering all of the matters set out above, I am satisfied that:

- Ms Sinclair's statement in her letter to the applicant relates to the receipt of advice.
- The advice given to Ms Sinclair was based on an interpretation of the applicant's letter to Mr Watters.
- Mr Ralling's interpretation of the applicant's statement, which he explains in the email dated 29 April 2005, was not unreasonable in the circumstances and the statement by Ms Sinclair in this regard is not inaccurate.
- The information the applicant seeks to amend is not inaccurate, incomplete, out-of-date or misleading.

157. Therefore, I set aside the internal review decision of Ms Barker in relation to Amendment 5 and find that the information the applicant seeks to amend:

- is not inaccurate, incomplete, out-of-date or misleading
- does not require amendment under Part 4 of the FOI Act

DECISION

158. For the reasons set out above, I set aside the internal review decision of Ms Barker in relation to Amendments 1, 2, 3, 4 and 5 by finding that the information which the applicant seeks to amend in the SOTP Withdrawal Summary and Ms Sinclair's Letter:

- is not inaccurate, incomplete, out-of-date or misleading
- does not require amendment under Part 4 of the FOI Act.

159. 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 Henry

Date: 3 March 2008