

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 56 of 1993
(Decision No. 94005)

Participants:

JAMES ROBERT BRACK
Applicant

- and -

QUEENSLAND CORRECTIVE SERVICES COMMISSION
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - Refusal of access - matter communicated to the respondent alleging that a prisoner made threats in respect of the family of the prisoner's victim - whether matter exempt under s.46(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - Applicant seeks removal of a document from the applicant's Case Management file held by the respondent - Part 4 of the *Freedom of Information Act 1992 Qld* imposes a prerequisite to an application for amendment that the applicant has had access to the relevant document from an agency or Minister - applicant unable to satisfy prerequisite - jurisdiction of Information Commissioner to deal with application.

Freedom of Information Act 1992 Qld s.6, s.25, s.41(1), s.42(1)(b), s.44(1), s.46(1)(a), s.46(1)(b), s.46(2), s.52, s.53, s.55, s.78

Freedom of Information Act 1982 Cth s.37(1)(b)

Doelle and Legal Aid Office (Queensland), Re (Information Commissioner Qld, Decision No. 93005, 24 November 1993, unreported)

Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (Information Commissioner Qld, Decision No. 93002, 30 June 1993, unreported)

G v Day [1982] 1 NSWLR 24

McEniery and Medical Board of Queensland, Re (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported)

McKenzie v Secretary, Department of Social Security (1986) 65 ALR 645

McMahon and Department of Consumer Affairs, Re (Information Commissioner Qld, Decision No. 94003, 28 February 1994, unreported)

DECISION

1. I affirm that part of the decision under review (being the internal review decision of 26 March 1993 made by Ms K Mahoney on behalf of the Queensland Corrective Services Commission) by which it was determined that page 8 of the applicant's Case Management File is exempt from disclosure under s.46(1)(b) of the *Freedom of Information Act 1992 Qld.*
2. I also find that page 8 of the applicant's Case Management File is an exempt document under s.46(1)(a) of the *Freedom of Information Act 1992 Qld.*
3. I find that I have no jurisdiction under the *Freedom of Information Act 1992 Qld* to deal with the applicant's request for the removal of page 8 from the applicant's Case Management File.

Date of Decision: 6 April 1994

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F N ALBIETZ
INFORMATION COMMISSIONER

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QUEENSLAND CORRECTIVE SERVICES COMMISSION
 Respondent

REASONS FOR DECISION

Background

1. Mr J R Brack seeks review of a decision of the respondent, the Queensland Corrective Services Commission (the QCSC), to refuse him access to one of a number of documents claimed by the respondent to be exempt under s.46(1)(b) of the *Freedom of Information Act 1992 Qld* (hereinafter referred to as the FOI Act or the Queensland FOI Act). Mr Brack also seeks removal of the document in issue from his Case Management File held by the QCSC.
2. Mr Brack is presently incarcerated at the Borallon Correctional Centre, serving a life sentence for the crime of murder. His FOI access request dated 27 November 1992 was for his "complete prison files".
3. By a decision dated 26 January 1993, Mr Brack was granted access to most of the requested documents, but was refused access to a number of documents and parts of documents contained on his Case Management File and his Detention File which were claimed to be exempt under one or more of s.41(1), s.42(1)(b), s.44(1) and s.46 of the FOI Act. In accordance with s.52 of the FOI Act, Mr Brack applied for internal review which was undertaken by Ms K Mahoney, Internal Review Officer, of the QCSC. By decision dated 26 March 1993, Ms Mahoney affirmed the initial decision.
4. On 6 April 1993, Mr Brack applied to the Information Commissioner for external review of Ms Mahoney's decision of 26 March 1993. In the letter which accompanied his application, Mr Brack advised that he accepted all but one of the exemptions claimed by the QCSC, the exception being in respect of page 8 of his Case Management File. Mr Brack sought access to page 8 and also requested that it "be removed" from his Case Management File.
5. In the circumstances, the sole document in issue in the present external review is page 8 of the applicant's Case Management File. That document was identified in the QCSC's initial decision of 26 January 1993 as being "a brief note of the relative of a victim", though it is more precisely described in the evidence at paragraphs 7 and 8 below.

The External Review Process

6. Following examination of page 8, evidence was sought from Mr J R Meakins, Manager (Operations), of the Borallon Correctional Centre, who provided a statutory declaration executed on 29 July 1993.

7. In that statutory declaration, Mr Meakins states that on 5 April 1990 he was contacted by Ms D Graham, Executive Secretary to the Director (Corporate Services), of the QCSC in relation to the applicant. Mr Meakins was advised that an individual (hereinafter referred to as the third party) had contacted the QCSC in relation to Mr Brack. The third party had claimed that a letter had been posted by the third party to the QCSC. Mr Meakins was advised by Ms Graham that the QCSC had no record of receiving any correspondence from the third party.
8. Mr Meakins contacted the third party by telephone on 5 April 1990 to discuss the information which he had received from Ms Graham. At that time, the third party advised Mr Meakins that a letter in relation to Mr Brack had been posted to the QCSC by the third party. Mr Meakins stated that he had a further telephone conversation with the third party on 6 April 1990 during which he requested that the third party read out the letter which had been written to the QCSC. While the third party read out the letter, Mr Meakins transcribed by hand what was read to him over the telephone. A typed copy of what Mr Meakins transcribed during that telephone conversation constitutes page 8 of Mr Brack's Case Management File.
9. The third party was then contacted by a member of my staff who was advised that the third party objected to the release of page 8 to Mr Brack. The third party was invited to apply, in accordance with s.78 of the FOI Act, to be a participant in the review proceedings, but did not take up that opportunity. Nevertheless, evidence was obtained from the third party by way of a statutory declaration (executed on 17 August 1993) in relation to the facts and circumstances surrounding the communication to Mr Meakins of the matter recorded in page 8.
10. After obtaining the third party's evidence, I wrote to the applicant setting out my preliminary view that the QCSC had correctly claimed that page 8 was exempt under s.46(1)(b) of the FOI Act, and setting out the arguments in support of that view. I also advised the applicant that it was my preliminary view that I had no jurisdiction to consider whether or not page 8 should be removed from his Case Management File. Again, I set out arguments in support of that view. Mr Brack was asked to indicate whether he accepted or contested my preliminary views. In that letter I extended to the applicant the opportunity to provide me with a written submission addressing the issues of whether or not page 8 was exempt under the provisions of the FOI Act, and whether or not I had jurisdiction to consider the removal of that document from his Case Management File.
11. By letter dated 26 September 1993, Mr Brack advised me that he did not accept my preliminary views as previously communicated. The submissions which Mr Brack made in support of his case are discussed below at paragraphs 14 to 19.

The Applicable Legislative Provisions

12. Section 46 of the FOI Act provides as follows:

"46.(1) Matter is exempt if -

- (a) its disclosure would found an action for breach of confidence; or*
- (b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.*

(2) Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless its disclosure would found an action for breach of confidence owed to a person or body other than -

- (a) a person in the capacity of -
 - (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or
- (b) the State or an agency."

13. In relation to the issue of my jurisdiction to consider the removal of page 8 from Mr Brack's Case Management File, the following section is relevant:

"Person may request amendment of information

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

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

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

The Applicant's Submissions

14. In response to my letter outlining my preliminary views in respect of page 8, Mr Brack provided (by letter dated 26 September 1993) a written submission in relation to the issues arising under s.46(1)(b) of the FOI Act.
15. In relation to the issue of whether or not page 8 contained information of a confidential nature, Mr Brack stated:
- "I still don't understand the confidential nature, the relatives are [four of Mr Brack's victim's relatives were named], the latter being the problem, now to be honest with you, I know where it came from, and the guts so to speak of the letter."*
16. Mr Brack also addressed the issue of whether or not disclosure of the matter recorded in page 8 would be in the public interest. His submissions in this regard were as follows:

"This page 8 is being used as fact, and is being used in the decision-making process, about my life, my future, how, where, and when I live, this makes me a victim many times over. I would like this to stop, and I would like a fair assessment of myself, so that I can plan and work towards the future, a future that I can live in, and not one governed by anyone, who feels that they have a problem with me, and in one letter

accuse me, of anything they wish, even though I cannot read it, I cannot refute it, nor am I able to give my side of it, this would seem to be the simplest of Justice.

So on balance we are saying aren't we that we should observe Justice, in the public interests, but in so doing, allow any crime, or injustice to happen as a result, even though we are talking of a human life, in the public interests, no sir I don't accept the finding as you have explained them, and on balance how do you weight my life with a letter, a letter that to date is still unproven, which way would the scales lean, in the public interest of course."

17. Mr Brack also alleged that as a result of page 8 being on his Case Management File, he had been disadvantaged and discriminated against. In this regard he provided the example of being handcuffed while he attended a funeral outside the prison.
18. As a result of Mr Brack's reference to page 8 being used to his detriment and his passing reference to the commission of a "crime" in his submissions relating to the public interest considerations, I afforded the applicant an opportunity to provide a further submission, explaining those matters in greater detail. Mr Brack took up this opportunity and provided me with a second written submission by letter dated 8 November 1993.
19. The applicant's further submissions can be summarised as follows:
 - the "crime" to which Mr Brack referred in his letter dated 26 September 1993 was that, in refusing him access to page 8, the QCSC was denying him procedural fairness or natural justice as he had not been permitted to present his case in response to the matters recorded in page 8;
 - Mr Brack was concerned that nothing had been done to confirm whether or not the information recorded on page 8 was correct;
 - in relation to the issue of whether or not disclosure of page 8 could reasonably be expected to prejudice the future supply of such information pursuant to s.46(1)(b) of the FOI Act, it was Mr Brack's contention that page 8 did not constitute "information" for the purposes of that section as it was merely an unproven allegation; and
 - Mr Brack submitted that I had the jurisdiction to order the removal of page 8 from his Case Management File.

Application of s.46(1)(a) of the FOI Act to the Document in Issue

20. In my recent decision in *Re "B" and Brisbane North Regional Health Authority* (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported), I had occasion to consider in detail the elements which must be established in order for matter to qualify for exemption under s.46(1)(a) of the FOI Act. The test of exemption is to be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency or Minister faced with an application for access, under s.25 of the FOI Act, to the information in issue (see paragraph 44 in *Re "B"*). Where the hypothetical legal action by which the test of exemption is to be evaluated must, in the circumstances of a particular case, be an action in equity for breach of confidence, there are five criteria which must be established:
 - (a) it must be possible to specifically identify the information in issue, in order to establish that

it is secret, rather than generally available information (see paragraphs 60-63 in *Re "B"*);

- (b) the information in issue must possess the "necessary quality of confidence"; i.e. the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained (see paragraphs 64-75 in *Re "B"*);
 - (c) the information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it (see paragraphs 76-102 in *Re "B"*);
 - (d) it must be established that disclosure to the applicant for access under the FOI Act would constitute a misuse, or unauthorised use, of the confidential information in issue (see paragraphs 103-106 in *Re "B"*); and
 - (e) it must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed (see paragraphs 107-118 in *Re "B"*).
21. No suggestion arises in the present case of a contractual obligation of confidence between the third party and the respondent concerning the communication of the information in issue. Therefore, the test for exemption under s.46(1)(a) must be evaluated in terms of the requirements for an action in equity for breach of confidence.
22. I am satisfied that there is an identifiable plaintiff (the third party) who would have standing to bring an action for breach of confidence, and that the information claimed to be confidential information (as recorded in page 8) can be identified with specificity.
23. Mr Brack has received some information in relation to the contents of page 8. At paragraph 13 of his statutory declaration, Mr Meakins states:
- "I recall that at about 8.30 a.m. on 6 April 1990, I informed Brack I had received information from the Commission alleging that he had made threats to the family of [name of the applicant's victim appeared here]. I advised him that, until the matter was investigated thoroughly, he would be re-assigned to a work detail inside the Centre. Brack denied making any threats and claimed that he had had no contact with [the victim's] family. Thereafter, Brack was relocated to an inside garden working party."*
24. Further, as noted at paragraph 5, the QCSC's initial decision of 26 January 1993 informed Mr Brack that page 8 constituted a communication from a relative of his victim.
25. Thus, it has been revealed to Mr Brack that information had been received by the QCSC from a relative of his victim, in relation to an allegation that Mr Brack had made threats of some sort with respect to the family of his victim. However, Mr Brack was not provided with any details in relation to the nature of the threats which were alleged to have been made, nor the means by which the third party was made aware of those threats. While Mr Brack was able to identify a number of people from whom he suspected the communication recorded on page 8 had been received, there is no evidence that Mr Brack is aware of the identity of the person who communicated the matter in issue to Mr Meakins. Moreover, the allegation that threats had been made by the applicant in respect of the family of his victim is only one of the issues raised in the communication between the third party and Mr Meakins, as recorded on page 8.

26. On the evidence before me, I find that the information recorded on page 8 is certainly not trivial and has the requisite degree of secrecy to invest it with the "necessary quality of confidence", so as to satisfy the second criterion referred to in paragraph 20 above. The information recorded on page 8 includes the third party's identity, which is also in my opinion eligible for protection as confidential information under s.46(1)(a) of the FOI Act given the circumstances of this case. Those circumstances are, in material respects, very similar to those encountered in *G v Day* [1982] 1 NSWLR 24 which is authority for the proposition that although a person's identity is ordinarily not information which is confidential in quality, the connection of a person's identity with the imparting of confidential information can itself be secret information capable of protection in equity (see paragraph 137 of my decision in *Re "B"*).
27. As to whether the information recorded on page 8 was received in circumstances importing an obligation of confidence, I have had regard to the evidence obtained from the third party and from Mr Meakins.
28. In a statutory declaration executed on 17 August 1993, the third party provided evidence of the telephone conversation the third party had with Mr Meakins on 6 April 1990. The third party recalled Mr Meakins requesting that the third party read out the letter which had been posted by the third party to the QCSC, but which apparently had not reached its proper destination. The third party stated that a copy of the letter had been retained, and that the third party had read the letter to Mr Meakins over the telephone. With the exception of the name of one individual referred to in the letter, the third party confirmed the accuracy of Mr Meakins' transcription of the letter which forms the contents of page 8. In relation to the issue of confidentiality, the third party stated that Mr Meakins had advised the third party that the information which had been communicated to Mr Meakins would be kept on the applicant's file and would be completely confidential. The third party also recalled that Mr Meakins had said that the applicant would not have access to the information communicated to Mr Meakins by the third party. The third party recalled telling Mr Meakins that what had been communicated to Mr Meakins had to be kept confidential for certain reasons provided by the third party, which it would be inappropriate for me to reproduce as part of my reasons for decision. The third party also recalled telling Mr Meakins that under no circumstances should the applicant receive any information which would enable the applicant to identify the source of the information communicated to Mr Meakins.
29. Mr Meakins had no independent recollection of the telephone conversations he had with the third party on 5 April 1990 and 6 April 1990. In providing the evidence contained in his statutory declaration in relation to those conversations, Mr Meakins refreshed his memory from a record he made of the conversations in a memorandum to Mr B Dickson, General Manager, of the Borallon Correctional Centre dated 6 April 1990 (the memorandum). Mr Meakins' evidence did not specifically address the issue of whether or not he had provided the third party with an assurance that the third party's identity, and the information communicated by the third party to Mr Meakins, would be treated as confidential, as details of any such assurance were not included in the memorandum. However, at paragraph 17 of his statutory declaration, Mr Meakins addressed the issue of confidentiality as follows:

"When allegations of threats by prisoners are received from third parties, the information received is treated with a great deal of sensitivity and is considered to be very confidential. In investigating the allegations made, the names of the third parties are not revealed to the prisoners involved. It is a matter for the External Investigation Unit as to whether or not the substance of the allegations made are related to the prisoners."
30. I am satisfied on the evidence that the third party sought an express assurance from Mr Meakins that the information imparted by the third party, and the third party's identity, would remain strictly

confidential, especially from the applicant. I am also satisfied that Mr Meakins gave the third party the assurance which the third party sought. The information in issue is clearly sensitive in nature, and the third party appears to have reasonable grounds for fearing detriment from its disclosure. In my opinion, the circumstances of Mr Meakins' receipt of the information recorded on page 8 from the third party are such as to bind the QCSC with an equitable obligation to respect the third party's confidence.

31. While the third party was advised that the matter communicated to Mr Meakins would be investigated by the External Investigation Unit (now the Corrective Services Investigation Unit) of the Queensland Police Service, this is not a case where it must reasonably have been expected that the External Investigation Unit would reveal the identity of the third party to the applicant in the course of its investigation (*cf. Re McEniery and Medical Board of Queensland* (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported) at paragraphs 26 to 35). Further, that investigation was capable of being undertaken without putting to the applicant any more detail of the substance of the information recorded on page 8 than has actually been disclosed to the applicant, i.e. that it had been alleged that threats had been made by Mr Brack with respect to the family of his victim (*cf. Re McMahon and Department of Consumer Affairs* (Information Commissioner Qld, Decision No. 94003, 28 February 1994, unreported) at paragraphs 22 to 26).
32. As to the fourth criterion identified above at paragraph 20, I am satisfied that at the time the information recorded on page 8 was communicated to Mr Meakins, the third party expressly stipulated that the information was not to be conveyed to the applicant. The third party has also advised me that the third party continues to object to the release to Mr Brack of the information recorded on page 8. In the circumstances, I find that disclosure to Mr Brack of the information recorded on page 8 would constitute an unauthorised use of that information.
33. I am also satisfied that disclosure to Mr Brack of the information recorded on page 8 would cause detriment to the third party. At paragraph 111 of my decision in *Re "B"*, I stated that it was not necessary to establish that a threatened disclosure of the matter in issue would cause detriment in a financial sense but that detriment could also include embarrassment, a loss of privacy, fear or an indirect detriment, for example, confidential information may injure some relation or friend. I am satisfied that disclosure to Mr Brack of the information recorded on page 8 (including the third party's identity) would cause detriment to the third party of one or more of the types mentioned above.
34. In the circumstances of the present case, no occasion arises to consider the application of any of the defences to an equitable action for breach of confidence discussed in my decision in *Re "B"* at paragraphs 119 to 134. Further, s.46(2) of the FOI Act does not apply to the matter recorded on page 8 (so as to render s.46(1) inapplicable) because its disclosure would found an action for breach of confidence owed to a person or body other than those mentioned in s.46(2)(a) and (b).
35. I am satisfied that disclosure of the matter recorded on page 8 would found an action for breach of confidence, and that it is therefore exempt matter under s.46(1)(a) of the FOI Act. Since I wrote to the applicant setting out my preliminary views in terms of s.46(1)(b) and invited him to address his case to me on that basis (see paragraph 10 above) it is necessary that I also address s.46(1)(b) of the FOI Act.

Application of s.46(1)(b) of the FOI Act to the Document in Issue

36. As discussed at paragraph 146 of my decision in *Re "B"*, in order to establish the *prima facie* ground of exemption under s.46(1)(b) of the FOI Act three cumulative requirements must be satisfied:
 - (a) the matter in issue must consist of information of a confidential nature;
 - (b) that was communicated in confidence; and
 - (c) the disclosure of which could reasonably be expected to prejudice the future supply of such information.
37. The requirement that the information must be of a confidential nature calls for a consideration of the same matters that would be taken into account by a court in determining whether, for the purpose of the second criterion identified at paragraph 20 of this decision, the information in issue has the requisite degree of relative secrecy or inaccessibility (see paragraph 148 of *Re "B"*).
38. In relation to the second element, I discussed the meaning of the phrase "communicated in confidence" at paragraph 152 of my decision in *Re "B"* as follows:

"I consider that the phrase 'communicated in confidence' is used in this context to convey a requirement that there be mutual expectations that the information is to be treated in confidence. One is looking then for evidence of any express consensus between the confider and confidant as to preserving the confidentiality of the information imparted; or alternatively for evidence to be found in an analysis of all the relevant circumstances that would justify a finding that there was a common implicit understanding as to preserving the confidentiality of the information imparted."
39. I have already made findings at paragraphs 26 and 30 above that the information in issue in this case is confidential in nature, and that it was received by the QCSC in circumstances importing an equitable obligation of confidence. Thus, the first two criteria for the application of s.46(1)(b) are also satisfied.
40. The nature of the inquiry in relation to the requirement that disclosure of page 8 could reasonably be expected to prejudice the future supply of such information was discussed at paragraphs 154-161 of my decision in *Re "B"*. The test is not to be applied by reference to whether the particular confider whose confidential information is being considered for disclosure could reasonably be expected to refuse to supply such information in the future, but by reference to whether disclosure could reasonably be expected to prejudice the future supply of such information from a substantial number of sources available or likely to be available to an agency. The meaning of the phrase "could reasonably be expected to" was explained at paragraphs 154 to 160 of my reasons for decision in *Re "B"*. Where an expectation is asserted of prejudice to the future supply of information of a like character to the information in issue, it must be determined whether the expectation claimed is reasonably based. The words "could reasonably be expected to" call for the decision-maker applying s.46(1)(b) to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.
41. In the present case, the nature of the inquiry concerns the expected effects of disclosure to the applicant, who has been convicted of a serious crime of violence to the person, of the full details surrounding an allegation that the applicant had made threats in respect of the family of his murder victim. In view of the nature of the information in issue and the evidence of the third party, I am satisfied that disclosure of page 8 to the applicant could reasonably be expected to prejudice the future supply of information of a like character.
42. In the circumstances, I am satisfied that a *prima facie* case is established that page 8 is exempt under

s.46(1)(b) of the FOI Act. It remains to be considered (having regard to the "public interest balancing test" incorporated within s.46(1)(b)) whether disclosure of page 8 to the applicant would, on balance, be in the public interest.

43. The meaning of the phrase "public interest" was discussed in detail in my decision in *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (Information Commissioner Qld, Decision No. 93002, 30 June 1993, unreported) at paragraphs 35-57, of which the following are presently relevant:

"54 *Likewise, under freedom of information legislation, the task of determining, after weighing competing interests, where the balance of public interest lies, will depend on the nature and relative weight of the conflicting interests which are identifiable as relevant in any given case.*

- 55 *While in general terms, a matter of public interest must be a matter that concerns the interests of the community generally, the courts have recognised that: 'the public interest necessarily comprehends an element of justice to the individual' (per Mason CJ in Attorney-General (NSW) v Quin (1990) 64 ALJR 627). Thus, there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government, as this is an interest common to all members of the community. Similarly, the fact that individuals and corporations have, and are entitled to pursue, legitimate private rights and interests can be given recognition as a public interest consideration worthy of protection, depending on the circumstances of any particular case.*

- 56 *Such factors have been acknowledged and applied in several decisions of the Commonwealth AAT; for example in Re James and Others and Australian National University (1984) 6 ALD 687 at p.701, Deputy President Hall said:*

'87 In [*Re Burns and Australian National University* (1984) 6 ALD 193] my colleague Deputy President Todd concluded that, for the purposes of the Freedom of Information Act, the concept of public interest should be seen as embodying public concern for the rights of an individual. Referring to a decision of Morling J, sitting as the former Document Review Tribunal (*Re Peters and Department of Prime Minister and Cabinet* (No. 2) (1983) 5 ALN No. 218) Deputy President Todd said:

"But what is important is that his Honour clearly considered that there was a public interest in a citizen having such access in an appropriate case, so that if the citizen's 'need to know' should in a particular case be large, the public interest in his being permitted to know would be commensurately enlarged." (at 197)

I respectfully agree with Mr Todd's conclusion ... The fact that Parliament has seen fit to confer upon every person a legally enforceable right to obtain access to a document of an agency or an official document of a minister, except where those documents are exempt documents, is to my mind a recognition by Parliament that there is a public interest in the rights of individuals to have access to documents - not only documents that may relate more broadly to the

affairs of government, but also to documents that relate quite narrowly to the affairs of the individual who made the request."

57 *The force of this principle has been recognised, at least in so far as it relates to documents concerning the personal affairs of an applicant for access, in s.6 of the FOI Act, which is in the following terms:*

'Matter relating to personal affairs of applicant

6. If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding -

- (a) whether it is in the public interest to grant access to the applicant; and
- (b) the effect that the disclosure of the matter might have'."

44. As discussed at paragraph 19 of *Re Eccleston* and paragraph 179 of *Re "B"*, s.46(1)(b) of the FOI Act is framed so as to require an initial judgment as to whether disclosure of the document in issue would have certain specified effects, which if established would constitute a *prima facie* ground of justification in the public interest for non-disclosure of the matter, unless the further judgement is made that the *prima facie* ground is outweighed by other public interest considerations, such that disclosure of the document in issue "would, on balance, be in the public interest".
45. I have taken into account Mr Brack's submissions as to the public interest considerations favouring disclosure, which are set out at paragraphs 16 to 20 above. I accept that there is a public interest in a prisoner having access to documents relevant to his or her incarceration and security classification. Further, I accept that there is a public interest in an individual being afforded access to particulars of the substance of allegations made against that individual with a view to enabling that individual to present his or her case in respect of the allegations made. However, as noted at paragraph 31 above, I consider that the extent of the disclosure which has already been made to the applicant has probably afforded sufficient access to the substance of the allegations made against the applicant, and accordingly, I have not given significant weight to this public interest consideration in the particular circumstances of the applicant's case. In accordance with s.6 of the FOI Act, I have also taken into account the fact that the matter recorded on page 8 relates to the personal affairs of Mr Brack.
46. Nevertheless, I am not satisfied in the circumstances of this case that, collectively, the public interest considerations favouring disclosure of page 8 are of sufficient weight to displace the public interest favouring non-disclosure which is evident in the satisfaction of the *prima facie* test for exemption under s.46(1)(b) of the FOI Act. That public interest lies in preserving from the applicant (who has been convicted of a serious crime of violence to the person) the confidentiality of a communication concerning details of threats alleged to have been made by the applicant in respect of the family of his victim. I regard that public interest consideration as carrying such weight as to overbear, in this case, the public interest considerations favouring disclosure (which themselves concern issues of no small importance). I find that page 8 is an exempt document under s.46(1)(b) of the FOI Act.

47. Before leaving this subject, I should deal with a specific contention raised by the applicant that the matter recorded on page 8 does not constitute "information" for the purposes of s.46(1)(b) of the FOI Act (as it is merely an unsubstantiated allegation which he submits is false). There is no substance in this contention. I see no reason to doubt the correctness of the following remarks made by Muirhead J of the Federal Court of Australia in *McKenzie v Secretary, Department of Social Security* (1986) 65 ALR 645 at 647-9, concerning the meaning of the word "information" in the context of s.37(1)(b) of the *Freedom of Information Act 1982 Cth*, nor do I doubt that Muirhead J's remarks are equally applicable to the meaning of the word "information" in the context of other exemption provisions such as s.46(1)(b) of the Queensland FOI Act:

"Here [the applicant says] the letter did not supply 'information' as such. To the contrary it contained only factual allegations found to be false, coupled with a malicious attack on the applicant who was in effect labelled as an inveterate liar. It contained not 'information' but 'disinformation', which is defined in the Concise Oxford Dictionary 7th ed, as deliberately false information. That publication defines information, inter alia, as an 'informing, telling, thing told, knowledge, items of knowledge, news ...'. But it seems to me that deliberately false information, albeit malicious, coming into the hands of a department, which does not at the time of receipt know whether it is true or false is nevertheless at that time fairly labelled 'information'. The word misinformation goes merely to the true quality of the information. So when the letter comes into the hands of the Department it must I think be treated as 'information', a word of common albeit wide meaning constantly used in the statute but which, wisely enough, the draftsman did not attempt to define. But that is not the end of the applicant's argument. Counsel submitted that it is at the time a client seeks disclosure of the document that the matter must be examined, a time, it must be assumed in this case, when the Department is satisfied the information was inaccurate and false. At that time when the document has lost all credibility can its author be aptly regarded as a 'confidential source of information in relation to the enforcement or administration of the law?' ...

[The applicant] argues that the exemption applies only to sources of information which are established as having validity or accuracy. If the stage is reached when the Department concludes that the information has no truth or validity, in the sense that it does not influence a decision, it ceases to have the protection of the Act as it can no longer be regarded as informative and the author can no longer be regarded as a confidential source of information. But I cannot accept such a narrow interpretation. Information prompting administrative inquiry is still properly classified as information in the hands of the Department, be it true or false."

Also relevant in this context are my remarks concerning s.42(1)(b) of the FOI Act and confidential sources who supply false information, at paragraphs 56-64 of my decision in *Re McEniery and Medical Board of Queensland* (Information Commissioner Qld, Decision No. 94002, 28 February 1994, unreported).

Jurisdiction Issue - Removal of Page 8 from the Applicant's Case Management File

48. In his application for internal review of the QCSC's initial decision of 26 January 1993, and in his application for external review of Ms Mahoney's decision of 26 March 1993, Mr Brack requested that page 8 be removed from his Case Management File.

49. I am satisfied that I have no jurisdiction to consider this aspect of Mr Brack's application for external review.
50. Part 4 of the FOI Act provides the mechanism by which an individual may, in certain circumstances, request an agency to amend information contained in documents held by an agency. Section 53 of the FOI Act, which is quoted above at paragraph 13, is drafted in terms which make it a prerequisite to the entitlement to apply to amend information recorded in a document that the applicant has previously had access to that document from an agency or Minister (whether under the FOI Act or otherwise). Mr Brack has not had access to page 8, nor is he to receive access to that document as a result of my decision in the present case. Accordingly, as Mr Brack is incapable of making a valid request for amendment of information under s.53 of the FOI Act, I have no jurisdiction to consider the removal of page 8 from his Case Management File. Even in the event that Mr Brack at some time in the future should obtain access to page 8, I consider that Mr Brack would not be entitled to seek the removal of page 8 (which I take to mean the destruction or disposal of that document) from the Case Management File under the provisions of Part 4 of the FOI Act. In my decision in *Re Doelle and Legal Aid Office (Qld)* (Information Commissioner Qld, Decision No. 93005, 24 November 1993, unreported), I determined that the removal or destruction of a document is not a method of amending information which can be required of an agency or Minister under s.55 of the FOI Act.

Conclusion

51. For the foregoing reasons:
- (a) I affirm that part of Ms Mahoney's decision of 26 March 1993 by which it was determined that page 8 of the applicant's Case Management File is exempt from disclosure under s.46(1)(b) of the FOI Act;
 - (b) I find that page 8 of the applicant's Case Management File is an exempt document under s.46(1)(a) of the FOI Act; and
 - (c) I find that I have no jurisdiction to consider the removal of page 8 from the applicant's Case Management File.

.....
F N ALBIETZ

INFORMATION COMMISSIONER