OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Decision No. 97007
Application S 176/95

Participants:

PETER JOHN BAYLISS
Applicant

QUEENSLAND HEALTH
Respondent

ANOTHER
Third Party

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - matter in issue would identify a source of information given to the Minister for Health about alleged unsatisfactory standards in the provision of medical services - whether disclosure of the matter in issue would identify a confidential source of information in relation to the enforcement or administration of the law - application of s.42(1)(b) of the *Freedom of Information Act 1992* Qld.

Freedom of Information Act 1992 Qld s.26, s.42(1)(b), s.78, s.89
Health Rights Commission Act 1991 Qld s.33(1), s.59(1)(c), s.59(1)(d)
Health Services Act 1991 Qld
Medical Act 1939 Qld

Attorney-General's Department and Australian Iron & Steel Pty Ltd v Cockcroft (1986) 64 ALR 97
"B" and Brisbane North Regional Health Authority, Re (1994) 1 QAR 279
Department of Health v Jephcott (1985) 62 ALR 421
McEniery and the Medical Board of Queensland, Re (1994) 1 QAR 349
Richardson and Commissioner for Corporate Affairs, Re (1987) 2 VAR 51

DECISION

1. I affirm that part of the decision under review (being the decision made on behalf of the respondent on 22 September 1995 by Ms K Liddicoat) by which it was decided to refuse the applicant access to certain matter in folio 216 on the basis that it was exempt matter under s.42(1)(b) of the *Freedom of Information Act 1992* Qld.

2. I also vary the decision under review by finding that those parts of the documents described in subparagraphs 19(a) and (c) of my accompanying reasons for decision, to which the applicant has been denied access, comprise exempt matter under s.42(1)(b) of the *Freedom of Information Act 1992* Qld.

Date of decision: 28 April 1997

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INFORMATION COMMISSIONER

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REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision refusing him access, under the *Freedom of Information Act 1992* Qld (the FOI Act), to matter which relates to a complaint made by a person (referred to in these reasons for decision as the "third party") to the Minister for Health, concerning the conduct by the applicant of a medical service in Brisbane.

2. By letter dated 27 June 1995, the applicant's solicitor applied to the Minister for Health for access, under the FOI Act, to:

> *… all written and printed correspondence, memoranda, minutes, diary notes, electronic mail and all other documents … relating to all correspondence and communication:-*
>
> *1. between the Minister for Health and the Department of Justice and Attorney-General (including the Minister for Justice and Attorney-General, and the Crown Law Division and the Office of the Solicitor General) subsequent to 1st January 1990 concerning:-*
>
> *(a) termination of pregnancies in Queensland; and*
> *(b) Dr Peter John Bayliss;*
>
> *and*

2. between the Minister for Health and Dr Diana Lange (in her capacity as the chief health officer of Queensland Health) subsequent to 1st January 1994 concerning:-

(a) the practice of termination of pregnancies in Queensland; and
(b) Dr Peter John Bayliss.

3. By letter dated 21 August 1995, Ms S Garvey of Queensland Health advised the applicant's solicitor that the FOI access application had, on 7 July 1995, been transferred to Queensland Health for processing (see s.26 of the FOI Act). Ms Garvey also indicated that, on 11 July 1995, part of the FOI access application had been transferred by Queensland Health to the Department of Justice and Attorney-General, for processing in respect of requested documents held by that Department. Ms Garvey then informed the applicant's solicitor of Queensland Health's decision in response to the remaining portion of the FOI access application. Ms Garvey stated that she had identified a file consisting of 319 pages, only two of which fell within the terms of the applicant's FOI access application. On behalf of Queensland Health, Ms Garvey stated that she had decided to grant the applicant full access to one page (folio 215), and to grant him partial access to the other page (folio 216), subject to the deletion of certain matter which she determined was exempt matter under s.42(1)(b) of the FOI Act.

4. Ms Garvey's statement that full access was given to folio 215 was not precisely accurate. Ms Garvey went on to explain that she had deleted, from both folios 215 and 216, certain matter which did not fall within the terms of the applicant's FOI access application. I note that the applicant's solicitor has made no complaint or challenge in respect of this aspect of Ms Garvey's decision. I have examined folios 215 and 216, which comprise a two page briefing note, dated 20 February 1995, to the then Minister for Health. I am satisfied that, apart from the information deleted as exempt matter under s.42(1)(b) of the FOI Act, the other matter deleted from folios 215 and 216 has no connection to the applicant. I will therefore treat it as matter which is not in issue in this review.

5. By letter dated 24 August 1995, the applicant applied for internal review of Ms Garvey's decision, stating that he was aggrieved by her decision not to grant access to folios 1-214, 216 and 217-319 of the file identified in Ms Garvey's decision. By letter dated 22 September 1995, Ms K Liddicoat, as the internal review officer appointed by the respondent, affirmed Ms Garvey's decision in respect of the matter which was deleted from folio 216 as exempt matter under s.42(1)(b) of the FOI Act. Ms Liddicoat also affirmed Ms Garvey's decision that folios 1-214 and 217-319 did not fall within the terms of the applicant's FOI access application. Ms Liddicoat informed the applicant that those folios dealt with a broad range of matters connected with the subject of termination of pregnancies, but did not relate specifically to the applicant. Hence, they fell outside the terms of the relevant FOI access application which had sought documents concerning termination of pregnancies and the applicant.

6. After some further correspondence with the respondent, the applicant, by letter dated 17 October 1995, applied to me for review, under Part 5 of the FOI Act, of Ms Liddicoat's decision.

External review process

7. In a telephone conversation on 13 February 1996 between one of my investigative officers and the applicant's solicitor, the applicant's solicitor agreed to a proposal that my investigative officer inspect folios 1-214 and 217-319 on the relevant Queensland Health file, in order to determine whether any of those folios fell within the terms of the applicant's FOI access application. On 23 February 1996, the investigative officer attended at Queensland Health's central office and inspected the relevant file, including some additional folios placed on the file since the making of the decision under review. As a result of that inspection, the applicant's solicitor was given a written assurance that folios 1-214 and 217-319 (as well as the additional folios placed on the file subsequent to the decision under review) fell outside the terms of the applicant's FOI access application. That assurance was accepted, and the applicant does not seek to pursue access to folios 1-214 and 217-319 in this review.

8. After examining folio 216, I wrote to the respondent on 26 February 1996, inviting it to lodge evidence and written submissions in support of its case that the third party (identifying references to whom had been deleted from folio 216, as exempt matter under s.42(1)(b) of the FOI Act) was a confidential source of information in relation to the enforcement or administration of the law, within the terms of s.42(1)(b) of the FOI Act.

9. The respondent lodged a written submission dated 7 May 1996. It identified three considerations pointing to the existence of an implied understanding between the third party and the respondent that the identity of the third party would be treated in confidence (one of the three considerations, as well as other identifying references, had to be deleted from the copy of the submission provided to the applicant, as disclosure of that material would have identified the third party). The respondent further submitted:

> *In order for this Department to effectively administer* [the *Health Services Act 1991* Qld], *confidential sources of information are relied upon to assist the Department in ensuring the provision of high quality health services. Information about the quality of health services (including the conduct of medical practitioners) is provided by health service consumers, health service providers and other members of the community on the understanding that their identity or the information they are providing or both, will remain confidential.*

10. The respondent's submission also stated (at p.3) that the respondent held no written record of information provided to it by the third party. I endeavoured to explore further with the respondent the nature of the information supplied by the third party, since, in *Re McEniery and Medical Board of Queensland* (1994) 1 QAR 349, I had said (at p.361, paragraph 26):

> *... If one is assessing the circumstances surrounding the imparting of information in order to determine whether there was an implicit mutual understanding that the identity of the person who supplied the information would remain confidential, a relevant (and frequently crucial) issue will be whether the provider and recipient of the information could reasonably have expected that the provider's identity would remain confidential given the procedures that must be undertaken if appropriate action is to be taken by the recipient, in respect of the information, for the purposes of the enforcement and administration of the law.*

(In respect of this issue, see, generally, pp.361-364 of *Re McEniery*).

11. By letter dated 17 May 1996, I requested that the respondent furnish details of the information provided by the third party, and address the issue identified in the passage from *Re McEniery* quoted above. The respondent replied by letter dated 20 June 1996, recommending that I consult the third party.

12. I had written to the third party on 24 May 1996, seeking to ascertain whether the third party had any objection to the disclosure to the applicant of the matter in issue in folio 216, and drawing the third party's attention to s.78 of the FOI Act, which allowed the third party to apply to be a participant in the review. The third party replied, by letter dated 17 June 1996, strenuously objecting to disclosure of the matter in issue in folio 216, but did not, at that stage, apply to be a participant in the review.

13. On 24 June 1996, the Deputy Information Commissioner wrote to the respondent conveying the third party's position, and again requesting a response to my letter to the respondent dated 17 May 1996.

14. By letter dated 8 August 1996, Dr Lange, Chief Health Officer, informed me that the respondent no longer wished to claim exemption under s.42(1)(b) in relation to folio 216. However, she stated that the respondent did not generally resile from the arguments it presented in its submission dated 7 May 1996, and referred in particular to that which is quoted at paragraph 9 above. The respondent's decision to withdraw its claim for exemption surprised me. The respondent may have perceived difficulty in establishing exemption because of the inability of Dr Lange, or any other relevant officer of the respondent, to recall, or give evidence about, information provided to the Minister and the respondent by the third party. (I note that the respondent had been unable, at that stage, to locate the third party's letter dated 31 January 1995 to the Minister for Health. It was located by the respondent in September 1996 following further searches undertaken at my request, after the third party had indicated an intention to rely on it to support the third party's case for exemption: see paragraph 18 below).

15. Having been informed of the respondent's altered position, the third party applied, under s.78 of the FOI Act, to become a participant in this review. That application was granted. The third party's solicitor lodged a written submission dated 18 October 1996, together with an affidavit sworn by the third party on 17 October 1996. Copies of those documents, with matter which might identify the third party deleted, were provided to the applicant for comment. The applicant's solicitor responded by letter dated 21 January 1997, contesting the claim for exemption under s.42(1)(b).

16. The applicant was also provided with edited copies of the respondent's submission dated 7 May 1996 and letter dated 8 August 1996, in response to which, the applicant's solicitor lodged a supplementary submission dated 25 February 1997.

17. The applicant's solicitor contended that, in the interests of natural justice, the applicant should have been provided with unedited copies of submissions. However, the requirements of procedural fairness are to be assessed according to what is fair and practical in the circumstances of a particular case. The only matter deleted from the copies provided to the applicant's solicitors, of material lodged by other participants in this review, comprised information which, if disclosed, would have revealed the identity of the third party. Whether or not the applicant has a right to obtain access to that information, under the FOI Act, is the very issue in dispute in this review. To have disclosed to the applicant unedited copies of the

evidence and submissions lodged by other participants would have made the review redundant, before I had an opportunity to make a decision in accordance with s.89 of the FOI Act. I consider that the applicant has been sufficiently apprised of the substance of the case made by other participants, through the provision of edited copies of submissions and evidence.

18. Annexures A and C to the third party's affidavit sworn 17 October 1996 are, respectively, true copies of the third party's letter to the Minister for Health dated 31 January 1995, and the Minister's reply dated 20 February 1995. At the time of the respondent's initial processing of the applicant's FOI access application, those documents were not identified as documents falling within the terms of the applicant's FOI access application, perhaps because they do not refer by name to the applicant. However, when those documents are read in conjunction with folio 216, it becomes apparent that those documents fall within the terms of the applicant's FOI access application. Both the respondent and the third party indicated that they were prepared to accept this, and that they had no objection to my dealing with the two documents as documents in issue in this review. The third party was prepared to consent to the disclosure to the applicant of the two documents, subject to the deletion of matter which the third party asserted would, if disclosed, identify the third party, and which is claimed by the third party to be exempt matter under s.42(1)(b) of the FOI Act. Copies of the two documents, edited to remove the matter claimed by the third party to be exempt matter under s.42(1)(b) of the FOI Act, have been disclosed to the applicant.

19. In summary then, the documents containing the matter in issue are:

    (a) a letter dated 31 January 1995 from the third party to the Minister for Health requesting a meeting to raise concerns about the provision of therapeutic pregnancy termination services in Queensland;
    (b) the first page (folio 216) of a briefing note dated 20 February 1995 to the Minister for Health, containing a recommended response to document (a); and
    (c) a letter dated 20 February 1995 from the Minister for Health to the third party, indicating that the Minister was unable to meet with the third party, but that the third party's letter had been passed on to the Chief Health Officer for attention and necessary action. (I note that, according to the respondent's submission dated 7 May 1996, the Chief Health Officer referred the third party's letter to the Medical Board of Queensland).

20. The applicant has had access to parts of each of the above documents. The matter in issue comprises the parts of the above documents which have thus far been withheld from the applicant, being matter which the third party contends would, if disclosed, identify the third party and destroy the protection to which the third party is entitled as a confidential source of information in relation to the enforcement or administration of the law.

Application of 42(1)(b) of the FOI Act

21. Section 42(1)(b) of the FOI Act provides:

> ***42.(1)*** *Matter is exempt matter if its disclosure could reasonably be expected to—*
>
> …

> *(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; … .*

22. I considered the proper interpretation and application of s.42(1)(b) at some length in *Re McEniery*, where I noted (at pp.356-357, paragraph 16) that:

> *16. Matter will be eligible for exemption under s.42(1)(b) of the FOI Act if the following requirements are satisfied:*
>
> *(a) there exists a confidential source of information;*
> *(b) the information which the confidential source has supplied (or is intended to supply) is in relation to the enforcement or administration of the law; and*
> *(c) disclosure of the matter in issue could reasonably be expected to -*
> *(i) enable the existence of the confidential source of information to be ascertained; or*
> *(ii) enable the identity of the confidential source of information to be ascertained.*

Confidential source of information

23. At p.358 (paragraphs 21-22) of *Re McEniery*, I adopted the statement of Keely J, sitting as a member of a Full Court of the Federal Court of Australia in *Department of Health v Jephcott* (1985) 62 ALR 421 (at p.426), in finding that the phrase "a confidential source of information" in s.42(1)(b) of the FOI Act means a person who has supplied information on the understanding, express or implied, that his or her identity will remain confidential.

24. There is no evidence before me of an express assurance or understanding between the respondent and the third party that the identity of the third party would remain confidential. It is therefore necessary to assess the circumstances surrounding the communication of information from the third party to the respondent, in order to determine whether there was an implicit mutual understanding that the identity of the third party would remain confidential. I discussed the factors relevant to an assessment of this kind in *Re McEniery* at pp.359-364 (paragraphs 24-34), and also at p.371 (paragraph 50) where I said:

> *50. The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential (and hence whether the informant qualifies as a confidential source of information for the purposes of s.42(1)(b)) requires a careful evaluation of all the relevant circumstances including,* inter alia*, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in a position analogous to that of an informer (*cf. *paragraph 25 above), whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as opposed to fanciful) risk that the informant may be subjected to harassment or other retributive action or could otherwise suffer*

> *detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential (e.g. a failure or refusal to supply a name and/or address, cf.* Re Sinclair, McKenzie's *case, cited in paragraph 36 above).*

25. In the third party's affidavit sworn 17 October 1996, the third party deposed to having met with the Health Rights Commissioner on 25 January 1995, on what the third party understood was a confidential basis. As a consequence of that meeting, the third party wrote on 31 January 1995, in identical terms, to the Minister for Health, the Premier and the Medical Board of Queensland (the letter to the Minister for Health being annexure A to the third party's affidavit). In reply, the Premier indicated that the third party's letter had been forwarded to the Minister for Health, and the Minister for Health indicated that he had passed the third party's letter on to the Chief Health Officer for attention and necessary action. The Medical Board of Queensland subsequently sought details of the matters the third party wished to raise, and these were given to the Board by letter from the third party dated 8 March 1995 (which is annexure B to the third party's affidavit).

26. In so far as the question of confidentiality of identity is concerned, the third party's affidavit states:

> *4. As a medical practitioner … I was acutely aware of the necessity to maintain anonymity and confidentiality in relation to complaints regarding other medical practitioners. It was my belief that complaints made by medical practitioners to the Queensland Medical Board were always held in strict confidence and the identity of the complainant would not be revealed unless information sought by the Medical Board could not be obtained from other bodies, organizations or non-confidential sources of information.*
>
> *5. I believe that as a medical practitioner I have an ethical duty to raise genuine concerns with the appropriate authorities and that had I been of the view that my identity would be revealed then I would have been extremely reluctant to volunteer this information. Further I would have felt extremely inhibited to volunteer such information regarding another medical practitioner's possible infringement of professional standards affecting the medical care and treatment of patients.*
>
> *6. The type of information I wished to discuss with the Medical Board, the Minister for Health and the Premier, I believed would not have led to my identity having to be disclosed if an investigation was to be conducted. The type of information concerned the procedures and practices adopted by a particular medical practitioner and this type of information would have been available from other sources.*
>
> …
>
> *8. …I understood that my identity would remain confidential and that the information provided in the above correspondence* [including the letter to the Minister] *could be obtained from alternate sources other than myself.*

27. I consider that there are sufficient indications, on the face of the third party's letter dated 31 January 1995 to the Minister for Health, of a desire on the part of the third party to keep his or her identity confidential, and that these indications must, or ought to, have been apparent to the Minister, and those in the Minister's office and in Queensland Health, who read the letter. I note, in particular, that

    (a) the letter is clearly marked "IN CONFIDENCE";
    (b) the third party was not prepared to disclose in the letter the information that the third party wished to convey (even though describing it as serious and urgent) but sought a meeting for that purpose; and
    (c) the third party wished to inform against another medical practitioner in respect of medical and professional conduct that allegedly presented a serious threat to the health of women in Queensland, but the third party was not prepared to name the other medical practitioner in the letter.

28. Having regard to all the relevant circumstances, I consider that the third party's desire for confidential treatment of his or her identity as a source of information would have been understood and accepted by the Minister for Health and the respondent. In my opinion, the following considerations (in addition to those referred to in paragraph 27 above) warrant a finding that there was and remains an implicit mutual understanding between the third party and the respondent that the third party's identity would remain confidential:

    (a) the serious and sensitive nature of the information which the third party had indicated he or she wished to convey to the proper authorities;
    (b) the fact that the third party stood in a position analogous to that of an informer; i.e., the third party had indicated that he or she wished to disclose information attributing responsibility to another medical practitioner for conduct which allegedly presented a serious threat to the health of women in Queensland;
    (c) it was reasonable for the third party to understand and expect that appropriate action could be taken in respect of the information which the third party wished to convey to the proper authorities (and which ultimately was conveyed to the Medical Board of Queensland, as the appropriate authority to conduct an investigation, rather than the Minister or the respondent), while still preserving the confidentiality of its source. The third party was not a source of information whose identity would necessarily have to be disclosed as a person against whom a wrong was alleged to have been committed, and the information which the third party wished to supply was such that a proper authority could seek to investigate and independently verify it; i.e., it would not have been dependent on the direct observation and testimony of the third party (*cf.* paragraphs 27 and 32 of *Re McEniery*).

29. The factors referred to in (c) above would not have been apparent to the Minister and the respondent at the time of receipt of the letter dated 31 January 1995 (though they should have been apparent to Dr Lange, who was also, at that time, the President of the Medical Board of Queensland, after the third party supplied information to the Medical Board of Queensland in March 1995). Nevertheless, the Minister and the respondent would have understood the need to protect the identity of an informer (unless and until disclosure was required by due legal process) in the interests of ensuring the continued flow of information that might assist medical regulatory authorities, like the Medical Board of Queensland and the Health Rights Commission, to more effectively perform their investigative/regulatory functions in the wider public interest. The Minister for Health, as the Minister with portfolio

responsibility for those bodies, and for the effective functioning generally of systems for the provision of health care in Queensland, was, in my opinion, an appropriate point of contact for the concerns which the third party wished to raise. Although the third party should probably have expected that the Minister would refer the third party's information to the relevant investigative/regulatory authority, the third party may have believed that if the Minister became convinced of the seriousness and urgency of the third party's concerns, he may have been prepared to use his authority and influence, as the responsible Minister, to ensure that appropriate action was taken.

30. The applicant's submissions raise a number of points for my consideration. The applicant contends, correctly in my view, that evidence given in paragraph two of the third party's affidavit about an understanding of confidentiality with the Health Rights Commissioner, cannot logically extend to the letter dated 31 January 1995 to the Minister for Health. I have not treated that segment of evidence from the third party as relevant to the finding I have made.

31. The applicant submits that disclosure by the third party to the Medical Board, the Health Rights Commission, the Premier and the Minister for Health (and the applicant also asserts that Dr Lange provided the information to the Queensland Police Service) amounts to "substantial dissemination" of the third party's views, which negates any claim to confidentiality. I noted at p.306, paragraph 71(b) and (c), of my reasons for decision in *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, that publication of confidential information to a limited number of persons on a confidential basis will not necessarily destroy the confidential nature of the information: see also *Attorney-General's Department and Australian Iron & Steel Pty Ltd v Cockcroft* (1986) 64 ALR 97 at p.108, and *Re McEniery* at p.364, paragraph 34. I consider that the disclosure, to those authorities, of the third party's identity as a source of confidential information did not destroy its confidential nature. In my view, each of the authorities the third party wrote to was an appropriate avenue for complaint given their investigative/regulatory or supervisory responsibilities. In each case, the third party clearly indicated a desire that the communication be treated "in confidence". I do not consider that this limited disclosure has resulted in the identity of the third party losing the element of secrecy necessary to maintain a claim for exemption under s.42(1)(b) of the FOI Act.

32. In addition, the applicant asserts that he is aware of the identity of the third party. In *Re McEniery* at p.357 (paragraphs 17 and 18), I accepted that s.42(1)(b) of the FOI Act cannot apply where the identity of an informer is known, or can be easily ascertained independently of the document in issue. However, I consider that, in asserting that he knows the name of the third party, the applicant is merely engaging in guesswork and has made an assumption that the third party is a person known by the applicant to have followed similar steps in making complaints about the applicant on a prior occasion. For reasons which would be apparent to any independent arbiter permitted to examine the matter in issue, but which I cannot satisfactorily explain without disclosing information that would tend to identify the third party, I am satisfied that the applicant has no confirmed knowledge of the identity of the third party. Nor could the identity of the third party be easily ascertained independently of the matter in issue.

33. The applicant also submits that the person he asserts to be the informer has communicated with the various authorities for no other reason than to cause a mischief. He submits that a claim for confidentiality cannot be upheld if this was the sole reason for communicating the

information. At p.375, paragraph 64 of my decision in *Re McEniery*, I referred with approval to the decision of the Victorian Administrative Appeals Tribunal in *Re Richardson and Commissioner for Corporate Affairs* (1987) 2 VAR 51. In *Re Richardson*, the applicant sought access to a file note which recorded information that had been provided by a confidential source in relation to the applicant's activities as a director of a company in liquidation. The applicant argued that the substance of the matter contained in the file note was libellous and that he proposed seeking legal redress. The applicant's argument was in the following terms:

> *...it could not be in the public interest to protect a source of false information but rather it is in the public interest to protect persons like himself from having false accusations made against him.*

The Tribunal made the following comment in response to the applicant's submission:

> *This argument may appear attractive when one only considers those who maliciously supply false information which they know to be untrue. However, when consideration is given to the case of a person who, in good faith, supplies information which is subsequently found on investigation to be inaccurate or mistaken, the difficulties inherent in such a construction become apparent. The legislation is clearly designed to protect the identity of informers and does not differentiate between the good, the bad or the indifferent.*

34. I do not consider that the application of s.42(1)(b) of the FOI Act was intended to involve an examination of the motives of the putative confidential source of information. A source may provide accurate information, which is useful to regulatory authorities, with the clear intention of causing harm to the subject of the information. The motive of the source would not alter the value to a regulatory authority of accurate information, which was relevant to its regulatory functions. The reliability of information provided by confidential sources would, in any event, ordinarily be tested in the course of the investigative process. I note that s.42(1)(b) of the FOI Act does not contain a public interest balancing test. Thus, in the application of s.42(1)(b), no account is to be taken of public interest considerations which might favour disclosure of information which otherwise satisfies the test for exemption under s.42(1)(b). In any event, there is no material before me which tends to show that information was communicated by the third party for the purpose of causing a mischief.

35. The applicant asserts that the information provided by the third party was already, to the knowledge of the third party, under investigation by the Medical Board. I am not satisfied, on the material before me, that that assertion is correct with respect to a substantial part of the information which the third party was seeking to provide to appropriate authorities, and ultimately did provide to the Medical Board of Queensland. Even if the applicant's assertion were correct, I do not consider that it would make any difference to the application of s.42(1)(b) of the FOI Act. That provision is clearly designed to ensure that citizens are not discouraged from co-operating with law enforcement and regulatory agencies, by providing information which might assist such agencies to more effectively perform their functions. That purpose would not be served if the protection of s.42(1)(b) were to be denied to a person volunteering to inform in respect of a particular matter (and who otherwise qualified as a confidential source of information within the terms of s.42(1)(b) of the FOI Act) merely because the particular matter was already under investigation.

36. In a supplementary submission dated 25 February 1997, the applicant commented on issues raised in material lodged by the respondent. I do not think it is necessary to separately address the comments made in the applicant's supplementary submission. Some of them correspond, in substance, to arguments made in the applicant's primary submission. To the extent that I consider the points made in the applicant's supplementary submission to have any substance or relevance, most of them (i.e., points 2, 3, 5, 6 and 7), have, in my opinion, been satisfactorily dealt with above (in, respectively, paragraphs 29, 29 and 31, 33-35, 31, and 17). One of them (point 4) may be correct, but refers to a consideration (raised in the respondent's submission dated 7 May 1996) which I have not treated as relevant to, or supportive of, my findings.

37. I find that the third party is a confidential source of information within the meaning of s.42(1)(b) of the FOI Act.

Relates to enforcement or administration of the law

38. Applying the principles discussed in *Re McEniery* at pp.365-370 (paragraphs 36-43), I am satisfied that such information as was provided in the third party's letter to the Minister dated 31 January 1995, and the information which the third party intended to provide as foreshadowed in that letter (and which was later supplied to the Medical Board of Queensland), was information which related to the enforcement or administration of the law. The information was clearly pertinent to the administrative and law enforcement responsibilities of the Medical Board of Queensland under the *Medical Act 1939* Qld (as I have indicated above, the Minister for Health was, and remains, the Minister responsible for the administration of that Act), and probably also could have been the subject of a valid complaint to the Health Rights Commissioner under s.33(1) or s.59(1)(c) (if the Minister for Health had been prepared to refer the complaint), or s.59(1)(d), of the *Health Rights Commission Act 1991* Qld.

39. I note that in the decision under review, and in its submission dated 7 May 1996, the respondent identified the *Health Services Act 1991* Qld as the relevant law for the purposes of the application of s.42(1)(b) of the FOI Act. However, I think the respondent was mistaken in that regard. The *Health Services Act 1991* concerns the organisation and delivery of public sector health services in Queensland. It does not appear to contain any provisions concerned with regulation of the standards of medical services provided by a private sector health care service, such as that operated by the applicant.

Identification of the confidential source

40. My observations in *Re McEniery* at p.370 (paragraphs 44-45) in respect of the third requirement (see paragraph 22 above) to establish exemption under s.42(1)(b), are relevant here. I am satisfied that disclosure of the matter remaining in issue in the three documents identified in paragraph 19 above could reasonably be expected to enable the identity of the third party as a confidential source of information to be ascertained. The name and position of the third party appears in several places. The third party's signature appears once. There are also a number of passages containing information relating to the third party which, I am satisfied, would, if disclosed, enable the identification of the third party.

41. I find that the matter remaining in issue satisfies the requirements for exemption under s.42(1)(b) of the FOI Act. I also find that none of the exceptions set out in s.42(2) of the FOI Act is applicable to the matter in issue.

Conclusion

42. I therefore affirm the decision of Ms Liddicoat to delete matter from folio 216 on the basis that it is exempt matter under s.42(1)(b) of the FOI Act. However, it is also necessary that I vary Ms Liddicoat's decision in order to take account of the two letters between the third party and the Minister for Health (identified in paragraph 19 above) which were not dealt with in the decision under review. The applicant has been given partial access to those letters. I vary the decision under review by finding that those parts of the documents described in subparagraphs 19(a) and (c) of my reasons for decision, to which the applicant has been denied access, comprise exempt matter under s.42(1)(b) of the FOI Act.

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F N ALBIETZ
INFORMATION COMMISSIONER