

Dimitrijević and Education Queensland

(S 224/99, 31 May 2000, Deputy Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

1.-3. These paragraphs deleted.

REASONS FOR DECISION

Background

4. The applicant, Mrs V Dimitrijević, is a maths/science teacher who currently holds an S2 suitability rating (the highest suitability rating for a teacher being S1) with Education Queensland. The applicant has been seeking employment with Education Queensland for several years but, after some initial short-term teaching contracts at various state high schools, has not been offered either full-time or part-time employment since 1997.
5. After having been informed that adverse reports had been made concerning her performance at two schools, the applicant was offered three further contracts in different schools, but was informed that her suitability rating could be subject to review during those contracts. (I understand that Education Queensland may, at its discretion, reassess a teacher's performance if it believes this to be necessary, and may raise, lower or maintain that teacher's suitability rating as a result of such reassessment. It is my understanding that this condition applies to all teachers.)
6. The applicant did not accept the subsequent offers of employment, as she believed that certain officers of Education Queensland were attempting to improperly obtain adverse reports on her teaching performance, for the purpose of downgrading her suitability rating and denying her further employment with Education Queensland. The applicant also believed that officers of Education Queensland had acted illegally in not observing certain provisions of the *Public Service Regulation 1996 Qld* (the PS Regulation) in relation to the adverse reports from two of the schools in which the applicant was contracted to teach. Whether Education Queensland followed the appropriate procedures, as specified in the PS Regulation, is not, however, relevant to the present review. I understand that the applicant has already raised those concerns with Education Queensland.
7. Brief statements to the effect that the applicant had been offered, but had declined, the further teaching contracts referred to in paragraph 5 above were entered into EDPERS (Education Queensland's computerised personnel database). I understand that the practice of Education Queensland, if a teacher is offered a contract and refuses that offer, is that future offers of employment may not be made to that teacher until all other available teachers with the same subject capabilities and suitability rating have been

given the opportunity to take up an offered contract or position. The applicant asked Education Queensland to remove the entries relating to contracts which she had been offered, but had declined, from her EDPERS records, but Education Queensland refused to do so on an administrative basis.

8. By letter dated 14 July 1999, the applicant wrote to "Freedom of Information, Department of Education", again requesting that Education Queensland remove *"improper and adverse information on my 'Staffing Comments Enquiry' screen of EDPERS"* and setting out in detail her reasons for seeking to have the record amended.
9. Education Queensland treated that request as an application, under Part 4 of the FOI Act, for amendment of information concerning the applicant. By letter dated 17 August 1999, Mr Paul Reynolds, Education Queensland's Acting FOI Co-ordinator, informed the applicant of his decision that the information in issue concerned the applicant's work affairs, not her personal affairs, and was therefore not information which Education Queensland was required to amend under Part 4 of the FOI Act. Mr Reynolds also informed the applicant that amendment of information by an agency did not include deletion of that information from agency records.
10. The applicant applied for internal review of Mr Reynolds' decision, by way of a letter dated 23 August 1999. The internal review was conducted by Ms Therese Storey, Principal Policy Officer, Judicial and Administrative Review Unit, who informed the applicant, in a letter dated 3 September 1999, that she had decided to uphold Mr Reynolds' decision. Ms Storey offered, however, to add a notation to the information in issue, and invited the applicant to provide the wording for that notation.
11. The applicant's notation was subsequently added to the EDPERS database. The applicant remained dissatisfied, however, with the refusal of Education Queensland to delete or otherwise amend the information in issue, and, by letter dated 27 October 1999, the applicant applied for review, under Part 5 of the FOI Act, of Ms Storey's decision.

External review process

12. Education Queensland provided my Office with a printed copy of the EDPERS screen in its present form (i.e., after the applicant's notation, which appears on the screen as lines 5 and 6, had been added by Education Queensland). The "Staffing Comments Inquiry" relating to the applicant then read as follows:

COMMENTS

- Line 1 : has indicated that she is able to teach physics*
2 : 23.06.97 - offer 2 wks Cor or R/Plns SHS to assess - DECLINED
3 : 11.07.97 - offered Beaudesert SHS (15.08-19.09.97) DECLINED
4 : 01.08.97 - offered Runcorn SHS (06.10-28.11.97) DECLINED
5 : DECLINED to get involved in improper and quite possibly

6 : *unlawful actions of department officers*

13. A member of my staff then discussed the information in issue with the applicant, and confirmed that, despite the amendment already made to that information by Education Queensland, the applicant still wished to have the EDPERS entries, relating to offers of teaching positions which the applicant had declined, deleted entirely from the database.
14. By letter dated 21 February 2000, the Information Commissioner informed the applicant of his preliminary view that the information in issue was not information which related to the applicant's personal affairs, and therefore was not information in respect of which the applicant had a legal entitlement to seek amendment under Part 4 of the FOI Act. The Information Commissioner also informed the applicant of his preliminary view that the information in issue, in its current form, was not inaccurate, incomplete, out-of-date or misleading, and that Education Queensland therefore could not be required to consider amendment of the information in issue under Part 4 of the FOI Act, even if the information did not relate to her personal affairs.
15. The applicant lodged a submission in reply, dated 23 February 2000, in which she reiterated her belief that the information in issue did relate to her personal affairs, and that it was incorrect and incomplete.
16. In reaching my decision in this matter, I have had regard to the following documents:
 1. the contents of the information in issue;
 2. the applicant's initial application for amendment dated 14 July 1999;
 3. the initial decision by Mr Reynolds, on behalf of Education Queensland, dated 17 August 1999;
 4. the applicant's internal review application dated 23 August 1999;
 5. Ms Storey's internal review decision, on behalf of Education Queensland, dated 3 September 1999;
 6. the applicant's external review application, dated 27 October 1999; and
 7. the applicant's submission dated 23 February 2000.

Amendment of personal affairs information

17. Section 53 of the FOI Act provides:

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

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

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

18. The Information Commissioner has previously considered the application of s.53 of the FOI Act in a number of decisions, including *Re Doelle and Legal Aid Office (Queensland)* (1993) 1 QAR 207; *Re Brack and Queensland Corrective Services Commission* (1994) 1 QAR 414 at p.426, paragraphs 48-50; *Re Banks and Queensland Corrective Services Commission* (1995) 2 QAR 461; *Re Jesser and University of Southern Queensland* (1997) 4 QAR 137.
19. An agency is not required to consider amendment of a document under Part 4 of the FOI Act unless:
 1. the person seeking the amendment has previously had access to the document from that agency;
 2. the information which the applicant seeks to amend is information which relates to the applicant's personal affairs; and
 3. the information which the applicant seeks to amend is inaccurate, incomplete, out-of-date or misleading.
20. If those criteria are satisfied, the agency is required to consider whether it should amend the document and, if it decides to do so, what form the amendment should take.
21. It is clear that the applicant has had access to a copy of the document containing the information in issue, and this is confirmed by Education Queensland. Criterion (a) above is therefore satisfied.

Does the information in issue relate to the applicant's personal affairs?

22. With respect to criterion (b), the applicant has presented detailed arguments, in her applications for internal and external review of Education Queensland's decisions, and in her submission to my Office dated 23 February 2000, in favour of her contention that the information in issue does relate to her personal affairs. From my examination of that matter, it is apparent that the applicant's belief that her decision to decline the three offered teaching positions is information relating to her personal affairs, turns on the following points:
 1. the phrase "personal affairs" can include information relating to an applicant's work performance and capacity for employment (the applicant cited as examples *Re Bewley and Commissioner for Superannuation*, Cth AAT, 1 February 1986, unreported, and FOI Memorandum No. 28 of the Commonwealth Attorney-General's Department);

2. the information in issue relates to the applicant's employment entitlements and professional competence, and concerns arrangements for a performance examination (i.e., the reassessment of the applicant's teacher suitability rating), and therefore should be characterised as information which relates to the applicant's personal affairs (even though it is contained on a database which relates to the applicant's employment by a government agency);
 3. the applicant held certain beliefs about the genuineness of the offers of employment, and about allegedly improper activities of certain officers of Education Queensland, in which she believed she should not participate;
 4. the applicant's reasons for declining the three offers listed in the information in issue were based on her personal attitude and beliefs concerning the nature of the offered positions and the purpose for which they were offered by Education Queensland;
 5. the term "Declined" used in the EDPERS database incorrectly describes the applicant's character, her belief in her abilities as a teacher, and her attitude towards genuine offers of employment by Education Queensland; this misleading description of the applicant will, if left on her personnel record, be prejudicial to the applicant's chances of future employment; and
 6. the information cannot be about the "employment duties of a government employee" because the applicant was not a government employee at the time the offers were made, and had no duty to accept a contract offer, so the refusal to accept an offer could not be associated with an employment duty.
23. In *Re Stewart and Department of Transport* (1993) 1 QAR 227, the Information Commissioner identified the various provisions of the FOI Act which employ the term "personal affairs", and discussed in detail the meaning of the phrase "personal affairs of a person" (and relevant variations thereof) as it appears in the FOI Act (see pp.256-257, paragraphs 79-114, of *Re Stewart*). In particular, the Information Commissioner said 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:
1. family and marital relationships;
 2. health or ill health;
 3. relationships and emotional ties with other people; and
 4. domestic responsibilities or financial obligations.
24. Whether or not information 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.

25. A person may accept or reject an offer of employment by an agency for many reasons, including personal reasons (for example, the employment may not suit the physical capabilities or family circumstances of the person to whom it is offered, or may require that person to undertake duties which are inconsistent with his or her religious, political or ethical convictions). If reasons of a personal nature for rejecting the offered employment are recorded in a document held by the agency, then it is arguable that that information is information which relates to the personal affairs of that individual.
26. However, I consider that a record such as the information in issue, which does no more than state that Education Queensland had made the applicant three offers of employment, and that the applicant had declined those offers, does not disclose anything about the applicant's health, relationships or emotional ties with other people, or about the applicant's personal beliefs, attitudes and opinions. In previous cases, the Information Commissioner has indicated that there is a distinction between "personal affairs", dealing with the "private aspects of a person's life", and "employment affairs". In *Re Pope and Queensland Health* (1994) 1 QAR 616, after reviewing relevant authorities (at pp.658-660), the Information Commissioner expressed the following conclusion at p.660 (paragraph 116):

Based on the authorities to which I have referred, I consider that it should now be accepted in Queensland that information which merely concerns the performance by a government employee of his or her employment duties (i.e., which does not stray into the realm of personal affairs in the manner contemplated in the Dyrenfurth case) is ordinarily incapable of being properly characterised as information concerning the employee's "personal affairs" for the purposes of the FOI Act.

27. The general approach evidenced in this passage was endorsed by de Jersey J (as he then was) of the Supreme Court of Queensland in *State of Queensland v Albiez* [1996] 1 Qd R 215, at pp.221-222.
28. The applicant relied upon the findings in *Re Bewley* to support her contention that the information in issue relates to her personal affairs. However, *Re Bewley* deals with the amendment of documents concerning the disputed entitlement of the applicant to be included in the superannuation scheme available to Commonwealth public servants (on the basis of his physical health and of a previous medical condition), and hence the information in issue in that case would have fallen within the core meaning of "personal affairs" stated in *Re Stewart*. I do not consider *Re Bewley* to be of any particular relevance to the applicant's case for amendment of the information in issue in this review.
29. The applicant has also sought to rely upon the wording of an 18 year old memorandum of the Commonwealth Attorney-General's Department, prepared (in 1982) for the assistance of FOI decision-makers in federal agencies before any Federal Court or AAT decisions were given interpreting the meaning of the term "personal affairs" as it appeared in the *Freedom of Information Act 1982* Cth (the Commonwealth FOI Act).

This is not a document which carries any judicial weight, and I do not consider that it should influence my finding on the correct characterisation of the information which the applicant seeks to amend.

30. I accept that the applicant was not a government employee at the time the offers were made. However, I consider that similar principles to those discussed at paragraphs 26 to 27 above apply in a case where records are kept about a person who may from time to time be available for what may be described as relief or casual work. The information is kept for the employment purposes of the agency, and must properly be characterised as information concerning the employment affairs of the applicant.
31. The first of the three entries concerning offers of employment which constitute the information in issue indicates that the applicant's suitability rating would be assessed during that contract. As I have indicated above, the reassessment of teachers' suitability ratings in the course of their employment is an established practice of Education Queensland. I do not consider that a reference to the fact that a teacher's work performance might be reassessed relates to anything other than the teacher's employment affairs.
32. The applicant stated her belief that the three offers of teaching contracts were made by an officer, or officers, of Education Queensland specifically for the improper purpose of enabling them to downgrade the applicant's teacher suitability rating, and that the applicant did not accept those offers because she did not wish to participate in what she perceived to be an improper process or abuse of power by Education Queensland. Even if the information in issue showed, on its face, such a purpose - which, in my view, it clearly does not - there is nothing before me to indicate how the making of those offers would constitute information which could be properly characterised as information relating to the applicant's personal affairs, nor how the applicant's refusal to accept them could be properly characterised as information relating to her personal affairs, rather than information relating to her employment affairs.
33. Nor does any potential effect of the information on the applicant's prospects for employment, transform the information into information relating to her personal affairs.
34. I find that the information in issue does not relate to the applicant's personal affairs, so that there is no entitlement to seek amendment of that information under s.53 of the FOI Act.

Is the information in issue inaccurate, incomplete, out-of-date or misleading?

35. While, given the above finding, it is not strictly necessary for me to do so, I will indicate that I am satisfied that the information in issue is not inaccurate, incomplete, out-of-date or misleading.
36. The information in issue states, in an abbreviated form, that the applicant was offered three temporary teaching contracts, varying in length from two weeks to seven weeks,

at different state high schools, and that the applicant declined those contracts. With the addition of the comment at lines 5 and 6 of the EDPERS screen containing the information in issue, it is clear to any person reading the information that the applicant did not accept any of the three contracts because she believed those offers were improperly made, and could involve the applicant in unlawful actions by officers of Education Queensland.

37. I find that the information in issue, in its present form, is not inaccurate, incomplete, or misleading for the following reasons:

5. there is no doubt that the applicant was offered, by Education Queensland, the opportunities to teach in the schools which are listed in the information in issue on the EDPERS database;
6. despite the applicant's suspicions of the motives and intentions of certain officers of Education Queensland, there is nothing before me to establish that those offers were not genuine offers of employment as a teacher in the schools listed;
7. the fact that the applicant's teaching performance would have been subject to assessment (and that, in consequence, the applicant's teacher suitability rating could have been altered) in the course of all or any of the three offered teaching contracts does not, on the material before me, make the offers improper. It is my understanding that Education Queensland may, at its discretion, reassess a teacher's performance if it believes this to be necessary, and may, as a consequence, raise, lower, or maintain that teacher's suitability rating;
8. the applicant did not in fact accept any of the three offered teaching contracts. Whether the word "declined", or some other term, is used by Education Queensland to describe the outcome of those offers is, in my view, merely a matter of semantics, as it is an undisputed fact that the applicant chose not to undertake the work offered for reasons which are now reflected in the EDPERS database.
9. the addition of lines 5-6 has clearly drawn to the attention of Education Queensland staff, the expressed reason of the applicant for declining the offers.

38. In her submission dated 23 February 2000, the applicant stated:

... I cannot accept your view that the information in issue is not incomplete. My test of completeness is very clear: a complete information is the one that will cause a proper action by a placement officer accessing the information. Without lines 5 and 6, the information is incorrect (or at least misleading), as the placement officers would quite reasonably apply the department's rule to place me at the bottom of the list of eligible applicants, however for wrong reasons. The addition of lines 5 and 6 provides correct meaning of the word "DECLINED", but it does not make the information complete, as it does not

specify what action should be taken by the placement officers -- confusion and no action is obviously the most likely result of this information, which appears to be what department officer(s) want to improperly achieve.

39. What the applicant appears to be seeking is a policy decision that her three refusals should be disregarded because of the circumstances in which they were made. It is not the role of the Office of the Information Commissioner to dictate what policy decisions Education Queensland should make with respect to the applicant, or at what level such decisions should be made. As I understand it, the present entry reflects the present policy. It is not incomplete or misleading.
40. I therefore would find that, even if the information in issue did relate to the applicant's personal affairs (which, in my view, it does not), the information in issue in its present form is not inaccurate, incomplete, out-of-date or misleading, and that Education Queensland is not required to consider amendment of the information in issue under Part 4 of the FOI Act.

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DECISION

41. For the foregoing reasons, I affirm the decision under review (being the decision made on behalf of Education Queensland by Ms T Storey dated 3 September 1999).