

OFFICE OF THE INFORMATION )  
COMMISSIONER (QLD) )

S 136 of 1994  
(Decision No. 95029)

Participants:

JOHN C BENNETT  
Applicant

- and -

QUEENSLAND CORRECTIVE SERVICES COMMISSION  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - applicant seeking access to information concerning the parole conditions of another person - whether such information concerns the other person's personal affairs - whether disclosure of the information would, on balance, be in the public interest - application of s.44(1) of the *Freedom of Information Act 1992* Qld.

*Freedom of Information Act 1992* Qld s.44(1)

*Corrective Services Act 1988* Qld s.165, s.165(5), s.169, s.175, s.175(1)(a), s.175(1)(a)(ii),  
s.175(1)(b)

*Lpidos and Office of Corrections (No. 2 ) , Re* (Victorian Administrative Appeals Tribunal,  
Jones J (President), 19 February 1990, unreported)

*Stewart and Department of Transport, Re* (1993) 1 QAR 227

**DECISION**

I affirm the decision under review (being the internal review decision made on behalf of the respondent by Mr G W Taylor on 5 September 1994).

Date of Decision: 1 December 1995

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F N ALBIETZ  
**INFORMATION COMMISSIONER**

Participants:

JOHN C BENNETT  
Applicant

- and -

QUEENSLAND CORRECTIVE SERVICES COMMISSION  
Respondent

### **REASONS FOR DECISION**

#### **Background**

1. The applicant seeks review of the respondent's decision to refuse him access to information concerning the parole conditions of a third party. That information is claimed by the respondent to be exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld* (the FOI Act).
2. By letter dated 25 July 1994, the applicant applied to the Queensland Corrective Services Commission (the QCSC) for access under the FOI Act to information concerning the parole conditions of a named person (who will be referred to in these reasons for decision as "the parolee"). The parolee had been convicted of a crime which did not involve violence against a person, and in respect of which the applicant was not a victim. The applicant asserted, however, that he had become involved in dealings with the parolee (following the latter's release from jail on parole) in which the applicant believed the parolee had acted criminally, and he wished to establish whether the parolee's actions were in breach of relevant parole conditions.
3. Both the QCSC's initial decision (made by Ms P Cabaniuk on 5 August 1994) and its internal review decision (made by Mr G W Taylor on 5 September 1994) refused the applicant access to the requested information on the basis that the parole conditions of the parolee comprised exempt matter under s.44(1) of the FOI Act. In his internal review decision, Mr Taylor said:  
  
*... the information you have requested pertains to another person's parole conditions and is considered to be of a personal nature. All persons placed on parole must obey the law, however, other conditions of their parole are of a personal nature and should not be disclosed to third parties. I feel it would not be in the public interest for this information to be disclosed.*
4. By letter dated 14 September 1994, the applicant applied for review by the Information Commissioner, under Part 5 of the FOI Act, of Mr Taylor's decision.

#### **External review process**

5. At the commencement of this external review, a letter was forwarded to the parolee, drawing his attention to s.78 of the FOI Act and inviting him to apply to participate in this external review. No response has been received from the parolee.

6. The matter in issue was obtained and examined. It was explained to the applicant that the five requirements set out in s.175(1)(a)(i)-(v) of the *Corrective Services Act 1988* Qld (these provisions are reproduced at paragraph 11 below) are standard inclusions in every parole order. In his written submission dated 21 February 1995, the applicant made it clear that he did not seek access to the mandatory parole conditions stipulated in s.175(1)(a) of the *Corrective Services Act*, but to "*the specific orders relating to [the parolee's] specific behaviour*".
7. The participants were invited to lodge written submissions concerning the application of s.44(1) of the FOI Act to the matter in issue. Submissions dated 9 November 1994 and 21 February 1995 were received from the applicant, and a submission dated 9 February 1995 was received from the QCSC.

### **The Queensland legislative scheme for parole of prisoners**

8. The legislative provisions which govern the administration of Queensland's parole system are contained in Part 4 of the *Corrective Services Act*. Section 165 of the *Corrective Services Act* provides that the Queensland Community Corrections Board may, by written order, direct that a prisoner be released on parole on the date specified in the order. The same function may be exercised by a Regional Community Corrections Board in respect of a prisoner who is serving a term of imprisonment not longer than five years.
9. Section 169 of the *Corrective Services Act* provides that a prisoner may, if the prisoner so requests, appear before, and make representations to, the relevant Community Corrections Board in support of the prisoner's application for parole, and may, with the leave of the Board, be represented by an agent.
10. Section 165(5) of the *Corrective Services Act* provides that the secretary of the relevant Community Corrections Board shall send a copy of the parole order to the prisoner in respect of whom the order is made, the person in charge of the prison or centre from which the prisoner is to be released, and to the QCSC itself.
11. The requirements of a parole order are set out in s.175 of the *Corrective Services Act* which, so far as relevant for present purposes, provides:

#### *175.(1) A parole order-*

(a) *shall contain requirements that the prisoner-*

(i) *be under the supervision of a community correctional officer-*

(A) *if the prisoner is a prisoner mentioned in section 165(1)(a) - for such period, that does not go past the end of the prisoner's term of imprisonment, as is determined by the board making the order; or*

(B) *if the prisoner is a prisoner mentioned in section 165(1)(b) - for the period that the prisoner was directed to be detained; and*

- (ii) *abstain from violation of the law; and*
- (iii) *carry out the lawful instructions of the community correctional officer; and*
- (iv) *report and receive visits as directed by the community correctional officer; and*
- (v) *notify the community correctional officer within 48 hours of any change of address or change of employment during the parole period; and*
- (b) *may contain such other requirements specified in the parole order as the board making the order considers necessary with a view to -*
  - (i) *securing the good conduct of the prisoner;*
  - (ii) *preventing a repetition by the prisoner of the offence in relation to which the prisoner was imprisoned or detained or the commission by the prisoner of other offences.*

*(2) A parole order may include requirements relating to the residence of the prisoner in the State or if the prisoner consents, in another State or a Territory of the Commonwealth.*

*(3) Unless the parole order otherwise permits or requires the prisoner to reside in another State or a Territory of the Commonwealth, it shall be a requirement of every parole order that the prisoner shall not leave or remain out of the State save in compliance in every respect with the terms and conditions of a permit in writing of -*

- (a) *where the order was made by the Queensland Community Corrections Board - that board or the Commission;*
- (b) *where the order was made by a regional community corrections board - any such board or the Commission.*

...

12. As noted above, s.175(1)(a) sets out mandatory requirements for inclusion in every parole order. Of significance for the present case, however, is s.175(1)(b) which permits a relevant Community Corrections Board to specify other requirements in a parole order, which may be individually tailored to the particular prisoner, for the purposes set out in s.175(1)(b)(i) and (ii).
13. The provisions of Part 4 of the *Corrective Services Act* which follow s.175 are either administrative machinery provisions, or provisions relating to breach of parole or variation to parole, and are not relevant to the issues in this external review.

14. In its written submission dated 9 February 1995, the QCSC informed me that meetings of the Queensland Community Corrections Board and of Regional Community Corrections Boards are closed to the public because "... *the dealing with parole applications is considered to be a private matter between the parolee and the Board, as numerous issues of a "personal nature" to the parolee are examined and discussed.*" The QCSC also informed me that copies of a parole order are sent only to the releasing correctional centre, to the parolee, and to the supervising community corrections office.
15. The nature and objects of legislative schemes allowing for the grant of parole to prisoners were concisely explained by the High Court of Australia in *Power v The Queen* (1974) 131 CLR 623, at pp.628-9, in a joint judgment of Barwick CJ and Menzies, Stephen and Mason JJ:

*... To interfere with [a prisoner's] sentence is not within the authority of the paroling authority. Its authority is to release the prisoner conditionally from confinement in accordance with the sentence imposed upon him. The sentence stands and during its term the prisoner is simply released upon conditional parole . ...*

*To read the legislation in the way we have suggested fulfills the legislative intention to be gathered from the terms of the Act, i.e. to provide for mitigation of the punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.*

16. Although a parolee may be released from prison before the full custodial term ordered by the sentencing court has been served, the parolee remains subject to the supervision of the corrective authorities, and may be returned to prison during the parole term in the event that parole conditions are not complied with.

**Do parole conditions comprise information concerning the parolee's personal affairs?**

17. Section 44(1) of the FOI Act provides:

*44.(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

18. As the applicant contended in his written submission dated 21 February 1995 (and as paragraphs 15 and 16 above make clear), there is no doubt that regulation of a prisoner's release on parole has a public character. However, the fact that information has a public character does not necessarily disqualify it from being properly characterised as information which concerns a person's personal affairs, within the meaning of s.44(1) of the FOI Act: see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at p.266; paragraph 111.
19. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, based on the proper characterisation

of the matter in question. In *Re Stewart*, I explained that the central concept of the phrase "information concerning the personal affairs of a person" is that of information concerning the private aspects of a person's life. I also endorsed (at p.257, paragraph 80, of *Re Stewart*) the finding by Jones J (President) of the Victorian Administrative Appeals Tribunal in *Re Lapidos and Office of Corrections (No. 2)* (Victorian AAT, Jones J, 19 February 1990, unreported) to the effect that information concerning what happens to a prisoner while in prison is information concerning the prisoner's personal affairs.

20. In its written submission dated 9 February 1995, the QCSC made the following arguments:

*It is submitted that parole conditions are that person's "personal affairs" as such conditions are variable depending on the facts of the particular case and are framed to specifically address issues which may arise in the course of the person's supervision.*

*Typical parole conditions which are usually imposed can, for instance, require a person to accept counselling because of some perceived personal deficit ie because of a drug or other substance abuse problem or to address some issue of a personal nature, often relating to relationship and sexual issues or to accept such psychiatric treatment as directed or to live at a certain place or to have no contact with a specified person.*

*The parole conditions are directed towards the regulation of the parolee's personal lifestyle during the parole period and are specifically selected or framed in a way which will address the personal issues involved in the parolee's prior offending behaviour.*

21. I consider that discretionary parole conditions imposed pursuant to s.175(1)(b) of the *Corrective Services Act* will usually comprise information concerning the personal affairs of the prisoner. Having examined it, I am satisfied that the matter in issue in the present case, comprising the discretionary parole conditions - conditions 6-10 (inclusive) - of the parole order issued in respect of the parolee, comprises information concerning the parolee's personal affairs.

**Would disclosure of the matter in issue, on balance, be in the public interest?**

22. The applicant's submissions primarily focussed on the application of the public interest balancing test incorporated within s.44(1) of the FOI Act. The essence of the applicant's submissions is that the parolee defrauded the applicant and others, and that disclosure of the parole conditions would assist the applicant in proposed civil action against the parolee, if the applicant were able to establish that the parolee's actions in connection with the alleged fraud involved a breach of parole conditions.
23. The QCSC's submissions in response hint that there is nothing in the discretionary parole conditions which would assist the applicant in that regard, or otherwise lend any force to public interest arguments of the kind advanced by the applicant. Having examined the matter in issue,

I can confirm that that is the case. The QCSC's submissions as to the public interest balancing test in s.44(1) were:

*The QCSC cannot identify any public interest in the requested disclosure. The issue whether [the parolee] acted unlawfully during the parole period does not depend in any obvious way upon the terms of the conditions applied in this case.*

*If the applicant or others have information which supports a breach of the law, that information and relevant facts and circumstances can be investigated by the Police.*

*Should the circumstances warrant it, then the parolee can be prosecuted. It is submitted that this course does not depend in any way upon the conditions attached to the parole order, but upon the facts and circumstances as are within the knowledge of the complainants.*

24. There may be cases in which public interest considerations, favouring disclosure to a particular applicant (or perhaps to any applicant) of discretionary parole conditions in another person's parole order, are found to exist. They would then have to be weighed against the public interest in non-disclosure of information which satisfies the test for *prima facie* exemption under s.44 of the FOI Act. One possible case is where a victim of crime is fearful of the perpetrator's release from prison, and wishes to establish what, if any, parole conditions have been made affecting the perpetrator's potential contact with the victim.
25. Another possible case is that of a prisoner, convicted of sex offences against children, who is released subject to a parole condition, for example, to have no unsupervised contact with children and to stay more than 500 metres away from any school, kindergarten, child care centre or children's playground. Arguably, the public interest in the observance of such a parole condition, and the difficulty for the parole authorities in ensuring its observance, might justify a finding that disclosure of parole conditions of that kind would, on balance, be in the public interest.
26. Against public interest considerations of that kind, there must also be weighed the public interest in achievement of the objects of the parole system in fostering rehabilitation of prisoners, for example, by an offender being able to undertake his or her rehabilitation, and re-integration into society, without unnecessary or demeaning exposure of his or her status as a parolee.
27. There is a general public interest in scrutiny of the operations of Community Corrections Boards, and accountability for their performance, on behalf of the public of Queensland, of what are quite sensitive, important and occasionally controversial duties, in assessing applicants for parole and imposing discretionary parole conditions on individual prisoners. However, I do not think that disclosure of the particular matter in issue in this case would further that public interest to an extent which outweighs the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1) of the FOI Act.



28. Moreover, I am not satisfied of the existence of any other public interest considerations which favour disclosure of any of the parole conditions in issue. It is possible that relevant authorities have other documents which might assist the plaintiff in his stated aim of seeking redress, but the alleged activities of the parolee, as described in the applicant's submissions to me, would not involve any breach of the terms of the discretionary parole conditions (conditions 6-10) in the relevant parole order. If the applicant believes the parolee engaged in conduct which violated the law (see s.175(1)(a)(ii) of the *Corrective Services Act*) he is able to lodge a complaint with the police or the parole authorities. Access to the matter in issue, however, would not be of any assistance in that regard.
29. I am not satisfied that disclosure of the matter in issue would, on balance, be in the public interest.

**Conclusion**

30. For the foregoing reasons, I am satisfied that the matter in issue is exempt matter under s.44(1) of the FOI Act, and I affirm the decision under review.

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F N ALBIETZ  
**INFORMATION COMMISSIONER**