

OFFICE OF THE INFORMATION)
COMMISSIONER (QLD))

S 104 of 1993
(Decision No. 94029)

Participants:

"M"
Applicant

- and -

BRISBANE SOUTH REGIONAL HEALTH AUTHORITY
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents recording information supplied by third party to medical staff of the respondent to assist with the care and treatment of the applicant - whether information communicated in confidence - whether exempt matter under s.46(1)(a) of the *Freedom of Information Act 1992 Qld* on the basis that disclosure of the information would found an action for breach of confidence - whether exempt matter under s.46(1)(b) of the *Freedom of Information Act 1992 Qld* - whether disclosure of the information could reasonably be expected to prejudice the future supply of such information - whether disclosure of the information would, on balance, be in the public interest.

FREEDOM OF INFORMATION - refusal of access - medical information in respect of a person other than the applicant appearing in medical records relating to the applicant - whether information concerning the personal affairs of the other person - whether exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld*.

Freedom of Information Act 1992 Qld s.25, s.44(1), s.44(3), s.46(1)(a), s.46(1)(b), s.46(2)
Freedom of Information Act 1982 Vic s.33

"B" and *Brisbane North Regional Health Authority, Re* (Information Commissioner Qld, Decision No. 94001, 31 January 1994, unreported)
Eccleston and Department of Family Services and Aboriginal and Islander Affairs, Re (Information Commissioner Qld, Decision No. 93002, 30 June 1993); (1993) 1 QAR 60
F and Health Department, Re (1988) 2 VAR 458
G v Day [1982] 1 NSWLR 24
"P" and *Brisbane South Regional Health Authority, Re* (Information Commissioner Qld, Decision No. 94024, 9 September 1994, unreported)
Stewart and Department of Transport, Re (Information Commissioner Qld, Decision No. 93006, 9 December 1993, unreported)

DECISION

1. I affirm that part of the decision under review (being the decision made on behalf of the respondent by Dr Golledge on 11 May 1993) by which it was determined that folio 3 is exempt matter under s.46(1)(b) of the *Freedom of Information Act 1992 Qld.*
2. I also find that folio 3 is exempt matter under s.46(1)(a) of the *Freedom of Information Act 1992 Qld.*
3. I affirm that part of the decision under review by which it was determined that the matter deleted from folio 31 constitutes exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld.*
4. I find that the matter deleted from folio 46 is exempt matter under both s.46(1)(a) and s.46(1)(b) of the *Freedom of Information Act 1992 Qld.*

Date of Decision: 18 November 1994

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F N ALBIETZ
INFORMATION COMMISSIONER

Participants:

"M"
Applicant

- and -

BRISBANE SOUTH REGIONAL HEALTH AUTHORITY
Respondent

REASONS FOR DECISION

Background

1. The applicant seeks review of the respondent's decision to refuse the applicant access to certain matter recorded on the applicant's file held by the Stones Corner Adult Mental Health Centre (the Centre). The matter in issue is claimed by the respondent to be exempt under s.44(1) and s.46(1)(b) of the *Freedom of Information Act 1992 Qld* (the FOI Act).
2. By application dated 2 March 1993, the applicant sought access under the FOI Act to the applicant's file held by the Centre. The Centre is administered by the respondent, the Brisbane South Regional Health Authority. The initial decision on behalf of the respondent was made by Ms Rhondda James and was communicated to the applicant by letter dated 28 April 1993. Ms James identified 46 folios as falling within the terms of the request and decided to grant the applicant full access to 41 folios, to refuse access to one folio, and to give the applicant partial access to four folios.
3. After receiving Ms James' letter, the applicant applied for internal review of her decision. The internal review was undertaken by Dr J G Golledge. By letter dated 11 May 1993, Dr Golledge decided to release to the applicant two of the folios which had originally been claimed to be partially exempt, but otherwise affirmed the original decision of Ms James, with the result that access was refused to one folio and to parts of two other folios. Dr Golledge found some of the matter in issue to be exempt under s.44(1) and some of it to be exempt under s.46(1)(b) of the FOI Act.
4. By letter dated 23 May 1993, the applicant applied under Part 5 of the FOI Act for external review of Dr Golledge's decision.

The External Review Process

5. The applicant's file which is held by the Centre, containing the matter in issue, was obtained and inspected.
6. Three folios from the applicant's file remain in issue:
 - **Folio 3:** A letter dated 1 January 1986 from an individual (who will be referred to as the third party) to a psychiatrist, Dr Klug, who had treated the applicant at the Centre.
 - **Folio 31:** A document headed "Continuation Sheet", which contains clinical notes in relation to the applicant's attendances at the Centre on 20 August 1986 and 12 September 1986. Part of one of the sentences which appears in the clinical notes made on 20 August

1986 has been deleted from folio 31.

- **Folio 46:** A document headed "Diary", which contains a chronological record of the matters recorded on the applicant's file held by the Centre. The matter remaining in issue on folio 46 consists of two words deleted from an entry which reads "1.2.86-letter from [the identity of the third party appears here]". In his decision, Dr Golledge decided to refuse access to this entire entry. However, during the external review, the respondent agreed to release the entry to the applicant with the exception of the two words which would enable to identity of the third party to be ascertained. This particular entry is a reference to the letter which comprises folio 3, but the entry contains a typographical error as to the date of the letter.

7. In respect of folio 3, a member of my staff consulted by telephone with Dr Klug about his recollections concerning the receipt of the letter from the third party. Dr Klug advised my staff member that he could recall the applicant having been his patient while he worked at the Centre but he did not recall any details of the applicant's case other than that the applicant was a schizophrenic. My staff member then read the contents of folio 3 to Dr Klug who advised that he had no recollection of the circumstances surrounding the receipt of the letter.
8. The third party was then consulted by a member of my staff, who was advised by the third party that the third party objected to the release of folio 3 to the applicant. Evidence was obtained from the third party by way of a statutory declaration, executed on 29 July 1993, as to the circumstances surrounding the forwarding of the letter dated 1 January 1986 to Dr Klug.
9. By letter dated 17 August 1993, I communicated to the applicant my preliminary view that the matter in issue is exempt matter, and explained my reasons for forming that preliminary view. I invited the applicant, if the applicant did not agree with my preliminary view, to put to me a written submission, addressing anything the applicant wished to raise in support of the contention that the matter in issue is not exempt matter under the FOI Act.
10. After I communicated my preliminary view to the applicant, there was a delay of some nine months before the applicant verbally advised a member of my staff that the applicant did not intend to make any written submissions in support of the contention that the matter in issue was not exempt matter. By letter dated 18 May 1994, I afforded the applicant a further opportunity to provide a written submission addressing the matters in issue. However, in a telephone conversation with a member of my staff on 4 July 1994, the applicant advised that the applicant did not intend to make any written submission, and that the applicant believed there was an entitlement under the FOI Act for the applicant to have access to all documents on the file held by the Centre.

Relevant Provisions of the FOI Act

11. In his decision of 11 May 1993, Dr Golledge relied on s.44(1) and s.46(1)(b) of the FOI Act in determining that the matter in issue is exempt. In my opinion, s.46(1)(a) of the FOI Act is also relevant.
12. Section 44(1) of the FOI Act provides as follows:

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.
13. 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.*

Folio 3 - Application of s.46(1) of the FOI Act

Application of s.46(1)(a)

14. In my 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"*).
15. There is no suggestion in the present case of a contractual obligation of confidence between the third party and the respondent concerning the communication of the information recorded in folio 3. Therefore, the test for exemption under s.46(1)(a) must be evaluated in terms of the requirements of an action in equity for breach of confidence.
16. 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 folio 3) can be identified with specificity.
17. As to the second criterion, there is nothing before me to suggest that the applicant is aware of any part of the information communicated to Dr Klug by the third party in the letter dated 1 January 1986. I find that the information recorded in folio 3 is 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. The identity of the third party as recorded in folio 3 is also, in my opinion, eligible for protection as confidential information under s.46(1)(a) of the FOI Act. In an appropriate case, 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"*, and *G v Day* [1982] 1 NSWLR 24).
18. In making a determination with respect to the third criterion, it is necessary, as stated at paragraph 84 of my decision in *Re "B"*, to make an evaluation of the whole of the relevant circumstances. In doing so, I have had regard to the evidence of the third party, the circumstances surrounding the imparting of the information recorded in folio 3, and the purpose for which that information was communicated to Dr Klug.
19. The material parts of the evidence of the third party, which I am able to reproduce in this decision, are contained in paragraphs 6 and 7 of the third party's statutory declaration of 29 July 1993:
6. *I wrote the letter which appears as Annexure "A" to Dr Klug with an expectation that the fact that I had communicated with Dr Klug about [the applicant] together with the matters I communicated to him in Annexure "A" would be treated by Dr Klug on a confidential basis. Further, I wrote the letter with an expectation that not anyone, including [the applicant], would be told about the fact I had written to Dr Klug.*
7. *It would be of great concern to me if [the applicant] was given access to Annexure "A"....*
20. As discussed in my decision in *Re "B"*, it is not necessary for there to have been an express undertaking by Dr Klug on behalf of the respondent not to disclose the information communicated to him by the third party, as such an obligation may be inferred from the circumstances. In particular, paragraphs 89-90 of my decision in *Re "B"* are relevant:
- 89 *The Federal Court in Smith Kline & French accepted that equity may impose an obligation of confidence upon a defendant having regard not only to what the defendant actually knew, but to what the defendant ought to have known in all*

the relevant circumstances. In cases decided under s.45(1) of the Commonwealth FOI Act (prior to its 1991 amendment) the Federal Court had consistently held that the determination of whether information was provided in circumstances importing an obligation of confidence is essentially a question of fact, which depends upon an analysis of all the relevant circumstances, and it is not necessary for there to have been an express undertaking not to disclose information; such an obligation can be inferred from the circumstances: see Department of Health v Jephcott (1985) 9 ALD 35; 62 ALR 421 at 425; Wiseman v Commonwealth of Australia (Unreported decision, Sheppard, Beaumont and Pincus JJ, No. G167 of 1989, 24 October 1989); Joint Coal Board v Cameron (1989) 19 ALD 329, at p.339.

90 It is not necessary therefore that there be any express consensus between confider and confidant as to preserving the confidentiality of the information imparted. In fact, though one looks to determine whether there must or ought to have been a common implicit understanding, actual consensus is not necessary: a confidant who honestly believes that no confidence was intended may still be fixed with an enforceable obligation of confidence if that is what equity requires following an objective evaluation of all the circumstances relevant to the receipt by the confidant of the confidential information.

21. Having regard to the nature and sensitivity of the information communicated in folio 3, and the circumstances relating to its communication, I am of the view that upon receipt of folio 3 Dr Klug and the respondent were fixed with an equitable obligation of conscience not to use the information supplied by the third party in a way that is not authorised by the third party.
22. As pointed out at paragraphs 92-93 of my decision in *Re "B"*, a relevant consideration, in determining whether the circumstances relating to the communication of confidential information to a government agency are such as to impose an equitable obligation of confidence on the recipient, is the use to which the government agency must reasonably be expected to put the information in the discharge of its functions. In the present case, it appears that the information recorded in the third party's letter dated 1 January 1986 was supplied to Dr Klug to assist him in his care of the applicant. However, the applicant's file reveals that, at the time of the receipt of the third party's letter by the Centre, the applicant was not under the care of the Centre. The applicant did subsequently attend at the Centre for further treatment, but was seen by another psychiatrist. In view of the nature of the information conveyed in folio 3, I consider that it was reasonable for either the third party or any psychiatrist treating the applicant (after the receipt of the letter by the Centre) to expect that the psychiatrist could carry out his or her duty in relation to caring for the applicant without needing to disclose the identity of the third party or the detail of the information supplied by the third party.
23. With respect to the fourth criterion identified in paragraph 14 above, I find that disclosure of folio 3 to the applicant under the FOI Act would constitute an unauthorised use of that information. The third party had an expectation that the information supplied by the third party, together with the third party's identity, would not be conveyed to the applicant. The third party has also advised a member of my staff that the third party continues to object to the release of folio 3 to the applicant.
24. With regard to the fifth criterion referred to in paragraph 14 above, I am satisfied that disclosure to the applicant of the information recorded in folio 3 would cause detriment to the third party. In paragraph 111 of my decision in *Re "B"*, I stated that it was not necessary to establish that a threatened disclosure of confidential information 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, that disclosure of the information may injure some relation or friend. I am satisfied that disclosure to the applicant of the information recorded on folio 3, including the third party's identity,

would cause detriment to the third party of one or more of the kinds mentioned above.

25. In the circumstances of the present case, no occasion arises to consider the application of the defences to an equitable action for breach of confidence, as discussed in my decision in *Re "B"* at paragraphs 119-134. Further, s.46(2) of the FOI Act does not apply to the matter recorded in folio 3 (so as to render s.46(1) inapplicable), because disclosure of folio 3 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).
26. I am satisfied that disclosure of the matter recorded in folio 3 would found an action for breach of confidence, and that it is therefore exempt matter under s.46(1)(a) of the FOI Act.

Application of s.46(1)(b)

27. As I have found that s.46(1)(a) of the FOI Act applies to folio 3, it is not strictly necessary to consider whether s.46(1)(b) also applies. However, as Dr Golledge's decision was made on the basis of s.46(1)(b) and I communicated my preliminary view and invited the applicant to respond on the same basis (see paragraph 9 above), it is appropriate that I also consider that provision.
28. 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.

If the *prima facie* ground of exemption is established, it must then be determined whether the *prima facie* ground is displaced by the weight of identifiable public interest considerations which favour the disclosure of the particular information in issue.

29. 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 an action in equity for breach of confidence) in determining whether, for the purpose of the second criterion identified at paragraph 14 of this decision, the information in issue has the requisite degree of relative secrecy or inaccessibility (see paragraph 148 of *Re "B"*).
30. In relation to the second requirement, I discussed the meaning of the phrase "communicated in confidence" at paragraph 152 of my decision in *Re "B"* as follows:

152. 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.

31. Consistently with my finding at paragraph 21 above, I am satisfied that there was a common implicit understanding between confider and confidant as to preserving the confidentiality of folio 3. Accordingly, the first two criteria for the application of s.46(1)(b) of the FOI Act are satisfied.

32. The nature of the inquiry in relation to the third requirement of s.46(1)(b), being that disclosure of the matter in issue 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 154-160 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, in other words, expectations for the occurrence of which real and substantial grounds exist.
33. In this case, the nature of the inquiry concerns the expected effects of disclosure to an individual diagnosed as suffering from a psychiatric illness, of the details of information provided by a third party in writing about the patient, which may be of assistance to the treating psychiatrist in determining the appropriate treatment for the patient at some future time. In his decision of 11 May 1993, Dr Golledge made reference to the need to protect the flow of confidential information to the respondent, being information that would assist in the decisions made by the respondent in the provision of health services.
34. In my view, disclosure of the letter from the third party to Dr Klug could reasonably be expected to prejudice the future supply of information of the type recorded in folio 3. My reasons for reaching this view are identical to those discussed in my decision in *Re "P" and Brisbane South Regional Health Authority* (Information Commissioner Qld, Decision No. 94024, 9 September 1994, unreported). In that case the matter in issue comprised the details of discussions between treating medical staff and people who were able to give information about a patient suffering from a psychiatric illness. Paragraphs 40-41 of *Re "P"* are relevant:

40. I note that there are several cases decided by the Victorian Administrative Appeals Tribunal under s.35 of the Freedom of Information Act 1982 Vic (Re W and Health Department (Vic) (1987) 1 VAR 383; Re Pyle and Health Commission (Vic) (1987) 2 VAR 54; Re M and Health Department (Vic) (1988) 2 VAR 317) which are somewhat similar to the present case, in that each involved an application by a former psychiatric patient for access to portions of the patient's clinical record comprising information about the patient conveyed to an agency by third persons. In all three cases, the Victorian AAT determined that disclosure of the information in issue would impair the future ability of the agencies concerned to obtain similar information. I accept that it will frequently be of assistance, and in some cases essential, for those involved in the care and treatment of a psychiatric patient to have access to a broad range of information, both clinical and non-clinical, concerning the patient.

41. If those who are in a position to disclose such information become aware that the patient may obtain access under the FOI Act to information they provide, I think it is reasonable to expect that many would either refuse to give information, or would give guarded or misleading information which would be of little use to Health Authorities in the care and treatment of the patient. In taking such a course, third parties may be motivated by concern for the

patient's well being, concern to maintain a continuing relationship with the patient, or concern for their own welfare.

35. In the circumstances, I consider there are real and substantial grounds for the expectation that disclosure of the matter recorded in folio 3 would prejudice the future supply of like information.
36. Thus, I consider that the first three requirements necessary to establish that folio 3 is exempt under s.46(1)(b) of the FOI Act have been satisfied. It remains to be considered whether disclosure of folio 3 would, on balance, be in the public interest.
37. As discussed at paragraph 19 of *Re Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 and at 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 judgment 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". As to the meaning of the phrase "public interest", see my decision in *Re Eccleston* at paragraphs 35-57 (of which paragraphs 54-57 are most relevant to the present case).
38. I accept that there is a public interest in patients being able to gain access to information relating to their medical treatment, though it is certainly not an unqualified one (see s.44(3) of the FOI Act where it is expressly recognised that there may be instances where disclosure to an applicant of information of a medical or psychiatric nature concerning the applicant would be prejudicial to the applicant's physical or mental health or well being).
39. Information concerning a person's medical treatment is information concerning that person's personal affairs (see paragraph 43 below). I have therefore also given consideration to the public interest which is given special recognition in s.6 of the FOI Act, being the public interest in an individual having access to information concerning that individual's personal affairs. However, based on my examination of folio 3, I do not consider that its disclosure to the applicant would have any positive or beneficial consequence for the applicant, and certainly none of sufficient substance to outweigh the detriment that would be occasioned to the third party, nor the potential prejudice to the future supply of such information as discussed in paragraphs 33-35 above.
40. While the applicant did not make any formal submissions to me in writing, the applicant did communicate to a member of my staff, during a telephone conversation, a wish to obtain access to folio 3, and the other matter in issue, for the purpose of bringing legal proceedings against the Centre. I consider that there is a public interest in individuals receiving fair treatment in accordance with the law in their dealings with government (see paragraph 55 of *Re Eccleston*) and that in an appropriate case, this may justify giving an applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received, and if not, to pursue any available means of redress, including any available legal remedy. However, I can see nothing in folio 3 which would enliven a public interest consideration of that kind.
41. I am not satisfied that the public interest considerations favouring disclosure of the matter in issue to the applicant 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. I therefore find that folio 3 is an exempt document under s.46(1)(b) of the FOI Act.

Folio 31 - Application of s.44(1) of the FOI Act

42. As noted at paragraph 6 above, folio 31 is a document headed "Continuation Sheet" which contains

clinical notes in relation to the applicant's attendances at the Centre on 20 August 1986 and 12 September 1986. Part of one of the sentences which appears in the notes made on 20 August 1986 was deleted from folio 31 prior to its release to the applicant. That part-sentence is considered to be exempt by the respondent under s.44(1) of the FOI Act.

43. In my reasons for decision in *Re Stewart and Department of Transport* (Information Commissioner Qld, Decision 93006, 9 December 1993, unreported), I 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 the relevant variations thereof) as it appears in the FOI Act (see paragraphs 79-114 of *Re Stewart*). In particular, I said that information concerns "the personal affairs of a person" if it relates to the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase "personal affairs", that phrase has a well accepted core meaning which includes:
- family and marital relationships;
 - health or ill-health;
 - relationships and emotional ties with other people; and
 - domestic responsibilities or financial obligations.
44. The matter deleted from folio 31 is a notation made by a psychiatrist in relation to the mental health of an individual other than the applicant. I indicated in paragraph 79 of my decision in *Re Stewart* that a person's health or ill-health fell within the core meaning of the term "personal affairs". Disclosure of the matter deleted from folio 31 in this instance would reveal information concerning the mental health of an individual other than the applicant. Accordingly, the matter is *prima facie* exempt from disclosure to the applicant under s.44(1), subject to the application of the public interest balancing test contained within s.44(1). In this instance, I am not satisfied that there are public interest considerations favouring disclosure which outweigh the public interest in non-disclosure which is inherent in the satisfaction of the test for *prima facie* exemption under s.44(1). I am not aware of any public interest considerations of any appreciable weight, which tell in favour of the disclosure to the applicant of information concerning the mental health of an individual other than the applicant.
45. A similar decision was reached by the Victorian Administrative Appeals Tribunal in *Re F and Health Department* (1988) 2 VAR 458, where it determined that clinical notes containing information about a person other than the applicant (including that person's name) were exempt under s.33 of the *Freedom of Information Act 1982 Vic*, on the basis that disclosure of that information would disclose the other individual's personal affairs.
46. In the circumstances, I find that the matter deleted from folio 31 is exempt matter under s.44(1) of the FOI Act.

Folio 46 - Application of s.46(1) of the FOI Act

47. As noted at paragraph 6 above, folio 46 comprises a chronological record of the matters recorded on the applicant's file held by the Centre. The matter remaining in issue comprises two words which were deleted from an entry on folio 46 which reads "1.2.86 - letter from [the identity of the third party appears here]". This entry, while containing an error as to the date of the letter, is a record of the receipt by the Centre of the letter from the third party to Dr Klug dated 1 January 1986, which is folio 3.

48. Disclosure of the matter deleted from folio 46 would reveal the identity of the third party, which I have already found to be confidential information that is exempt from disclosure under s.46(1)(a) and s.46(1)(b) of the FOI Act.
49. Accordingly, I find that the identity of the third party where it appears on folio 46 is exempt matter under s.46(1)(a) and s.46(1)(b) of the FOI Act for the same reasons as are explained at paragraphs 14 to 41 of this decision.

Conclusion

50. For the foregoing reasons:
- (a) I affirm that part of Dr Golledge's decision of 11 May 1993 by which it was determined that folio 3 is exempt from disclosure under s.46(1)(b) of the FOI Act;
 - (b) I also find that folio 3 is an exempt document under s.46(1)(a) of the FOI Act;
 - (c) I affirm that part of Dr Golledge's decision of 11 May 1993 by which it was determined that the matter deleted from folio 31 constitutes exempt matter under s.44(1) of the FOI Act; and
 - (d) I find that the identity of the third party, where it appears on folio 46, is exempt matter under both s.46(1)(a) and s.46(1)(b) of the FOI Act.

F N ALBIETZ
INFORMATION COMMISSIONER