

Decision D0152008 - Published in note form only

***Re 'B' and Bentley Health Service* [2008] WAICmr 15**

Date of Decision: 16 May 2008

Freedom of Information Act 1992: ss. 45, 48(3), 50

The complainant applied to the Bentley Health Service ('the agency') under s.45 of the *Freedom of Information Act 1992* ('the FOI Act') for amendment of certain personal information about him recorded in a document held in his medical records. The complainant claimed that the relevant information ('the disputed information') was inaccurate and he sought to have it amended by removing or obliterating it from the document.

The agency initially decided to amend the disputed information in the manner requested and applied to the A/Information Commissioner ('A/Commissioner') for approval to obliterate it from the document, under s.48(3) of the FOI Act. Following discussions with the A/Commissioner's office, the agency reconsidered its decision and withdrew its application under s.48(3). The agency notified the complainant that it had decided not to amend the disputed information in the manner requested because it was not satisfied that it was inaccurate, as claimed by the complainant. Instead, the agency proposed to approve the insertion of a notation in the margin of the relevant document to record the complainant's view about the disputed information. The complainant did not accept that proposal and, subsequently, applied to the Information Commissioner for external review of the agency's decision.

The A/Commissioner obtained the agency's file holding the complainant's medical records, including the document containing the disputed information, and the relevant FOI file from the agency. The A/Commissioner was satisfied that the disputed information was 'personal information' as defined in the FOI Act about the complainant, which consisted of the recollection of a doctor - the author of the document containing the disputed information - of information the complainant had provided to him during a medical consultation some 3 years previously.

The A/Commissioner was also satisfied that the disputed information was not shown to be an inaccurate record of the author's recollection of the information the complainant provided to him during the relevant medical consultation. The A/Commissioner considered that the fact that the complainant disagrees with the accuracy of the disputed information does not, without more, establish that the disputed information is inaccurate. Faced with the competing claims of the author of the document that it was an accurate record of the author's view at the time, and the complainant's strongly held view that the record was inaccurate, the factor that tilted the balance in favour of finding that the agency's decision was justified was a finding that the author had made the record nearly contemporaneously with the relevant medical consultation.

The A/Commissioner agrees with the statement of the former A/Commissioner in *Re 'B' and Armadale Health Service* [2007] WAICmr 4 that a complainant's right to

have personal information about him or her amended is contingent upon that person providing some factual information or evidence to the agency in the first instance, or to the A/Commissioner, establishing that the personal information sought to be amended is inaccurate as claimed.

In the absence of sufficient evidence to establish that the disputed information was inaccurate, the A/Commissioner was not persuaded that the disputed information should be amended in the manner requested by the complainant or at all. The agency's decision not to amend the personal information was therefore justified.

The A/Commissioner considered that, even if he were persuaded that some form of amendment was justified, the permanent removal of the disputed information from the document would not be the appropriate means of amendment, as it would create an untrue record of the author's view of the information the complainant had provided to him at the relevant medical consultation.

The A/Commissioner noted that the FOI Act recognises that people can hold different views about an event and that s.50 of the FOI Act allows a note to be added to an official State record so that a person's alternative view can be recorded.

The A/Commissioner considered that the appropriate means of ensuring that the complainant's view about the disputed information is retained on the agency's file would be the addition of a notation to that file, pursuant to the complainant's rights under s.50 of the FOI Act.