

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2003113
Decision Ref: D0012004**

Participants: **Philip Patrick Murrin**
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – documents of the Internal Investigations Unit of the agency – section 23(2) – whether apparent from nature of documents as described in access application that documents are exempt – clause 5(1)(b) – whether requested documents contain matter the disclosure of which could reasonably be expected to reveal the fact and content of a particular investigation by the Internal Investigations Unit of the agency of any contravention or possible contravention of the law – whether any obligation under section 24 to give access to edited copies of the requested documents – clause 3(1) – documents on Complaint History Review file and related documents – definition of personal information – whether documents contain personal information about individuals other than the access applicant – public interest test.

FREEDOM OF INFORMATION – application for amendment of personal information under Part 3 of FOI Act – request for destruction of file because created in error – refusal to amend by destruction – whether application for amendment complies with s.46 of the FOI Act – invalid application for amendment – requirements for valid application for amendment – certification under s.48(3) not warranted.

Freedom of Information Act 1992 (WA) ss.3(3), 23(2), 24, 45(1), 46, 48(1), 48(3), 50, 71, 76(4), 102(3); Schedule 1 clauses 3, 5(1)(b), Glossary.

The Criminal Code (WA)
Police Regulations 1979
State Records Act 2000

Police Force of Western Australia v Kelly and Smith (1996) 17 WAR 9
Manly v Ministry of Premier and Cabinet (1995) 14 WAR 550
Police Force of Western Australia v Helen Louise Winterton (1997) WASC 504

DECISION

The decisions of the agency to:

- (a) refuse access to matter deleted from the Complaint History Review file and related documents on the ground that it is exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992*;
- (b) refuse access to Internal Investigations Unit documents described in the access application, in accordance with s.23(2) of the *Freedom of Information Act 1992*, on the ground that the documents are exempt under clause 5(1)(b) of Schedule 1 to *Freedom of Information Act 1992*; and
- (c) refuse to deal with the complainant's application for amendment on the ground that it does not comply with section 46 of the *Freedom of Information Act 1992*,

are confirmed.

D A WOOKEY
A/INFORMATION COMMISSIONER

12 January 2004

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of two decisions made by the Police Force of Western Australia ('the agency') to refuse Mr Philip Patrick Murrin ('the complainant') access to documents and to refuse to deal with an application for amendment under the *Freedom of Information Act 1992* ('the FOI Act').

BACKGROUND

2. The agency has established an administrative process to assist in the early identification of police officers whose performance may be below standard and to monitor the effectiveness of operational procedures. In relation to the performance of police officers, I understand that the process, which is referred to as the Complaint Early Warning System, involves the conduct of a "Complaint History Review", which is triggered by the recording of three major complaints involving an officer in any 12 month period. A file is created by the agency's Professional Standards Portfolio and referred to the officer's supervisors to review and take any action considered necessary.
3. The complainant is a serving police officer posted in the south west of the State. In June 2000, the Risk Assessment Unit of the Professional Standards Portfolio of the agency referred to the complainant's District Superintendent an Early Warning System file - or Complaint History Review file - relating to the complainant's performance. However, the complainant disputed that there had been three major complaints involving him in the preceding 12 month period and did not accept that a Complaint History Review by the District Superintendent was warranted.
4. It appears that the District Superintendent interviewed the complainant as a result of receiving the file but took no further action with the complainant in respect of it and queried the creation of the file. The agency later acknowledged that the agency's guidelines for the creation of such files had not been followed and that the file had been created in error.
5. In 2000 and 2001 the complainant sought under the FOI Act, and was given access to, documents contained in the Complaint History Review file. Following correspondence between the Assistant Commissioner (Professional Standards) and the complainant's solicitor, a meeting between two senior officers of the Risk Assessment Unit of the agency and the complainant and his solicitor was held. As a result of that meeting, the agency undertook to endorse the file "issued in error"; advise the South West District Police Office of the error; enter the "outcomes" missing from the summary of the complainant's complaint history; and write to the complainant's solicitor confirming those actions when completed. I understand that all those undertakings were subsequently performed. I also understand, however, that the complainant remained dissatisfied and initiated proceedings against the agency in the WA Industrial Relations Commission.

6. In April 2003, the complainant applied to the agency for access to “...documents that are being held at the Internal Investigation Unit of the Western Australian Police Service”, and specifically “...all “records” and “documents” relating to...” twenty internal investigations, which he identified by the file numbers. He specified that he required “...all internal documents related to local complaints and internal investigation files...Copies of complaint resolution forms, all supervisors’ write-offs, all district office write-offs, and all internal investigation write-offs...All videos, photographs and documentary evidence associated with these files.”
7. The complainant also requested access to:
 - “...documents and copies of any e-mails from the Risk Assessment Unit and or professional Standards Unit to the Bunbury District Office and the Officer in Charge of the Bunbury Police Station, advising the Early Warning file was generated in error...” and
 - “...a copy of my “Early Warning File” or as it is known “Complaints History” file with the front page “marked” generated in error or words to that effect.”

He also sought to have the Complaint History Review file destroyed because that file had been created in error.

8. Without identifying or specifying the reasons for the exemption of each, the agency refused to give the complainant access to the requested documents, in accordance with s. 23(2) of the FOI Act, on the ground that it was apparent from their description in the access application that they were all exempt under clause 5(1)(b) of Schedule 1 to the FOI Act and that it was not practicable for the agency to give him access to edited copies of the documents. The agency also refused to deal with the application for amendment (by destruction of the file) because it considered that the application was invalid. The agency’s decisions were confirmed on internal review and, subsequently, on 18 July 2003, the complainant made a complaint to the Information Commissioner seeking external review of the agency’s decision.

REVIEW BY THE INFORMATION COMMISSIONER

9. The former Information Commissioner (“the former Commissioner”) obtained the FOI file and other relevant documents, including the Complaint History Review file, from the agency. Various inquiries were made with the agency and the complainant and endeavours made to resolve the complaint by conciliation between the parties, as permitted by s.71 of the FOI Act. During that part of the external review process, the agency agreed to reconsider its decision. On 15 September 2003, the agency amended its decision relating to access to the Complaint History Review file. The agency decided to give access to all of the documents on that file except for minor deletions of what it claims is personal information about third parties and is exempt under clause 3. The agency otherwise confirmed its decisions. Although the complainant indicated that he is primarily concerned with the application for amendment, he did not withdraw from that part of his complaint which relates to access to documents.

Accordingly, the complaint could not be resolved by conciliation between the parties.

10. On 22 October 2003, after considering the material before her, the former Commissioner informed the parties in writing of her preliminary view of this complaint, including her reasons. It was the former Commissioner's preliminary view that:
 - the matter deleted from the documents on the Complaint History Review file may be exempt under clause 3(1);
 - the matter contained in the agency's Internal Investigations Unit ('IIU') files, as described in the access application, may be exempt under clause 5(1)(b); and
 - the application for amendment of personal information was not made in accordance with the provisions of Part 3 of the FOI Act.
11. In light of her preliminary view, the former Commissioner invited the complainant to either withdraw the complaint or provide her with submissions for her consideration. I received a response from the complainant's solicitor confirming that the complainant wished to pursue his complaint. The complainant's solicitor also provided submissions, including attachments, for my consideration. I have considered those submissions, together with reviewing and considering the contents of my office's file relating to the complaint, the documents produced by the agency, including the Complaint History Review file, and the matter deleted from the documents released to the complainant by the agency.

THE DISPUTED DOCUMENTS

12. In respect of the agency's decisions to refuse access, the documents remaining in dispute at this stage are:
 - all the documents held by the IIU relating to the investigation of complaints involving the complainant including the twenty internal investigation files he identified by file number; and
 - the matter deleted from the Complaint History Review file and related documents.

Also remaining in dispute is the agency's refusal to deal with the complainant's application to amend the Complaint History Review file by destroying it.

THE INTERNAL INVESTIGATIONS UNIT DOCUMENTS

13. Without identifying any or all of the requested documents and without specifying the reason why matter in any particular document is exempt, the agency refused the complainant access to all of the IIU documents in accordance with s.23(2) of the FOI Act. The agency claimed that all of the documents described in that part of the complainant's access application would be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act and, further, that it was not practicable to give him edited copies of the documents.

Section 23(2)

14. Section 23(2) of the FOI Act provides as follows:

“(2) The agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if -

(a) it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and

(b) there is no obligation under section 24 to give access to an edited copy of any of the documents.”

15. For an agency to rely upon s.23(2) of the FOI Act and refuse access without identifying the documents and dealing with each one individually, as the agency has done in this instance, the requirements of both paragraphs (a) and (b) of s.23(2) must be satisfied. If it can be shown that the documents are of the kind described in paragraph (a), then it is necessary to consider the requirements of paragraph (b), that is, whether the agency is obliged under section 24 to give access to an edited copy of any of the documents.

Section 23(2)(a)

16. The first question, therefore, is whether it is clear from the description itself that the documents requested by the complainant in his access application are exempt. The term “exempt document” is defined in the Glossary in the FOI Act. An exempt document is a document that contains matter that is exempt under one or more of the clauses in Schedule 1 to the FOI Act. In this instance, the agency claims that the requested documents, as described, are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

17. The complainant made no submissions on the point, even in response to the former Commissioner’s preliminary view that the documents may be exempt under clause 5(1)(b). His solicitor merely advised that the complainant “...affirms his original request for access to documents as per his initial application” and claimed that he had been given access to similar documents as a result of an earlier access application. Whether or not the agency may have exercised its discretion on previous occasions to grant access to similar documents is entirely a matter for the agency and - although it may be relevant in conciliation negotiations - is irrelevant to what I must now determine. The agency has the discretion, under s.3(3) of the FOI Act, to disclose exempt documents if it so chooses; I do not. The agency has claimed exemption for the documents, as it is entitled to do, and I must decide whether the agency’s claim is correct. If it is established that a document is exempt, then I am prohibited by s.76(4) of the FOI Act from making a decision to the effect that it should be disclosed.

Clause 5(1)(b)

18. Clause 5(1)(b) provides that matter is exempt matter if its disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted.
19. The former Information Commissioner discussed the scope and meaning of the exemption in clause 5(1)(b) in a number of her decisions following the decision of the Supreme Court of Western Australia in *Police Force of Western Australia v Kelly and Smith* (1997) 17 WAR 9. In an earlier decision of the Supreme Court (*Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550), Owen J had said essentially that, for documents to be exempt under clause 5(1)(b), it had to be reasonable to expect that disclosure of the documents would reveal something of the content of an investigation.
20. In *Kelly's* case, Anderson J referred to that earlier decision and said at page 13:

“...documents which reveal that there is an investigation, the identity of the people being investigated and generally the subject matter of the investigation probably would satisfy the requirement stipulated by Owen J that the document “must reveal something about the content of the investigation”.”
21. Anderson J also said that, in his opinion, *“...the phrase “...if its disclosure could reasonably be expected to...reveal the investigation of any contravention of the law in a particular case...” is apt to include the revelation of the fact of a particular investigation by police of a particular incident involving certain people...”* and that *“[o]nce it appears that disclosure of a matter could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, the matter is exempt...”*.
22. The decision in *Kelly's* case makes it clear that the scope of the exemption provided by clause 5(1)(b) is very broad. In essence, it means that, once it is established that there was, is or will be an investigation of a contravention or possible contravention of the law in a particular case, and that disclosure of the particular documents in question could reasonably be expected to reveal the fact of the existence of that investigation, the identity of the people being investigated and generally what the investigation is about, then the documents are exempt. The exemption clearly applies to such documents as, among others, witness statements, investigation reports and the like, the disclosure of which could reasonably be expected to reveal the investigation of a possible contravention of the law.
23. The IIU of the agency investigates complaints against police officers. As I understand it, the primary purpose of an internal investigation by the IIU is to determine whether or not there has been a breach of the criminal law or a disciplinary offence or offences under the *Police Force Regulations 1979* committed. Both the *Criminal Code* and the regulations are clearly relevant “laws” for the purposes of clause 5(1)(b). The wording of the exemption itself indicates that disciplinary inquiries can be within its scope.

24. Taking into account the role and functions of the IIU and the nature of the documents described in the access application, I am satisfied that the disclosure of those documents would 'reveal' the investigations carried out by the IIU in particular cases, in the sense in which that term is used in clause 5(1)(b) as interpreted by the Supreme Court in *Kelly's* case and subsequently. At the least, those investigations would have been investigations into whether or not there had been a contravention or contraventions of the regulations.
25. Although the complainant may have some knowledge about the fact and content of the particular investigations, clause 5(1)(b) still applies regardless of how much the complainant might already know or claim to know about those investigations: *Re Kelly and Smith* at p.14. Accordingly, I am satisfied that the IIU documents, as described in the complainant's access application, are exempt under clause 5(1)(b) of Schedule 1.

Section 23(2)(b)

26. Further, I do not consider that the agency is obliged to consider the option of giving access to edited copies of any of those documents. In my opinion, it would not be practicable to do so because the very nature of the documents requested suggests to me that disclosing any part of them would "reveal the investigation" or that editing so that they did not would result in documents that had little meaning. In the decision of the Supreme Court of Western Australia in *Police Force of Western Australia v Helen Louise Winterton* [1997] WASC 504, Scott J said:

"It seems to me that the reference to the word "practicable" is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, [s24](#) should not be used to provide access to documents which have been so substantially altered as to make them either misleading or unintelligible."

Finding

27. Accordingly, I find that the decision to refuse access in accordance with s.23(2) of the FOI Act on the ground that the IIU documents are exempt under clause 5(1)(b) was justified.

COMPLAINT HISTORY REVIEW FILE AND RELATED DOCUMENTS

28. The agency's Complaint Early Warning System ("the CEWS") policy document describes the purpose and procedure for the use of the CEWS. Among other things, the CEWS policy states that:

- It is the policy of the agency to monitor and provide early developmentally orientated intervention on the basis of a member's history of complaints.
 - The aim of the policy is to minimise unacceptable behaviour on the part of the members (via managerial identification of trends and causal factors) whilst facilitating timely individual and corporate development and the acceptance of managerial accountability at the local level.
 - After three major complaints are received against a member over a 12 month period, the Professional Standards Portfolio will forward a complaint review file to the respective District/Region/Portfolio.
 - The member's complaint history will include substantiated and unsubstantiated complaints in order to provide a broad insight into the patterns of allegations received. Local management should also review personnel information such as sick leave and supervisor's comments to identify any causal/contributory factors to the behaviour in question.
 - The member concerned shall be interviewed by the District/Regional Officer or a Commissioned Officer representative, in the company with the member's OIC/Supervisor.
 - At interview, members should be encouraged to identify reasons for their behaviour as well as to discuss possible intervention strategies.
 - Local management shall within two months report on the action taken and return the file to the Internal Investigations Unit.
29. I am advised by the agency that the system is designed to assist in the identification of "problem" officers and the idea is that a trend or pattern of alleged behaviour will be brought to the attention of local supervisors to consider and determine whether there is anything in need of attention. The agency informs me that the process is a management tool and is not intended or designed to be an investigative or disciplinary tool. The agency's advice in this regard is confirmed by the contents of several documents in the Complaint History Review file.
30. In this case, the contents of the Complaint History Review file include: a printout of a summary of all the complaints to the agency which have involved the complainant; a "Personnel Development" report, to which summaries of each of the three internal inquiry histories concerning the complainant for the 12 month period May 1999 to May 2000 are attached; an IIU internal memorandum; an uncompleted *pro forma* "Employee at Risk Action Report"; a list of available courses and assistance; a copy of the CEWS policy; various internal memoranda between officers of the Risk Assessment Unit, officers of the IIU, the complainant and officers of the relevant District Office and police station; a copy of a memo from the complainant to the Police Union; and documents relating to an earlier FOI application.

Access

Personal information about third parties

31. The agency gave the complainant access to all of the documents contained in the Complaint History Review file and almost all of the matter contained in

them. The matter deleted from those documents comprises a very small part of the total contents of that file and consists of the names of third parties and other information that would identify those third parties, as well as the handwritten signatures of several officers of the agency. In my view, the matter deleted from the Complaint History Review file is personal information as defined in the FOI Act about persons other than the complainant. That information is, on its face, exempt matter under clause 3(1), which provides that matter is exempt if its disclosure would reveal personal information about an individual (whether living or dead).

32. During the course of my office dealing with this complaint, the agency identified and located a number of documents relating to the action taken by the agency following its acknowledgement that the file had been created in error. The agency decided to give the complainant access to all those documents, subject to minor editing to remove any unrelated matter which is outside the scope of the complainant's access application and any personal information about third parties, which the agency claims to be exempt under clause 3(1). As I understand it, that matter comprised only a personal signature which, in my view, constitutes personal information as defined in the FOI Act and is *prima facie* exempt under clause 3(1).

The public interest

33. However, the exemption in clause 3 is subject to the limits on exemption in clauses 3(2) to 3(6). In my opinion, the only limit which might apply in this instance is the limit on exemption in clause 3(6), which provides that matter is not exempt matter under clause 3(1) if its disclosure would, on balance, be in the public interest. Under s.102(3) of the FOI Act, the complainant bears the onus of establishing that the personal information about third parties which the agency deleted from the documents is not exempt because its disclosure would be in the public interest. Once again, the complainant has made no submissions on this point. Although the complainant did not provide any relevant submissions to satisfy that onus, I have nonetheless considered the relevant public interest factors for and against disclosure in this case.
34. The purpose of the exemption in clause 3(1) is to protect the privacy of individuals and I consider that there is a strong public interest in maintaining personal privacy. In favour of access, I accept that there is a public interest in access applicants being able to exercise their rights under the FOI Act and in people being given access to personal information about themselves contained in government documents. However, in my view, the disputed matter is properly characterised as personal information about third parties and not about the complainant and the complainant has been given access to all the remaining matter contained in the documents, including personal information about himself. I also recognise a public interest in agencies, as employers, being accountable for their management methods.

Finding

35. In my opinion, however, neither of those public interests requires the disclosure of the personal signatures of the officers involved in the matters or the personal information about other people contained in the documents. In this case, I consider that the public interest has been sufficiently satisfied by the agency giving the complainant access to edited copies of the documents with only minor deletions. In the absence of any other public interest favouring disclosure having been identified, it seems to me that, on balance, the public interest in protecting the personal privacy of the third parties outweighs any public interest in disclosure. Therefore, I find the matter deleted from the documents contained in the Complaint History Review file and related documents exempt under clause 3.

Amendment

36. Section 45(1) of the FOI Act provides that an individual has a right to apply to an agency for amendment of personal information about the individual contained in a document of an agency if the information is inaccurate, incomplete, out of date or misleading.

Applications under s.46

37. Section 46 of the FOI Act prescribes how an application for amendment of personal information must be made. Section 46(1) provides that, among other things, the application must: be in writing; give enough details to enable the relevant document or documents to be identified; give details of the matters in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading; give the person's reasons for that belief; and give details of the amendment the person seeks.
38. If an agency decides to amend the information, it may do so by alteration, striking out or deletion, inserting information or inserting a note in relation to information, or in more than one of those ways (s.48(1)). However, pursuant to s.48(3), an agency is not to amend information in a manner that obliterates or removes the information or results in the destruction of a document containing the information, unless the Information Commissioner has certified in writing that it is impracticable to retain the information or that, in the opinion of the Information Commissioner, the prejudice or disadvantage that the continued existence of the information would cause to the person outweighs the public interest in maintaining a complete record of information.

The agency's decision

39. On 27 May 2003, the agency advised the complainant that his application for amendment was not valid and explained that it was invalid because it did not comply with s.46 of the FOI Act. The agency advised him that, although in his application the complainant had identified the file to be considered for amendment, he had not identified which particular part of that file, or which document on the file, he claimed to be incorrect and in need of amendment or

given details of the amendment he sought to have made. In other words, the application did not comply with paragraphs (b), (c) or (e) of s.46(1). The complainant was requested to provide further details to the agency to make a valid application that could be dealt with by the agency in accordance with its obligations under Part 3 of the FOI Act. The complainant responded to the agency's request, but did not provide the relevant details and, as a result, the agency refused to deal with the complainant's application for amendment on the ground that it did not comply with s.46 of the FOI Act.

The complainant's submissions

40. The complainant's solicitor submits that:
- the complainant applied for destruction of the entire Complaint History Review file on the basis that the agency has conceded in writing that the file was erroneously created;
 - the Police Royal Commission has advised the agency that it has no objection to the exemption of the file from the moratorium on destruction of records of the agency;
 - there is no public interest in the continued existence of the file;
 - there can be no public interest in retention of a file that should never have been created; and
 - the prejudice to the complainant arising from the retention of the file is obvious.

The agency's response

41. The agency claims that, although the Complaint History Review file was generated in error, the action taken to acknowledge and remedy that error is sufficient to prevent any prejudice to the complainant and it is not appropriate to destroy the file under the provisions of FOI Act because most of the information contained in the file is factually correct.

Consideration

42. Based on the terms of the complainant's application for amendment, the decision of the agency in respect of the application and the complainant's submissions to me, it is clear to me that the complainant has not made an application for amendment which complies with s.46 of the FOI Act. In particular, the complainant has not given enough details to enable the identification of the relevant document or documents and the specific matter contained within them which he believes is personal information about him and is inaccurate, incomplete, out of date or misleading.
43. Rather, as I understand it, the complainant argues that the file should be destroyed because it was created in error and he considers the continued existence of the file is prejudicial to him. Apparently in the alternative, the complainant also requested that the contents of the file "*be reviewed and re-written correctly*" by the agency. The complainant's approach to this issue and

his submissions in respect of it appear to me to indicate a misunderstanding of the purpose and application of the amendment provisions in the FOI Act.

44. Section 45(1) of the FOI Act creates the legal right to apply to an agency for amendment of personal information about the applicant “*contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading*”. That is, an applicant for amendment must identify personal information about him or her which is ***contained in a document*** and which the applicant believes is inaccurate, incomplete, out of date or misleading, and apply to have that amended. In this case, the complainant has not done that. He has merely claimed the creation of the file was wrong and asked for it therefore to be destroyed. Other than his making the claim, which the agency has accepted, that he was not subject to investigation for 3 major complaints in 12 months, he has not specified any particular information contained in the documents and explained why it is inaccurate, incomplete, out of date or misleading.
45. The only specific request the complainant has made for amendment of particular information contained in the documents, with an explanation of the basis of the request, as far as I can see, is that he has indicated to the agency that he considers the summary of complaints about him contained in the file to be inaccurate, incomplete, and/or misleading in that some of the outcomes were not recorded. The agency has addressed that by agreeing to ensure that all outcomes are recorded and I understand they now have been.
46. In the Glossary in the FOI Act “personal information” is defined to mean:

“ ... information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -

(a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*

(b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample”.*
47. On the basis of my examination of the documents contained in the Complaint History Review file, I am satisfied that there is personal information about the complainant contained in them. In particular, the complainant is identified by name and there is some other information about the complainant’s performance of his duties. However, the documents also contain information that is either personal information about other people, or information that is non-personal information relating to the subject matter in general. Part 3 of the FOI Act does not apply to that kind of information.
48. Although the complainant has established that the file was created as a result of an administrative error, and the agency has accepted that and taken a number of actions in an attempt to remedy the administrative error, that fact alone is not sufficient to justify destruction of the file under the FOI Act. Destruction of a document under the FOI Act is a means of amending erroneous personal

information contained in a document, not a means of correcting an administrative error in the creation of the file *per se*. It seems to me that a complaint about the creation of a file as a result of an administrative error is a matter within the jurisdiction of the Ombudsman, who has the power to recommend any action she considers necessary to remedy the effect of an administrative error, and that matter would have been more appropriately the subject of a complaint to the Ombudsman, rather than a request for amendment under the FOI Act.

Finding

49. As I have explained above, an applicant for amendment must specify personal information about him or her contained in the documents of an agency and explain why the personal information is inaccurate, incomplete, out of date or misleading. The complainant in his application did not do so and I concur with the agency's decision that therefore his application did not comply with s.46(1) and was not a valid application for amendment.
50. If the complainant wants particular personal information about him which is contained in the documents in the file amended, he may apply to have it amended in accordance with s.46. If he does so, and the agency decides not to amend the information in accordance with his application, he may, in writing, request the agency to make a notation or attachment to the information detailing his views, in accordance with s.50. The agency has to comply with such a request unless it considers that the notation or attachment that the person has requested is defamatory or unnecessarily voluminous. That may be a course the complainant may now consider pursuing.

Certification under s.48(3)

51. In any event, the FOI Act prohibits an agency from destroying records in response to an application under the FOI Act without a certificate issued by the Information Commissioner under s.48(3) of the FOI Act. Although I find that the complainant has not made a valid application for amendment to the agency, even if I did consider he had made a valid application for amendment of the Complaint History Review file, on the information presently before me I would not be prepared to issue such a certificate.
52. As I have explained above, the mere fact that a file was created in error is not sufficient reason to authorise its destruction under the FOI Act. The FOI Act requires me to be satisfied firstly that specific personal information about the complainant which is contained in the documents in the file is inaccurate, incomplete, out of date, or misleading. If the complainant had established that - which, at this stage, he has not - or I accepted that the whole of the file could be said to be personal information about the complainant which is inaccurate, incomplete, out of date or misleading - which I do not - the Act then requires that I form the view either that it is impracticable to retain the relevant information or that the prejudice or disadvantage its continued existence would cause to the complainant outweighs the public interest in maintaining a complete record of information. On the information presently available to me, I

would not be satisfied on either point. Clearly, it is not impracticable to retain the documents in the file in its present form.

53. The agency informs me that, whilst the Complaint History Review file was not created in accordance with its established policy guidelines, the contents of the file are factually correct and will be retained for record-keeping purposes only. I understand that the agency has assured the complainant on a number of occasions that the particular file is closed and that it is not made routinely available to agency officers. It has been clearly marked “issued in error”. The agency informs me that only one hard copy of the file exists and that is retained by the agency’s Risk Assessment Unit, which is a restricted-access area and access to information of that kind held by the Risk Assessment Unit is not generally available and is subject to an authorisation process. Details of the creation of the file are not on the agency’s electronic databases or on the complainant’s personal file. I am also assured that the file and its contents will not be used for performance assessment in the future; nor will it affect the complainant’s promotional opportunities. In the absence of any evidence to the contrary, I accept those assurances.
54. In my view, there is a clear public interest in government agencies maintaining a full record of their activities, whether those activities were undertaken in error or not. Section 48(3) of the FOI Act recognises the public interest in an agency retaining a complete record of information. That public interest is also reflected in the *State Records Act 2000* which, among other things, provides that it is an offence for a government organisation employee to destroy a government record unless the destruction is authorized by the record keeping plan of the organization. The question then is whether that public interest is outweighed in this instance by any prejudice or disadvantage that the continued existence of the information would cause to the complainant.
55. The complainant submits that the prejudice to him that will follow from the continued existence of the file “is obvious”. With respect, in the circumstances outlined above, it is not obvious to me. From the foregoing, I understand that the file will not be generally accessible, and anyone to whom it is accessible will see immediately that it was generated in error and no action taken in respect of it; the file will not be used in relation to the future management of the complainant or at all; the existence of the file will not be noted on the complainant’s personal file and is not noted on the agency’s electronic databases. In those circumstances, I am at a loss to see what prejudice to the complainant its continued existence will have.
56. Accordingly, in those circumstances, I would not be prepared to authorise the destruction of that file under s.48(3) of the FOI Act.
