

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

**File Ref: F2013004
Decision Ref: D0012014**

Participants:

Corey David Larkman
Complainant

- and -

Department of Corrective Services
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – application for amendment of personal information under Part 3 of the *Freedom of Information Act 1992* – refusal to amend personal information by way of alteration or deletion – whether disputed information is inaccurate, incomplete, out of date or misleading – notation or attachment under section 50.

Freedom of Information Act 1992 (WA) sections 45(1); 48(1); 48(3); 50; Schedule 2
Glossary

DECISION

The decision of the agency not to amend its records in accordance with an application for amendment made under Part 3 of the *Freedom of Information Act 1992* is confirmed.

Sven Bluemmel
INFORMATION COMMISSIONER

25 February 2014

REASONS FOR DECISION

BACKGROUND

1. This complaint arises from a decision of the Department of Corrective Services (**the agency**) not to amend information in accordance with an application for amendment made under Part 3 of the *Freedom of Information Act 1992* (**the FOI Act**) by Mr Larkman (**the complainant**).
2. In 2003, the complainant was convicted, in the Supreme Court of Western Australia, of murder and was sentenced to life imprisonment.
3. In a letter dated 22 October 2013, the complainant applied to the agency for amendment of personal information about him contained in a Case Conference Report dated 3 September 2012 (**the Report**). The complainant did not specify the manner in which he sought amendment, but as I understand it from his correspondence with my office, he sought deletion of a paragraph in the Report. The complainant claimed the paragraph was inaccurate and it would be unfair to retain it in the Report. The complainant contends that the shooting was unintentional, a fact he considers is supported by his being convicted of felony murder and not wilful murder.
4. In a notice of decision dated 23 November 2012, the agency informed the complainant that it was satisfied that the paragraph was inaccurate. The agency prepared a statement to attach to the Report and provided a copy of that statement to the complainant. I understand that the agency has already given effect to this proposal and has placed that statement on the relevant file. The complainant did not accept that offer by the agency and sought internal review of the agency's decision. The agency's decision was confirmed on internal review. On 30 December 2012, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. I obtained a copy of the Report from the agency, together with the agency's file maintained in respect of the amendment application. I examined those documents and considered the submissions made by the complainant. My office made inquiries with the agency.
6. On 18 October 2013, I informed the parties, in writing, of my preliminary view of this complaint including my reasons. On the information then before me, it was my preliminary view that amendment of the disputed information was justified but in slightly different terms to that proposed by the agency.
7. Accordingly, I informed the complainant that the agency's offer to make a note on the Report and to attach a detailed notation was, in all the circumstances, most appropriate and I invited the complainant agree to the proposal. I provided a suggested notation for the complainant's consideration. The agency accepted my proposal. However, the complainant did not agree to the proposal and

maintained that he required the removal of the information from the Report, and he did not withdraw his complaint.

8. On 11 November 2013, my office wrote to the complainant with another suggested notation to be placed on his files within the prison system. In response, the complainant agreed that that suggested notation contained correct information but he did not agree that placement of the suggested notation on his file would address his concerns, as he claimed the prison staff will only rely on documents created by other prison staff.

AMENDMENT OF PERSONAL INFORMATION

9. Part 3 of the FOI Act deals with the right of a person to apply to an agency for the amendment of personal information about the person contained in a document of an agency and prescribes the procedures to be followed by an agency in dealing with an application for amendment. Section 45(1) provides that an individual has the right to apply for such an amendment if the information is inaccurate, incomplete, out of date or misleading. The person seeking the amendment must give details of the matters in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading and the person must give reasons for holding that belief.
10. If an agency decides to amend its records, section 48(1) provides that it may do so by alteration, striking out or deletion, inserting information or inserting a note in relation to the information. However, section 48(3) provides that an agency is not to amend information in a way that obliterates or removes the information, or results in the destruction of a document containing the information, unless the Information Commissioner certifies 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 disputed information

11. The disputed information is a paragraph which briefly purports to describe details of the offence which has led to the incarceration of the complainant. The disputed information is one paragraph contained in the Report. Given the sensitive nature of the disputed information, I have not quoted the relevant paragraph in full in order to preserve the privacy of the complainant and victim to some degree.

Is the disputed information personal information concerning the complainant?

12. In the Glossary in Schedule 2 to the FOI Act, the term “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”.*

13. I have examined the Report and I am satisfied that it contains personal information as defined in the FOI Act about the complainant. The Report is located on the complainant’s file and its contents, in my view, amount to personal information about the complainant. Therefore, I am satisfied that the Report contains personal information about the complainant and that that information may be the subject of an application for amendment under section 45(1) of the FOI Act.

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

14. The Report is titled ‘Case Conference Report’ and relates specifically to the complainant. It contains a brief history of the complainant’s offence history; current offence details; other information relevant to the management of complainant within the prison system, including the complainant’s current prison performance. The disputed information is one paragraph under the heading ‘Current Offence Details’ and it contains the author’s paraphrasing from the judge’s sentencing remarks. The agency agrees that the disputed information is, in part, inaccurate.

The complainant’s submission

15. In brief, the complainant contends that the Report contains inaccurate information with respect to the events that took place during the armed robbery which resulted in the complainant serving his current prison sentence and, in particular, the disputed information is inaccurate and misleading because it does not accurately reflect the sentencing remarks of the Supreme Court judge.

Consideration

16. I obtained from the agency a copy of its ‘Adult Custodial Rule 18 Assessment and Sentence Management of Prisoners’ (**Rule 18**) which is publicly available on the agency’s website. According to paragraph 9.8.5 of Rule 18, the Report serves to assist in the total management of the prisoner by capturing information across a variety of areas, including medical, psychiatric and previous offending/imprisonment.
17. In addition, based on my examination of Rule 18, the Report is a part of the process of developing each prisoner’s Individual Management Plan (**IMP**). Each individual prisoner has input into the development of his or her own IMP.
18. Finally, I understand Case Conferences are the forums where documentation relating to the prisoner’s assessment is considered and recommendations are made regarding the prisoners in respect of assessment, security rating and placement within the prison system. It is also the forum where prisoners are

informed of recommendations and the reasons for those recommendations and where prisoners can raise issues in relation to their IMP or other documentation.

19. In my view, the disputed information is clearly the understanding of the author of the judge's sentencing remarks based on the author's reading of those remarks. However, the agency agrees that the disputed information does not accurately reflect the judge's sentencing remarks and advised the complainant that it was prepared to place a notation on his files within the prison system.
20. In his submissions to me, I understand the complainant to be claiming that his treatment within the prison system is affected by the continued existence of the disputed information. However, there is no evidence before me which establishes that the disputed information has resulted in the complainant being treated differently – in particular, more harshly – to other prisoners generally.
21. The obliteration, removal or destruction of a document by an agency is only authorised in the circumstances outlined in section 48(3) of the FOI Act. Information may only be amended by an agency in any of those ways if the Information Commissioner is of the opinion that it is impracticable to retain the information or the prejudice or disadvantage that its continued existence would cause to the complainant outweighs the public interest in maintaining a complete record of information, and certifies that opinion in writing.
22. In summary, I do not consider there is any evidence currently before me which persuades me that the continued existence of the disputed information would prejudice or disadvantage the complainant. Therefore, I do not consider that the prejudice or disadvantage that the continued existence of the information would cause to the complainant outweighs the public interest in maintaining a complete record of information. This is particularly so in light of the fact that the agency has inserted a note on the Report together with a detailed notation, which corrects any inaccuracy in the Report. Accordingly, I do not consider that there are grounds for me to certify and thereby authorise the destruction of the disputed information. For the reasons given, I confirm the agency's decision not to amend the information in the manner requested by the complainant.

Notation

23. I note that it remains open to the complainant to request, under section 50 of the FOI Act, that the agency make a further notation to the Report. The agency will need to comply with any such request unless it considers that the notation is defamatory or unnecessarily voluminous.
