

did not change his billing practice because the visiting officer did not confirm his advice in writing.

The Tribunal found the offences to be of a serious nature and, despite Dr Summers previously good record, the offences could not be ignored. The AAT took into account the fact that the loss of his services to the community was not as critical as if he had been in a small country town. Dr Summers had also complained that the period of exclusion was uncertain. The AAT therefore set a period of exclusion of eighteen weeks.

Freedom of Information

'Personal Affairs' includes personality and reputation

Re: Toomer and Department of Primary Industries and Energy (1990) 20 ALD 275. Under section 48 of the Freedom of Information Act if a person claims that a document of an agency contains information relating to his personal affairs that is incomplete, incorrect, out of date or misleading, and that has been used for an administrative purpose, he may request the agency to amend the record of that information.

The AAT noted that the Full Federal Court in Dyrenfurth (1988) 80 ALR 533, made it clear that information concerning a person's state of health, the nature or condition of his marital or other relationships, domestic responsibilities or financial obligations, might be included within the phrase 'personal affairs' used in the exemption provision of the FOI Act (section 41). In the Tribunal's view the comments in Dyrenfurth were to apply, as far as possible, to construing the phrase 'personal affairs' in section 48. The Tribunal noted however that section 48 differs from section 41 in that documents within the ambit of section 48 may include public information which is not kept private or confidential but which nevertheless may be used by an agency for an administrative purpose.

In the Tribunal's view Dyrenfurth did not limit the class of what may be information relating to 'personal affairs'. The Tribunal referred to the dictionary definitions of 'personal' and 'private' and took the view that information about a person's personality or reputation is within the meaning of 'personal affairs'.

Mr Toomer was employed as a Senior Quarantine Inspector. Two documents in the possession of the Department criticised Mr Toomer's personality and competence 'in such a way as to destroy his professional reputation and render it impossible for him to perform his duties'. In the Tribunal's view the attack on his professional reputation contained in the document was based on information concerning his work performance and accordingly it related to his personal affairs. Further the information was incomplete, incorrect, out of date and misleading and was to be used for an administrative purpose. The Tribunal ordered a notation on each document to that effect.

'Document of an Agency' and 'Personal Affairs'

Bleicher v Australian Capital Territory Health Authority (Federal Court - 13 August 1990, Sydney) concerned an appeal from a decision made by the Tribunal in connection with an application made under the Freedom of Information Act 1982. Mrs Bleicher had unsuccessfully applied for a permanent position with the ACT Health Authority as an occupational therapist. That employer had had regard to written comments on her work history records. She applied to have these amended under the FOI Act. The matter came before the AAT and was resolved by an agreement that the records be amended by attaching two further papers provided by Mrs Bleicher.

On a later date Mrs Bleicher applied for access to four documents used at the AAT hearing, and upon being given access to the copies held by the Authority, requested their amendment. The Authority refused and Mrs Bleicher appealed to the AAT. The Tribunal relied on two matters:

- . none of the subject documents was a document of the agency; once filed in proceedings before the Tribunal the documents became documents used in the administrative proceedings of the Tribunal;
- . the documents did not contain information relating to the 'personal affairs' of the applicant.

On appeal Mr Justice Wilcox rejected the first reason for decision on the basis that the copy documents in the Authority's possession could be subject to an amendment order, and there was no reason why an appropriate note should not be added to the copies. The judge held that the Tribunal had applied the wrong test in considering whether the subject documents fell within the expression 'personal affairs' and relied on the Full Federal Court's decision in Dyrenfurth (1988) 80 ALR 533 (handed down after the Tribunal's decision in this matter).

The Court in that case said 'In our view, it cannot be laid down by way of definition that an assessment of the capacity or previous work performance of an employee or prospective employee necessarily contains "information relating to the personal affairs" of that person. Equally, however, it is not permissible to construe the phrase ... as being incapable of application to information contained in an assessment of capacity of work performance'.

The Courts

Access to Commonwealth Cabinet records

Northern Land Council v Commonwealth (Federal Court
6 August 1990).