

ment of facts giving rise to an undesirable duplication in litigation. The respondent also argued that the documents in dispute would not be discoverable in the Supreme Court proceedings and their disclosure under the *FoI Act* would contravene the principle requiring freedom from bias. The respondents submitted the writs lodged by one of the judges in the Supreme Court action to support those contentions.

In response the applicant submitted, amongst other things, that in seeking adjournment, the respondent was asking the Tribunal, in effect, to determine a preliminary matter, the alleged ground of exemption under s.31(1)(b) of the *FoI Act*. This was a substantive issue in the applicant's application and should be determined on the merits.

The Tribunal concluded that the respondent had not satisfied the onus of demonstrating that there was any real risk that in proceeding with the hearing there would be prejudice to the Supreme Court proceedings or prejudgment of any matters to be canvassed in those proceedings. It did, however, acknowledge that it may, at a later stage in the proceedings, become apparent that such a risk would evolve and at that stage it would be appropriate to reconsider the adjournment. Until that time the

Tribunal held that the application would proceed and it made various orders accordingly. The exemptions relied on by the respondent will therefore be the subject of the application when it is heard.

[K.R.]

**RABEL and STATE
ELECTRICITY COMMISSION
(No. 93/3207)**

Decided: on 18 August 1993 by Fagan J (President).

Request under s.39 for an amendment to a personal record.

Rabel sought an order under s.39 of the *FoI Act* for an amendment to a date contained in a document held by the SEC. The document was a report by a grievance investigation panel concerning Rabel and his treatment by management officers of the SEC in his employment. While the report was in some respects adverse to Rabel, the issue for consideration in this application was whether a date of a Work Performance Report (WPR) was correct within the report.

The difficulty in the case arose because there were three versions of the relevant WPR in existence and there were some differences in the content of the report. Rabel claimed that only one of the documents was the correct version.

The importance of the correct date on the report was related to the fact that Rabel had live proceedings before the Equal Opportunity Board claiming discrimination in his employment by officers of the SEC. This had occurred, he alleged, since a particular date, which was when he delivered to the SEC a copy of an incident report which reported that he had been subject to threats pressing him to join the Municipal Officers Association. The date of the WPR was relevant because he claimed that he was given an adverse WPR because he had made the incident report.

Evidence was called by the applicant but the Tribunal did not find that the disputed date in the grievance report was inaccurate, incomplete, or out of date, or likely to give a misleading impression. The Tribunal stated that it was for the applicant to take the necessary steps to activate s.46 of the *FoI Act* if desired. This entitles the applicant to make a request by notice in writing requiring the Minister or agency to add to the record a notation specifying the respects in which the information is claimed to be incomplete, incorrect, out of date or misleading.

[K.R.]

FEDERAL FoI DECISIONS

Administrative Appeals Tribunal

**SLEZANKIEWICZ and
AUSTRALIAN AND OVERSEAS
TELECOMMUNICATIONS
CORPORATION
(No. V91/984)**

D cid d: 1 July 1992 by Deputy President I.R. Thompson.

Request for amendment of information — annotation on documents — whether use of information for an administrative purpose is to be distinguished from use for an operational or financial purpose — personal information.

The applicant sought review of a deemed refusal to amend records of certain information kept by the respondent. The respondent had made application under s.48 for amendment or annotation to four

documents held by the respondent relating to him.

Section 48

Section 48 provides that:

48. Where a person claims that a document of an agency or an official document of a Minister to which access has been lawfully provided to the person, whether under this Act or otherwise, contains personal information about that person:

- (a) that is incomplete, incorrect, out of date or misleading; and
- (b) that has been used, is being used or is available for use by the agency or Minister for an administrative purpose, the person may apply to the agency or Minister for:
 - (c) an amendment; or
 - (d) an annotation of the record of that information kept by the agency or Minister.

The respondent argued that the documents did not contain information relating to the applicant's personal affairs. The respondent further contended that some of the documents had not been used, were not being used and were not available for use by the respondent for an administrative purpose.

The Tribunal considered evidence given by the applicant and on behalf of the respondent in relation to alleged inaccuracies contained in documents previously supplied to the applicant. The Tribunal stressed that, in order to succeed in his claim to have the documents amended or annotated under s.48, the applicant needed to demonstrate not only the inaccuracy of the information, but also that the

material had been used or was available for use for an administrative purpose. Findings as to whether or not the information constituted 'personal information' relating to the applicant, were made on a factual basis in respect of each of the documents considered. Similarly, inaccuracies contained in the documents were determined on a factual basis.

As regards those documents found to contain information which was incomplete, incorrect, out of date or misleading, the Tribunal then went on to consider the further requirement that the document be used or available for use for an administrative purpose. The respondent argued that the express reference to information used for an administrative purpose in s.48 implicitly indicated that some information in documents in the possession of an agency might not so be used. The Tribunal accepted this view but rejected the respondent's submission that a distinction was to be drawn between information used for 'operational' and 'financial' purposes and that used for administrative purposes.

The Tribunal noted that the meaning of the phrase 'administrative purpose' used in s.48 had not been the subject of consideration by the Tribunal or Federal Court. It therefore reviewed a number of decisions to which the *Administrative Decisions (Judicial Review) Act 1977* applied, being decisions of an administrative character as prescribed by s.3(1) of that Act. Of these, *Registrar of Motor Vehicles v Dainer* (1985) 57 ALR 759 and *Cardo-Matic Pty Ltd v Australian Industrial Research and Development Incentives Board* (1986) 81 ALR 283 to be of assistance. The former distinguished between matters of a judicial character and matters of an administrative character. The latter drew a distinction between matters of a commercial character and those of an administrative character. However, these distinctions were not applicable in the present case. The Tribunal then referred to the Shorter Oxford English Dictionary (3rd edn) where 'administrative' is stated to mean 'pertaining to management; executive'. A similar definition was found in the Random House Dictionary. On this basis, the Tribunal concluded that 'administrative purpose' in s.48 means a purpose that has to

do with the management of the agency in whose possession a document is held. The Tribunal added:

That management extends at least to all its internal activities, including financial control and activities of an operational nature as well as the employment and management of staff.

The Tribunal accordingly ruled that the information sought by the applicant to be amended, being information relating to his sick leave record, salary paid and staff assessment, had been created and used for an administrative purpose.

[G.W.]

SOUTHERN and DEPARTMENT OF EDUCATION EMPLOYMENT AND TRAINING (No. A92/87)

Decided: 17 February 1993 by Deputy President B.J. McMahon.

Request for access to documents recording formal complaints of sexual harassment — identity of complainant deleted from documents — claim for exemption under s.40(1)(c).

The applicant had requested access to all documents held by the respondent Department which related to him. In particular, the applicant sought access to documents containing details of complaints of sexual harassment made against him. A large number of documents was made available by the respondent, some of which had been subject to deletion in order to conceal the identity of complainants and/or witnesses or for concealing details of conduct the subject of the harassment complaints. Exemption was claimed under s.40(1)(c) on the ground that disclosure could reasonably be expected to have a substantial adverse effect on the management or assessment of the respondent's personnel.

The Tribunal noted that some of the material deleted from the documents was obviously known to the applicant and, indeed, was repeated by him in evidence. The Tribunal stressed, however, that knowledge of the material did not detract from the validity of the exemption claim. The Tribunal stated:

Knowledge by Mr Southern is one thing. Disclosure under the *Freedom of Information Act* is another, as it is disclosure to the whole world. A document in which the name of the signatory is unofficially known to Mr Southern is not the same

as a document disclosed under the processes of the Act with the identity of the signatory revealed. Such a document would (subject to any other regulatory inhibition) be capable of publication, for example, in the *Canberra Times*.

Considering the information sought by the applicant, the Tribunal acknowledged that some of the complaints may have been personal and may have related to a private relationship which previously existed between one of the complainants and the applicant. The Tribunal added that the material may even, in fact, have been untrue, but noted that the new definition of 'personal information' includes information or an opinion whether true or not. In any event, the Tribunal considered the most significant aspect of the information sought to be that it was material created in the context of a program for detecting and preventing sexual harassment. As such, the Tribunal accepted uncontested evidence given on behalf of the respondent to the effect that release of the information sought to be exempt would affect the integrity of the respondent's sexual harassment program, and acknowledged the fact that confidentiality is essential for the preservation of the program's integrity within the department.

Citing *Boeam and the Commonwealth Ombudsman* 8 ALN N29, in which the Tribunal upheld a claim for exemption on the basis that disclosure of information could lead to a substantial diminution of unsolicited information the subject of investigations, the Tribunal considered disclosure in the present case to be substantially adverse to the respondent's assessment of personnel.

As regards public interest considerations, the Tribunal noted that it was important not only to maintain a workable sexual harassment complaint and elimination system, but also to recognise the fulfilment of the legal responsibilities of agencies under the *Sex Discrimination Act*. The Tribunal concluded that an assurance of confidentiality to complainants when invoking the mechanism established by their employing agency to complain of sexual harassment was essential in order to ensure the effective management of personnel.

[G.W.]