



Decision and Reasons for Decision

Citation:	<i>U5OR8D and Department of Housing and Public Works [2018] QICmr 19 (2 May 2018)</i>
Application Number:	313465, 313521, 313605 and 313678
Applicant:	U5OR8D
Respondent:	Department of Housing and Public Works
Decision Date:	2 May 2018
Catchwords:	ADMINISTRATIVE LAW - AMENDMENT OF PERSONAL INFORMATION - applications to amend information contained in Public Information Documents and letters and a correspondence brief authored by officers of the agency - information relating to issues arising under the <i>Retirement Villages Act 1999</i> (Qld) about the management and operation of a Retirement Village - whether the information sought to be amended is contained within a document of the agency - section 13 of the <i>Information Privacy Act 2009</i> (Qld) - whether information is the personal information of the applicant - section 12 of the <i>Information Privacy Act 2009</i> (Qld) - whether information is inaccurate, incomplete, out of date or misleading - section 72(1)(a) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant is concerned about a range of issues relating to a retirement village operated by the Retirement Village Operator.¹
2. The applicant applied,² by separate applications, to the Department of Housing and Public Works (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for amendment of information contained in:
 - the applicant's Public Information Document (**PID**)
 - letters the applicant received from the Director-General of the Department dated 18 August 2015³ (**2015 Letter**) and 28 June 2017⁴ (**2017 Letter**)

¹ Both the applicant and Retirement Village Operator have been de-identified in this decision.

² Amendment applications dated 5 July 2017 (external review 313465), 25 August 2017 (external review 313521), 12 October 2017 (external review 313605) and 4 December 2017 (external review 313678).

³ Reference HPW01664/15.

⁴ Reference HS 01343-2017.

- a correspondence brief prepared by an officer of the Department (**Correspondence Brief**); and
 - the Retirement Village PID.
3. The Department decided to refuse the requested amendments in accordance with section 72(1) of the IP Act on the basis that:
- the applicant's PID is not a document of the Agency⁵
 - the information sought to be amended in the 2015 Letter, 2017 Letter, paragraphs [7] and [9] of the Correspondence Brief and the Retirement Village PID is not personal information of the applicant;⁶ and
 - the information sought to be amended in paragraph [10] of the Correspondence Brief is not inaccurate, incomplete, out of date or misleading.⁷
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decisions.⁸
5. For the reasons set out below, I affirm the Department's decisions to refuse the applicant's requested amendments.

Background

6. The Appendix to these reasons for decision sets out the significant procedural steps taken during the external reviews.

Reviewable decisions

7. The decisions under review are the Department's decisions dated 18 August 2017⁹ (external review 313465), 29 September 2017¹⁰ (external review 313521), 10 November 2017¹¹ (external review 313605) and 20 December 2017¹² (external review 313678).

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
9. During the reviews the applicant provided a number of submissions as well as documents (including professional advice and media articles) relating to her concerns regarding the operation of the retirement village. I have considered all of this material and have only extracted those parts which I consider to have relevance to the issues to be determined in these reviews.

Issues in the reviews

10. The following issues arise for determination in these external reviews. That is, whether:

⁵ Decision dated 29 September 2017 (external review 313521).

⁶ Decisions dated 18 August 2017 (external review 313465), 29 September 2017 (external review 313521), 10 November 2017 (external review 313605) and 20 December 2017 (external review 313678).

⁷ Decision dated 10 November 2017 (external review 313605).

⁸ External review applications received on 21 August 2017 (external review 313465), 30 September 2017 (external review 313521), 14 September 2017 (external review 313605) and 21 December 2017 (external review 313678).

⁹ Amendment application dated 5 July 2017.

¹⁰ Amendment application dated 25 August 2017.

¹¹ Amendment application dated 12 October 2017.

¹² Amendment application dated 4 December 2017.

- the applicant's PID is a document of the Department
- the information the applicant seeks to have amended in the 2015 Letter, 2017 Letter, paragraphs [7] and [9] of the Correspondence Brief and the Retirement Village PID is the personal information of the applicant
- the applicant has demonstrated that the information she seeks to have amended in paragraph [10] of the Correspondence Brief is inaccurate, incomplete, out of date or misleading; and
- if it is, whether under section 72(1), amendment of the information may still be refused.

Relevant law

11. Under the IP Act, an individual has a right to apply for amendment of a document of an agency containing the individual's personal information where the following requirements are satisfied:¹³

- a) the applicant has previously obtained access to the document said to contain the applicant's personal information
- b) the information which the applicant seeks to amend is the applicant's personal information; and
- c) the personal information is inaccurate, incomplete, out of date or misleading.

12. Satisfaction of the preceding requirements does not itself entitle an applicant to amendment. Due to the opening words of section 72(1) of the IP Act—*'[w]ithout limiting the grounds on which the agency or Minister may refuse to amend the document'*, a decision-maker may still refuse to amend a relevant document—this provision confers on a decision-maker discretion whether to grant or refuse an amendment application. While the section sets out specific grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds. Consequently, even where an applicant has satisfied each of the requirements noted above, discretion is retained to refuse to amend a relevant document.

13. While an agency has the onus of establishing that its decision was justified,¹⁴ in an external review of a decision to refuse to amend information:¹⁵

... a practical or evidentiary onus shifts to [an applicant] to provide evidence to support [their] entitlement to relief under [the IP Act] on the basis that the documents in issue contain information that is inaccurate, incomplete, out-of-date or misleading.

Findings

14. The applicant has applied to amend information contained within Parts 5.1.2 and 5.1.8 of the applicant's PID, contending that the information is inaccurate or misleading. Further, that the document is out of date or incomplete, stating *'every year it is necessary*

¹³ See sections 41 and 44 of the IP Act.

¹⁴ Section 100(1) of the IP Act.

¹⁵ *Doelle and Legal Aid Office (Qld)* (1993) 1 QAR 207 at paragraph [18], where the Information Commissioner considered the issue of onus in an equivalent context under the now repealed *Freedom of Information Act 1992* (Qld). In *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (**3DT2GH**) at paragraph [9] I found this reasoning to be applicable to the provisions of the IP Act, and also referred to section 44(4)(e) of the IP Act - which requires an applicant to state both the way in which the applicant claims the information to be inaccurate etc. and the grounds for the applicant's claim - and sections 44(4)(f) and (g) of the IP Act, which require the applicant to state the amendments or other information claimed to be necessary for the information to be accurate or not misleading or to complete the information or bring it up to date.

to update my PID showing my Capital Depreciation on my Ingoing Contribution'. The right of amendment under the IP Act applies only to documents of an agency or Minister.

Is the applicant's PID a document of the Department?

15. No, for the reasons that follow.
16. A document of an agency is a document in the possession, or under the control, of the agency.¹⁶
17. The Department's decision states that enquiries with its Residential Services Unit revealed that the Department does not hold a copy of the applicant's PID.
18. In seeking an external review, the applicant submitted:¹⁷

Please be advised there is no Public Interest Document. My Public Information Document S74 Retirement Villages Act 1999 includes and forms part of my Residential Contract with [the Retirement Village Operator]. Changes in Parts 2 & 5 are regarded as material changes that should be notified under S36 of the Act. Part 5 Ch 1 Funds Information Capital Replacement Fund 8 March 2012 omits in 5.1.2 the Capital Replacement Reserve >\$1M declared annually in forming the CRF Budget in the approved form from quantity surveying. In Part 4 Retirement Villages Act 1999 Other documents relating to retirement village schemes S78 prescribes in my PID Funds information, only funds details, end of previous financial year 2011 balance and 5.1.5 my capital replacement fund annual contribution and details of the quantity surveyor's report used to decide the percentage of my ingoing contribution to be applied towards the capital replacement fund.

5.1.5 The scheme operator applies the following calculations based on my ingoing contribution to the capital replacement fund is about my ingoing contribution and connects the PID to about me 1-6% contributing to the annual capital replacement reserve.

19. I acknowledge that the applicant's PID forms part of the applicant's residence contract and that the *Retirement Villages Act 1999 (Qld) (RV Act)* requires notification of certain changes.¹⁸ However, this is not relevant to the question of whether the document the applicant seeks to amend is a document of the Department.
20. During the course of the external review, the applicant submitted:¹⁹

I believe I am the subject of the letter and my misleading Public information Document which as I have enclosed is under the department's control. I am subject to no conciliation by the Department of Housing regarding [the Retirement Village Operator] budgets not in the approved form consistent with quantity surveying for the fixing of my fees. The connection of the information to me is my increased fees for reduced standards of service not tenuous with the ongoing non-compliance by [the Retirement Village Operator] of the relevant provisions of the RV Act for the Capital Replacement and Maintenance Reserve Trust Funds.

¹⁶ Section 13 of the IP Act and section 12 of the *Right to Information Act 2009 (Qld) (RTI Act)*.

¹⁷ Application for external review dated 30 September 2017.

¹⁸ Section 37(1) of the RV Act. I note that section 95 of the *Housing Legislation (Building Better Futures) Amendment Act 2017 (Amendment Act)*, which received assent on 10 November 2017, omits sections 36 and 37 from the RV Act. However, as at the date of this decision, section 95 of the Amendment Act had not commenced (section 2 of the Amendment Act).

¹⁹ Submission dated 3 November 2017. In subsequent correspondence the applicant re-stated the above, referring to section 35 of the RV Act (submission to OIC dated 1 December 2017).

21. And:²⁰

My Public Information Document discrepancies.

Please find enclosed DHPW documents on my personal file relevant to my PID lack of disclosure to determine my annual general service fees and lack of [the Retirement Village Operator] obligations in implementing annual [Retirement Village] budgets to restrict my annual capital gain on my ingoing contribution 2012.

22. In support of these submissions, the applicant provided OIC with page 1 of a Retirement Village Form 1 (**RV Form 1**) for the Retirement Village which states *'This Public Information Document was given to the chief executive of the Department administering the Retirement Villages Act 1999 on 8 March 2012 under section 36 of the Act.'*

23. A public information document gives prospective residents information about a specific retirement village.²¹ The document must be in the approved form and include certain categories of information, such as residents' contributions information, residents' rights and obligations information and dispute resolution information.²²

24. To register a retirement village scheme, the application must be accompanied by a copy of the public information document for the retirement village.²³ The RV Act also specifies circumstances in which any inaccuracies in the public information document must be notified to the Department's chief executive and effected residents.²⁴

25. The approved form for the purposes of section 74 of the RV Act is the RV Form 1, which comprises five parts as follows:

- Part 1 – Generic Information
- Part 2 – Village and accommodation information
- Part 3 – Your accommodation unit details
- Part 4 – Available accommodation units information; and
- Part 5 – General information for this village.

26. Section 35 of the RV Act requires the Department's chief executive to keep a register for retirement village schemes. The register must include the public information documents and notices about inaccuracies in public information documents given under section 36 of the RV Act.

27. After receiving the applicant's submission at paragraphs 20 and 21 above, OIC sought further information from the Department. The Department submitted²⁵ that while the Department holds the Retirement Village PID, it does not hold a copy of the applicant's PID which would contain details in Part 3 specific to the applicant. The applicant's PID would be held by the applicant, having been provided to her prior to entering into her residence contract, and by the Retirement Village Operator.

28. I acknowledge the applicant's submission at paragraph 18 above that the extracted statement forms part of the RV Form 1 and reflects requirements of the RV Act previously noted. However, I am satisfied that the Retirement Village PID held by the Department

²⁰ Submission to OIC dated 27 January 2018. The applicant attached to this submission a letter and attachments from the Retirement Village Operator dated 15 August 2014, page 3 of a report prepared by a quantity surveying firm for the Retirement Village, an article titled *'Fair cop: spotlight on laws'* from Active Living dated 25 October 2017, and a draft letter from the applicant's accountant dated 18 November 2014.

²¹ Section 13 of the RV Act. See also <https://www.business.qld.gov.au/industries/service-industries-professionals/service-industries/operating-retirement-village/documents-contracts>.

²² Sections 13 and 74 of the RV Act.

²³ Section 27(2)(b) of the RV Act.

²⁴ Section 36 of the RV Act.

²⁵ Correspondence to OIC dated 13 December 2017.

comprises those parts of the RV Form 1 which relate to the retirement village as a whole and does not include information specific to the applicant in Part 3 of the RV Form 1, the latter being held by the applicant and the Retirement Village Operator. I accept the Department's submission at paragraph 27 that the Department does not hold the applicant's PID.

29. On the basis of the above, I am satisfied that the applicant's PID is not a document of the Department as the Department is not in possession of the document and there is no information before me to indicate that it is under the Department's control. Accordingly, the applicant is not entitled to apply to have this document amended because the information sought to be amended is not contained within a document of an agency, and therefore the amendment request can be refused.
30. The applicant has also applied to amend certain paragraphs in a number of Department documents, copies of which were attached to the applicant's amendment applications.²⁶
31. The right of amendment under the IP Act can only be considered if the information the applicant seeks to amend comprises their personal information.²⁷

Is the information the applicant seeks to amend in the Letters, paragraphs [7] and [9] of the Correspondence Brief and the Retirement Village PID the applicant's personal information?

32. No, for the reasons that follow.
33. In external review 313521 the applicant requests amendment of the following paragraphs in the 2015 Letter, wherein the author stated:

I have been advised that the [Retirement Village Operators] have provided the department with copies of the 2015-2016 financial year capital replacement fund and maintenance reserve fund budgets.

...

Retirement village operators are required to set a capital replacement fund budget each financial year, having regard to the quantity surveyor's report. The documents provided by the [the Retirement Village Operators] indicate that an estimated \$1,245,000 (plus interest earned by the fund) will be held as the capital replacement fund reserve for costs expected to be incurred during the 2015-2016 financial year.

...

34. In support of the request, the applicant states:²⁸

HPW01664/15 S78 Funds Information. My Public Information Document Retirement Villages Act 1999 is inaccurate and misleads in Part 5. 1. 2. & 5. 1. 8 with closing balances CRF & MRF not determined by quantity surveying nor 9 year budgets voids. Ref QCAT ... It reveals my fee contributions to [the Retirement Village Operator's] operations result in capital depreciation of my ingoing contribution.

²⁶ It is unclear if the applicant has had access to the Retirement Village PID. However, this issue is not determinative given my findings.

²⁷ Section 44(1) of the IP Act provides:

44 Making amendment application

- (1) *An individual who has had access to a document of an agency or a document of a Minister, whether or not under this Act, may apply to the agency or Minister for **amendment of any part of the individual's personal information contained in the document** that the individual claims is inaccurate, incomplete, out of date or misleading.* [my emphasis]

[Notes omitted]

²⁸ Application dated 25 August 2017.

...

Every year it is necessary to update my Public Information Document showing my Capital Depreciation on my Ingoing Contribution.

35. In external review 313465 the applicant requests amendment of the following paragraphs in the 2017 Letter, wherein the author stated:

I have been advised that a retirement village scheme operator must keep a Capital Replacement Fund and hold amounts standing to the credit of that fund in a separate bank account. The scheme operator is solely responsible for contributing to the fund and that the Retirement Villages Act 1999 (the RV Act) specifies how amounts standing to the credit of the fund can be spent.

...

I have also been advised that it is up to the scheme operator to decide the amount to be held in the fund (the capital replacement reserve) and that this decision must be made regarding the fund's purpose, the quantity surveyor's report and any amounts transferred to the fund when it was established, including the balance transferred from any Capital Replacement Fund established prior to the enactment of the RV Act.

...

In instances where the balance of the fund is not sufficient to cover the costs incurred by the scheme operator when replacing capital items, the operator must pay the difference between the actual amount to be spent and the amount held in the capital replacement fund.

...

36. In support of this amendment request, the applicant states:²⁹

The [Retirement Village Operator] is solely responsible in accordance with the Public Information document for contributing to make the capital replacement reserve on behalf of residents at the rate of 1-6% of [my] ingoing contribution for more than 5 years.

Without the capital replacement fund contribution from [me] the exit fee is 24% of [my] ingoing contribution. The costs incurred by [the Retirement Village Operator] in replacing capital items out of the CRF Budget have shown a shortfall of 20% below the Annual Reserve.

...

To complete my personal information about my contribution to the capital replacement fund by [the Retirement Village Operator], the Public Information document information 1-6% of my ingoing contribution must be included.

37. In external review 313605 the applicant requests amendment of information contained in the following paragraphs of the Correspondence Brief:

[7] ...³⁰ [The applicant] made application to have this matter heard through QCAT ...³¹ and a decision was handed down 8 January 2014 wherein the application was dismissed. The Tribunal found that [the Retirement Village Operator] has used its best endeavours in deciding the amount to be held in the MRF and that there is no evidence to suggest that [the Retirement Village Operator] has deliberately ignored the recommendations of the quantity surveyor's report in a significant way. The Tribunal further found that [the Retirement Village Operator] was not in breach of section 98(4) of the Act.

[9] [The Retirement Village Operator] pay the discounted rates and water accounts and pass on the rebate amounts directly to the eligible individual residents within the village. [The Retirement Village Operator] apply the entire rates and water charges (before the rebate) to the general services expenditure to cover the costs of paying these accounts.

²⁹ Application dated 5 July 2017.

³⁰ The first sentence of this paragraph refers to the applicant's application to have the matter heard in QCAT, noting that the application was dismissed. This sentence comprises personal information of the applicant, but I note that the applicant's amendment requests do not relate to this information. This is also noted in the Department's decision.

³¹ QCAT reference omitted.

[10] [The applicant] believes the practice whereby [the Retirement Village Operator] recoup the pensioner rebate amounts paid to residents, through the general services account, results in a significant overcharge to residents.

38. In seeking to amend the above information, the applicant states:³²

[7] No evidence to suggest that [the Retirement Village Operator] ignores quantity surveying because [the Retirement Village Operator] lied to the tribunal & MRF budgets are still not in the approved form ...³³ meaning no 9 year plan for the surplus >\$1 M.

[9] [The Retirement Village Operator] is allowed by auditing not to divulge the total gross credit income amount within residents' contributions in the annual financial accounts to balance altering quarterly bills back to gross bills according to my expert advice Pontings cpa Accountants & auditors.

...
[10] DHPW has sought no External Consultation expert advice. So the Pontings cpa expert advice prevails that the significant total credit amount including my pensioner rebate amount is withheld from village income & allowed by Director-Generals.

39. The applicant also states:³⁴

I am seeking to have my personal information i.e. the annual fees my residential contract contained in my public information document states I am obligated to pay accurate, complete, not out of date and not misleading.

40. In external review 313678 the applicant requests amendment of certain paragraphs within the Retirement Village PID appearing under the headings:

- Maintenance Reserve Fund [paragraph 1.1.19]
- Facilities Details [paragraph 2.8]
- Accommodation Details [paragraph 2.11]
- Insurance Information [paragraph 2.13]
- Capital Replacement Fund [paragraph 5.1.2]
- Maintenance Reserve Fund [paragraph 5.1.7 and 5.1.8]

41. The applicant seeks to amend these paragraphs as follows:³⁵

1.1.19. insert 'as calculated by 10year MRF budget'. omit the amount of contributions' 5.1.2 omit 'balance projections' as inconsistent with S78[b] RV Act. 5.1.8 omit 'balance projections' as inconsistent with S78[b].

...

2.8 Facilities Details omit ' hydrotherapy pool'

2.11 Accommodation Details update redevelopment total to 295.

2.13 Insurance Information Building omit \$35M & update.

42. In support of this application, the applicant states:³⁶

It became my PID manual materially connected to me when I signed it 14/05/12 as my residence contract.

³² Application dated 12 October 2017.

³³ QCAT reference omitted.

³⁴ Application dated 12 October 2017.

³⁵ Application dated 4 December 2017.

³⁶ Application dated 4 December 2017.

43. *Personal information* is defined in section 12 of the IP Act as:

...information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

44. Determining whether information is the personal information of an individual for the purposes of the IP Act requires consideration of whether the individual can reasonably be identified from the information and if so, whether the information is ‘*about*’ that individual.³⁷

45. With the exception of paragraph [10] of the Correspondence Brief, which I am satisfied does comprise the applicant’s personal information³⁸ and have addressed in paragraphs 52 to 66 below, the information the applicant seeks to amend does not include her name, however, the information appears in documents which reference her. Due to my conclusion that the information the applicant seeks to amend is not *about* her, I consider that nothing turns on this point.

46. If the individual is the subject matter of the information, the information will be about them.³⁹ Where information is not clearly about an individual, it is necessary to consider the context in which the information appears. In doing so, the key question is whether there is a sufficient connection between the fact or opinion and the individual to reveal something about the individual. To demonstrate a sufficient connection between the individual and the information, the link cannot be so tenuous that the information is not about the individual, but about something else.⁴⁰

47. During the external reviews, the applicant made a number of submissions and provided various documents to OIC⁴¹ contending that the information she seeks to amend is her personal information. She submits that the connection between the Letters, Correspondence Brief and the Retirement Village PID and herself is the capital depreciation of her ingoing contribution and her increased fees for reduced standards of service:

- in relation to the Letters, I understand the applicant’s submissions⁴² to be that the fact that the calculations applied by the operator are based upon the applicant’s ingoing contribution to the capital replacement fund means that this information is about the applicant’s ingoing contribution and that this connects the PID to the applicant as she contributes to the annual capital replacement reserve
- in relation to the information the applicant seeks to amend in paragraphs [7] and [9] of the Correspondence Brief, I understand the applicant’s submission⁴³ to be that the fact that she is the subject of the Correspondence Brief and the increase in the annual general service fees and maintenance reserve fund fees the applicant pays means that the information is about the applicant; and

³⁷ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at paragraph 19.

³⁸ In its decision dated 10 November 2017 (external review 313605), the Department determined that the information contained within paragraph [10] of the Correspondence Brief is the applicant’s personal information.

³⁹ See *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4 (19 January 2017) at paragraph 63.

⁴⁰ See *Telstra Corporation Limited and Privacy Commissioner* [2015] AATA 991 (18 December 2015) at paragraph 99.

⁴¹ Dated 1 September 2017 (external review 313465), 25 September 2017 (external review 313465), 3 November 2017 (external review 313521), 1 December 2017 (external reviews 313521 and 313605), 4 December 2017 (external review 313521), 16 December 2017 (external reviews 313465, 313521 and 313605) and 27 January 2018 (external review 313678).

⁴² As set out in the applicant’s submission dated 1 September 2017 (external review 313465), application for external review dated 30 September 2017 (external review 313521) and submission dated 3 November 2017 (external review 313521).

⁴³ As set out in the applicant’s submission dated 1 December 2017 (external review 313605).

- in relation to the Retirement Village PID, I understand the applicant's submission⁴⁴ to be that it became '*materially connected*' to her when she signed it as her residence contract and that the increase in the annual general service fees and maintenance reserve fund fees the applicant pays means that the information is about the applicant.
48. Although the Letters were addressed to the applicant, the Correspondence Brief discusses letters received from the applicant and issues regarding the management of the Retirement Village and the PID for the Retirement Village forms part of a contract signed by the applicant, the applicant is not the subject of the information sought to be amended. Rather, the information the applicant seeks to amend:
- in relation to the 2015 Letter, identifies documentation provided to the Department by the Retirement Village Operator, an estimate of the funds held in the Capital Replacement Fund reserve and information about calculating the Maintenance Reserve Fund budget (external review 313521)
 - in relation to the 2017 Letter, sets out an interpretation of provisions of the RV Act and their operation (external review 313465)
 - in relation to the information the applicant seeks to amend in paragraphs [7] and [9] of the Correspondence Brief, is a summary of the findings of a QCAT decision and information about how the Retirement Village Operator manages and pays rates which was provided to the Department by the Retirement Village Operator (external review 313605); and
 - in relation to the Retirement Village PID, provides details about the retirement village scheme, including specific details about the Retirement Village relating to the Maintenance Reserve and Capital Replacement Funds projections over ten years (2011 to 2021) and generic information relevant to all retirement villages (external review 313678).
49. This information is general in nature or concerns the operation of the Retirement Village as a whole. There is not a sufficient connection between the applicant and the information such that would make the information *about* the applicant for the purposes of the amendment provisions of the IP Act. I am satisfied that the information sought to be amended by the applicant discloses nothing about the applicant and the link the applicant is seeking to draw is far too tenuous.
50. On the basis of the above, I am satisfied that the information sought to be amended in the 2015 and 2017 Letters, paragraphs [7] and [9] of the Correspondence Brief and the Retirement Village PID is not *about* the applicant and therefore does not comprise her personal information. Therefore, the Department was entitled to refuse amendment of this information under section 72(1) of the IP Act.
51. In view of my finding at paragraph 50 above, it is not necessary for me to consider the amendment requests for this information further. However, for completeness, I have addressed the discretion to amend information at paragraphs 61 to 66 below.

Is the information sought to be amended within paragraph [10] of the Correspondence Brief inaccurate, incomplete, out of date or misleading?

52. No, for the reasons that follow.

⁴⁴ As set out in the applicant's access application dated 4 December 2017, application for external review dated 21 December 2017 and submission dated 27 January 2018 (external review 313678).

53. As previously noted, paragraph [10] of the Correspondence Brief comprises the applicant's personal information. This information appears in a document of the Department and therefore, I must consider whether the Department was entitled to refuse amendment of this information.

54. The applicant disputes paragraph [10] of the Correspondence Brief, wherein the author states:

[10] [The applicant] believes the practice whereby [the Retirement Village Operator] recoup the pensioner rebate amounts paid to residents, through the general services account, results in a significant overcharge to residents.

55. In the amendment application to the Department, the applicant stated the following:⁴⁵

[10] DHPW has sought no External Consultation expert advice. So the Pontings cpa expert advice prevails that the significant total credit amount including my pensioner rebate amount is withheld from village income & allowed by Directors- Generals.

56. In support of her request to amend the Correspondence Brief, the applicant stated:

I am seeking to have my personal information ie annual fees my residential contract contained in my public information document states I am obliged to pay accurate, complete, not out of date & not misleading.

57. I have carefully considered the information the applicant seeks to have amended and the applicant's statements at paragraphs 55 and 56 above. The applicant appears to contend that the information in paragraph [10] of the Correspondence Brief is out of date or incomplete because it does not include information which she considers relevant to the issues then in dispute between her and the Retirement Village Operator.

58. Amendment provisions such as those found in the IP Act are aimed at:

*... ensuring that personal information concerning an applicant and read by third persons, does not unfairly harm the applicant or misrepresent personal facts about the applicant. It is concerned that the third persons reading the personal information do not get the wrong impression ...*⁴⁶

59. At paragraph [10] of the Correspondence Brief the document's author has simply recorded their understanding of concerns raised by the applicant. As the document details matters in contention between the applicant and the Retirement Village Operator, it is not surprising that the applicant disagrees with issues covered in the Correspondence Brief, however, this does not mean that the paragraph the applicant seeks to amend is incomplete as contemplated by the amendment provisions of the IP Act. On the contrary, the author's statement seems generally consistent with the applicant's concerns, and in any event, is an accurate recording of the understanding of the author.⁴⁷

60. I do not consider that the statement made by the author at paragraph [10] of the Correspondence Brief could reasonably be said to cause any of the detriments described in paragraph 58 above. I am further satisfied that inclusion of the applicant's statement

⁴⁵ The applicant indicated in her amendment application that paragraph [10] of the Correspondence Brief was out of date or incomplete.

⁴⁶ *Buhagiar and Victoria Police* (1989) 2 VAR 530, per Jones J.

⁴⁷ See *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) at paragraphs [25] to [27], paraphrasing the relevant principle as stated in *Crewdson v Central Sydney AHS* [2002] NSWCA 345 at paragraph [34].

at paragraph 55 above is not necessary to ensure that paragraph [10] is up to date and complete. I do not consider the applicant has provided objective evidence which would demonstrate, on the balance of probabilities, that the statement contained in this paragraph is inaccurate, incomplete, out of date or misleading. I therefore find that the information the applicant seeks to amend, that is, paragraph [10] of the Correspondence Brief is not inaccurate, incomplete, out of date or misleading, and amendment may be refused.

61. As stated at paragraphs 12 and 13 above, even where there is evidence to support an applicant's contention that information is inaccurate, incomplete, out of date or misleading, this would merely enliven my discretion to consider the requested amendment. There are a number of considerations a decision-maker may appropriately take into account in determining whether or not to exercise the discretion to amend a record of information.

62. In *3DT2GH* I noted that the Information Commissioner has previously recognised the relevance of the following criteria when considering whether the discretion should be exercised:⁴⁸

- (a) *the character of the record, in particular whether it purports to be an objective recording of purely factual material or whether it merely purports to be the record of an opinion/report of one person;*
- (b) *whether the record serves a continuing purpose;*
- (c) *whether retention of the record in unamended form may serve a historic purpose;*
- (d) *whether the record is dated;*
- (e) *whether amendment is being sought as a de facto means of reviewing another administrative decision;*
- (f) *the extent to which access to the record is restricted;*
- (g) *whether creation of the record or any of its contents was induced by malice*
- (h) *whether the record is part of a group of records and, if so, whether the other records modify the impact of the record in dispute.*

63. Further, previous decisions of OIC and other Australian jurisdictions⁴⁹ establish that in considering whether to exercise the discretion to refuse to amend information, a decision-maker may take into account that it is not the purpose of the amendment provisions to:⁵⁰

- *re-write history, as this destroys the integrity of the record-keeping process;*
- *determine disputed questions of opinion (including expert opinion), when that opinion was actually held and accurately entered in the official record;*
- *re-write a document in words other than the author's;*
- *review the merits or validity of official action;*
- *correct any perceived deficiencies in the work undertaken by agencies or re-investigating matters.*

64. Even if all of the requirements for amendment of the 2015 and 2017 Letters, paragraphs [7], [9] and [10] of the Correspondence Brief and the Retirement Village PID in accordance with the applicant's application were otherwise met, I am satisfied that the discretion to refuse amendment could be exercised in this case.

⁴⁸ As noted in, for example, *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008), at paragraph [41], quoting with approval the decision of Deputy President Todd of the Administrative Appeals Tribunal in *Re Cox and Department of Defence* (1990) 20 ALD 499 at 502-503.

⁴⁹ Applying substantially similar legislative provisions.

⁵⁰ *3DT2GH* at paragraph [18]. Footnotes omitted.

65. I acknowledge that the applicant disputes various matters relevant to the financial and service provision arrangements under her contract with the Retirement Village Operator and their obligations under the RV Act. However, the amendments the applicant would seek to make would have the effect of altering the record of matters then in dispute, including the views and understandings relevant to issues in dispute put forward by both the Department's officers and the Retirement Village Operator. The purpose of the amendment provisions of the IP Act is not to allow the Department's record of contentious issues to be distorted by artificially overlaying the views of an individual on the views genuinely held, recorded and conveyed by Departmental officers and other individuals. Permitting the requested amendments in this circumstance would, in my view, destroy the integrity of the relevant public records and amount to a re-writing of history.
66. Specifically in relation to the Retirement Village PID, I acknowledge that the applicant disputes certain information contained within it. However, the amendments that the applicant would seek to make would have the effect of altering the Retirement Village PID, which contains information relevant to the Retirement Village as a whole. The Retirement Village PID, and in particular, notifiable changes to that document, are specified in the RV Act, together with processes for dealing with disputes. As stated in paragraph 65, I consider the purpose of the amendment provisions of the IP Act is not to allow a public information document provided to the Department by a retirement village operator to be changed by artificially overlaying the views of an individual on the information contained within that document.

Conclusion

67. I am satisfied, for the reasons stated above, that each of the applicant's amendment requests can be refused under section 72(1)(a) of the IP Act.

DECISION

68. For the reasons set out above, I affirm the Department's decisions to refuse to amend the 2015 Letter, 2017 Letter, paragraphs [7], [9] and [10] of the Correspondence Brief, the applicant's PID and the Retirement Village PID under section 72(1)(a) of the IP Act.
69. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Suzette Jefferies
Acting Assistant Information Commissioner

Date: 2 May 2018

APPENDIX

Significant procedural steps

Date	Event
21 August 2017	OIC received the applicant's application for external review 313465.
30 August 2017	OIC received information relevant to the application from the Department in relation to external review 313465.
31 August 2017	OIC accepted external review 313465 and conveyed a preliminary view to the applicant, inviting the applicant to provide submissions by 14 September 2017.
1 September 2017	OIC received a submission from the applicant in relation to external review 313465.
25 September 2017	OIC received a submission from the applicant in relation to external review 313465.
30 September 2017	OIC received the applicant's application for external review 313521.
12 October 2017	OIC received information relevant to the application from the Department in relation to external review 313521.
27 October 2017	OIC accepted external review 313521 and conveyed a preliminary view to the applicant, inviting the applicant to provide submissions by 10 November 2017.
3 November 2017	OIC received a submission from the applicant in relation to external review 313521.
14 November 2017	OIC received the applicant's application for external review 313605.
17 November 2017	OIC received information relevant to the application from the Department in relation to external review 313605.
23 November 2017	OIC accepted external review 313605 and conveyed a preliminary view to the applicant, inviting the applicant to provide submissions by 7 December 2017.
1 December 2017	OIC received a submission from the applicant in relation to external review 313521 and 313605.
4 December 2017	OIC received a submission from the applicant in relation to external review 313521.
7 December 2017	OIC wrote to the Department putting forward an informal resolution option in relation to external reviews 313465 and 313605.
8 December 2017	OIC wrote to the Department on external review 313521 seeking confirmation of OIC's understanding of the applicant's Public Information Document.
13 December 2017	OIC received the Department's response on external reviews 313465 and 313605. The Department proposed an alternate informal resolution option.
13 December 2017	OIC received the Department's response on external review 313521 regarding the applicant's Public Information Document.

Date	Event
15 December 2017	OIC conveyed a second preliminary view to the applicant on the issues in external reviews 313465, 313521 and 313605 inviting the applicant to provide submissions by 12 January 2018. OIC also put the Department's informal resolution proposal to the applicant.
16 December 2017	OIC received a submission from the applicant in relation to external reviews 313465, 313521 and 313605.
21 December 2017	OIC received the applicant's application for external review 313678.
22 December 2017	OIC received information relevant to the application from the Department in relation to external review 313678.
12 January 2018	OIC accepted external review 313678 and conveyed a preliminary view to the applicant, inviting the applicant to provide submissions by 29 January 2018.
17 January 2018	OIC received a submission from the applicant in relation to external review 313678.
27 January 2018	OIC received a submission from the applicant in relation to external review 313678.