



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>U12 and Queensland Fire and Emergency Services [2021] QICmr 42 (17 August 2021)</i></b>
<b>Application Number:</b>	<b>315914</b>
<b>Applicant:</b>	<b>U12</b>
<b>Respondent:</b>	<b>Queensland Fire and Emergency Services</b>
<b>Decision Date:</b>	<b>17 August 2021</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - information appearing in an incident report - whether information is inaccurate, incomplete, out of date or misleading - section 72(1)(a) of the <i>Information Privacy Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Fire and Emergency Services (**QFES**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to amend an incident report dated 11 May 2019 (**Report**) to include his name and correct an address.
2. QFES decided<sup>2</sup> to refuse to amend the Report, on the basis that the information was not inaccurate, incomplete, out of date or misleading.
3. The applicant sought internal review of QFES' decision.<sup>3</sup> As QFES did not make an internal review decision within the statutory timeframe, it was taken to have affirmed its original decision.<sup>4</sup>
4. The applicant then applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of QFES' decision.
5. For the reasons below, I affirm QFES' decision and find the applicant's request to amend the Report may be refused.

#### Background

6. The Report relates to an activated alarm incident on 11 May 2019, which the applicant called to report. The sections of the Report where the caller's name can be inserted

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<sup>1</sup> On 5 January 2021.

<sup>2</sup> On 18 January 2021.

<sup>3</sup> By email dated 22 January 2021, the applicant advised QFES that he was posting his request for internal review and a CD of supporting information to QFES. On 17 February 2021, QFES confirmed to the applicant that the posted CD had been received.

<sup>4</sup> Under section 97(2) of the IP Act.

<sup>5</sup> On 25 February 2021.

were left blank, however, the mobile telephone number from which the reporting call was made is recorded. The applicant has concerns about how QFES responded to the incident which is the subject of the Report and about previous incidents at the same address.

7. On external review, the applicant confirmed that his amendment application seeks to:
  - insert his name on two pages of the Report<sup>6</sup>
  - insert his address on one page of the Report<sup>7</sup>
  - change the address entered on another page of the Report to his address;<sup>8</sup> and
  - change the reference to '*neighbour*' in the '*Alarm raised by*' line item of the Report.
8. The applicant also requested that OIC consider a further amendment to the Report, namely, '*updating*' the mobile telephone number appearing in the 'Call Receipt' section of the Report.<sup>9</sup> As that further amendment did not form part of the applicant's amendment application to QFES, it cannot be considered in this review.<sup>10</sup>
9. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner<sup>11</sup> and the Information Commissioner has an obligation to identify opportunities and processes for early resolution and to promote settlement of external review applications.<sup>12</sup>
10. In order to ensure procedural fairness (as required by both the IP Act<sup>13</sup> and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.<sup>14</sup>
11. After completing a preliminary assessment of the issues in this review, I wrote to the applicant<sup>15</sup> to explain that I had formed a preliminary view that QFES was entitled to refuse the amendments requested in his amendment application. I invited the applicant to provide a submission, in accordance with specific directions,<sup>16</sup> if he did not agree with that view.
12. The applicant disagreed with the preliminary view and provided submissions (and supporting information) to OIC, which failed to comply with the issued directions and

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<sup>6</sup> In the Call Receipt section for 'Customer Name' and in the Block A section for 'Callers Name'.

<sup>7</sup> In the Call Receipt section for 'Location Info'.

<sup>8</sup> In the Block A section for 'Address'.

<sup>9</sup> The applicant described the mobile telephone number appearing in the Report as now being his '*secondary mobile number*' and requested that it be updated to his new mobile telephone number.

<sup>10</sup> This was notified to the applicant on 4 May 2021.

<sup>11</sup> Section 108 of the IP Act.

<sup>12</sup> Section 103(1) of the IP Act.

<sup>13</sup> Section 110(2) of the IP Act.

<sup>14</sup> Section 103(1) of the IP Act.

<sup>15</sup> On 4 May 2021.

<sup>16</sup> The directions were for the applicant to provide a submission, with a maximum length of five pages, which addressed only issues relevant to whether the Information Commissioner is entitled under section 72 of the IP Act to refuse the amendment requested in his application to QFES. I notified the applicant that these directions were made under section 108(2) of the IP Act, which empowers the Information Commissioner to give directions as to the procedure to be followed on the external review. Where an applicant fails to comply with directions issued during an external review, the Information Commissioner may decide not to further deal with the review under section 107(1)(b) of the IP Act.

included a request that I ‘*recuse*’ myself from the external review. It appears that the basis of this recusal request was the applicant’s disagreement with the preliminary view, as he offered no reason for the request.

13. It is not open to an external review applicant to request that a specific decision-maker deal, or not deal, with their review. For this decision, I have carefully reviewed the entirety of the applicant’s submissions and considered them to the extent they are relevant to the issues for determination. I have also considered the amendment application, the decision under review and the legislative framework for amendment of personal information. I do not consider that the applicant has raised any proper basis for me to recuse myself and the applicant’s recusal request has not altered my conduct of the review or my consideration of the issues before me in any way.

### Reviewable decision and evidence considered

14. The decision under review is the decision QFES is taken to have made under section 97(2) of the IP Act, affirming the original decision dated 18 January 2021.
15. The significant procedural steps taken in this review are set out in the Appendix. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
16. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression.<sup>17</sup> I consider a decision-maker will be ‘*respecting and acting compatibly with*’ that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.<sup>18</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>19</sup>

### Relevant law

17. Under the IP Act,<sup>20</sup> an individual has a right to apply for amendment of an agency’s document containing the individual’s personal information where the following requirements are satisfied:
  - a. the applicant has previously obtained access to the relevant document
  - b. the information the applicant seeks to amend is their personal information;<sup>21</sup> and
  - c. the personal information is inaccurate, incomplete, out of date, or misleading.
18. The terms ‘*inaccurate*’, ‘*incomplete*’, ‘*out of date*’ and ‘*misleading*’ are not defined in the IP Act, nor the *Acts Interpretation Act 1954* (Qld). These terms are therefore used in their ordinary sense and the dictionary definitions<sup>22</sup> of them, as set out below, are relevant:

- ‘*inaccurate*’            *not accurate.*
- ‘*incomplete*’        1. *not complete; lacking some part.*

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<sup>17</sup> Section 21 of the HR Act.

<sup>18</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>19</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): ‘*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*’

<sup>20</sup> Sections 41 and 44 of the IP Act.

<sup>21</sup> ‘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 reasonably be ascertained, from the information or opinion.*’

<sup>22</sup> Macquarie Dictionary (accessed 17 August 2021).

- 'out of date'
  2. *not to the entire extent: incomplete combustion.*
  1. *(of a previous style or fashion) obsolete.*
  2. *(of a ticket, etc.) no longer valid.*
- 'mislead'
  1. *to lead or guide wrongly; lead astray.*
  2. *to lead into error of conduct, thought or judgement.*

19. Section 72(1) of the IP Act sets out non-exclusive grounds on which a decision-maker may refuse to amend a document.<sup>23</sup> While an agency has the onus on external review of establishing that its decision was justified,<sup>24</sup> *'the practical or evidentiary onus shifts to the party challenging the decision to provide evidence in support of the contention that the party is entitled to amendment on the basis that the documents in question contain information which is inaccurate, incomplete, out of date or misleading'*.<sup>25</sup>
20. However, even if it is shown that the information an applicant seeks to amend is inaccurate, incomplete, out of date or misleading, 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'—confer a discretion on the decision-maker to refuse amendment.<sup>26</sup>
21. The exercise of this discretionary refusal may take into account the fact that the purpose of amending a document is not to:
- re-write history,<sup>27</sup> as this destroys the integrity of the record-keeping process<sup>28</sup>
  - determine disputed questions of opinion (including expert opinion), when that opinion was actually held and accurately entered in the official record<sup>29</sup>
  - re-write a document in words other than the author's<sup>30</sup>
  - review the merits or validity of official action;<sup>31</sup> or
  - correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.<sup>32</sup>

### Issues for determination

22. There is no dispute that the applicant has previously obtained access to the Report or that the Report contains the applicant's personal information.<sup>33</sup> As this personal information of the applicant could lead to his identification as the individual who reported the incident which is the subject of the Report, I am satisfied the applicant was entitled to apply for amendment under the IP Act. As there is also no dispute that the Report forms part of a functional record, I am satisfied that section 72(1)(b) of the IP Act cannot be relied on to refuse amendment of the Report.
23. Therefore, the issues for determination in this review are whether:

<sup>23</sup> These include where an agency is not satisfied the information sought to be amended is personal information of the applicant (section 72(1)(a)(ii) of the IP Act) and where the document does not form part of a functional record (section 72(1)(b) of the IP Act).

<sup>24</sup> Section 100(1) of the IP Act.

<sup>25</sup> *Purrer v Office of the Information Commissioner & Anor* [2021] QCATA 92 (**Purrer**) at [32].

<sup>26</sup> In *Purrer*, Daubney J observed at [28] that *'the prefatory words of the section clearly operate to retain in the relevant agency or Minister a general discretion to refuse to amend'*.

<sup>27</sup> *DenHollander and Department of Defence* [2002] AATA 866 (**DenHollander**) at [96].

<sup>28</sup> To ensure that, in a record keeping context, the document is preserved without any alteration as a public record.

<sup>29</sup> *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 (**Crewdson**) at [34].

<sup>30</sup> *Re Traynor and Melbourne and Metropolitan Board of Works* (1987) 2 VAR 186 (**Traynor**) at [190], cited in *3DT2GH* at [18]. *Traynor* considered the requirements of the *Freedom of Information Act 1982* (Cth), the terms of which are substantially similar to the amendment provisions in the IP Act.

<sup>31</sup> *Crewdson* at [24].

<sup>32</sup> *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) (**Shaw**) at [57].

<sup>33</sup> Being his mobile telephone number.

- the applicant has demonstrated that the particular information sought to be amended within the Report is inaccurate, incomplete, out of date or misleading; and
- if so, whether under section 72(1) of the IP Act, amendment of the information may still be refused.

## Findings

24. The applicant seeks to have his name and address inserted into the Report, to specifically identify him as the person who called to report the incident.<sup>34</sup> QFES has explained that the Report has been completed in accordance with its own procedures<sup>35</sup> and it has processes in place to identify the applicant as the caller, should the need arise.<sup>36</sup> While I acknowledge that the Report may not contain all the details the applicant would like it to contain, this, of itself, is not enough to establish that, in the absence of those details, the Report is inaccurate, incomplete, out of date or misleading. Accordingly, notwithstanding the applicant's submissions, I do not accept that the absence of his name and address makes his personal information within the Report inaccurate, incomplete, out of date or misleading.
25. The Report nominates the incident address in an 'Address' field within the Block A section of the Report. The applicant submits that this entry was meant to record his address, as the caller, and it requires amendment because it incorrectly records his personal information. Further, the applicant submits that details of his '*timeline, location and whereabouts for 11 May 2019*' need to be restored. In support of this amendment request, the applicant has provided a substantial volume of information to OIC to confirm his location around the timeframe of the incident.<sup>37</sup>
26. The incident address has been recorded throughout the Report, whereas the applicant's name and address were not included anywhere in the Report. In these circumstances, I consider it reasonable to conclude that this particular field of the Report was intended to record the address of the incident rather than the address of the caller. On this basis and notwithstanding the applicant's submissions, I am unable to find that this address within the Report comprises the applicant's personal information or that it is inaccurate or misleading.
27. The applicant contends that referencing him as a neighbour in an '*Alarm raised by*' field of the Report is misleading. The description appearing in this field—'*31-Traveller, passer-by, neighbour*'—appears to be a standard report input. The word *neighbour* means '*someone who lives near another*'.<sup>38</sup> As the applicant resided near where the incident in question occurred, I consider that, when objectively assessed, describing the applicant as a neighbour is accurate. Notwithstanding the applicant's submissions, I find that the word neighbour in this field of the Report is not inaccurate or misleading.
28. Accordingly, I find that the applicant has not met the practical or evidentiary onus of demonstrating that the particular Report information which he seeks to amend is inaccurate, incomplete, out of date or misleading.

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<sup>34</sup> In the Call Receipt section for 'Customer Name' and 'Location Info' and in the Block A section for 'Callers Name'.

<sup>35</sup> In the decision under review, QFES confirmed that reports of this nature are regularly used by QPS as evidence in court because all entries are time and date stamped at the time they are entered and are not able to be altered.

<sup>36</sup> Using the applicant's personal information (mobile telephone number) which does appear in the Report.

<sup>37</sup> The applicant asserts that this provided information evidences a disparity between the incident timelines recorded in the Report and the incident timelines recorded in documents held by a separate agency and it is therefore necessary to restore details of his timeline and location across '*both involved departments*'. In this regard, the applicant seeks amendments which are not part of his amendment application to QFES and they cannot be considered in this review.

<sup>38</sup> Macquarie Dictionary (accessed 17 August 2021).

29. I am also satisfied that, even if the applicant had demonstrated that particular Report information was inaccurate, misleading or incomplete, the discretion to refuse amendment could be exercised.<sup>39</sup> Taking into account the regulatory functions of the QFES, the Report author entered details considered to be appropriate for an incident report of this nature and QFES has processes in place to identify the applicant as the caller, should the need arise. As a functional record, the Report records the alarm incident and the actions taken in respect of that incident. While the applicant considers further details about him, as the person who reported the incident, *should* appear in the Report, QFES has confirmed that such additional information would not change or impact the outcome of the incident from QFES' perspective. On this basis, I consider amending the Report in the manner requested by the applicant seeks to correct what the applicant considers to be deficiencies in how QFES records alarm incidents; include words not considered necessary by the Report author; and could damage the integrity of the Report. This is not, in my view, an outcome which the amendment provisions in the IP Act were intended to permit.
30. For these reasons, I find that the amendments requested by the applicant may be refused under section 72(1) of the IP Act.

## DECISION

31. As a delegate of the Information Commissioner, under section 139 of the IP Act, I affirm<sup>40</sup> the decision of QFES to refuse the applicant's requested amendments.

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**S Martin**  
**Assistant Information Commissioner**

**Date: 17 August 2021**

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<sup>39</sup> See footnote 26 above.

<sup>40</sup> Under section 123(1) of the IP Act.

## APPENDIX

### Significant procedural steps

Date	Event
25 February 2021	OIC received the application for external review.
23 April 2021	The applicant confirmed to OIC the Report amendments he was seeking.
4 May 2021	OIC notified the applicant and QFES that it had accepted the external review application and conveyed a preliminary view to the applicant (including a direction regarding his response). OIC received an email submission from the applicant.
10 May 2021	OIC received an email submission from the applicant.
17 May 2021	OIC received the applicant's submissions (and supporting information) in five emails.
6 August 2021	OIC received the applicant's further submissions (and supporting information).