



Decision and Reasons for Decision

Citation:	<i>Q96 and Department of Housing and Public Works [2020] QICmr 44 (31 July 2020)</i>
Application Number:	315060
Applicant:	Q96
Respondent:	Department of Housing and Public Works
Decision Date:	31 July 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - personal information appearing in a departmental work order - whether information is inaccurate, incomplete, out of date or misleading - whether agency entitled to exercise discretion to refuse amendment - whether amendment by deletion or notation appropriate - section 72 of the <i>Information Privacy Act 2009</i> (Qld).

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Housing and Public Works (**DHPW**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to amend the following sentence in a DHPW work order for work to be done on a DHPW asset building:²

Description: I – AH FIRE PANEL SOUNDING RPT BY IRATE NEIGHBOUR [applicant's first name] *PH* [applicant's mobile telephone number]

2. DHPW did not make a decision within the prescribed processing period³ and was therefore taken to have decided to refuse to amend the work order.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for review.
4. For the reasons below, I set aside the decision⁵ and grant amendment by notation.⁶

Background

5. Significant procedural steps taken by OIC in this review are set out in the Appendix.

¹ Amendment application dated 16 December 2019, which was received by DHPW on 19 December 2019.

² The second and third lines of work order 15422686 dated 11 May 2019.

³ By 13 December 2019.

⁴ Section 71(1) of the IP Act.

⁵ Section 123(1)(c) of the IP Act.

⁶ Under section 74(b) of the IP Act.

Reviewable decision

6. The decision under review is the decision deemed to have been made by DHPW on 13 December 2019 refusing to amend the work order.

Issue for determination

7. The issue for determination is whether DHPW was entitled to refuse to amend the work order.⁷

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including in footnotes and the Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld),⁸ particularly the right to seek, receive and impart information.⁹ 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.¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹¹
10. The applicant provided several submissions to OIC.¹² I have considered these submissions to the extent they are relevant to the issue for determination.

Relevant law

11. An individual has a right under the IP Act to amend, if inaccurate, incomplete, out of date or misleading, documents of an agency to the extent they contain the individual's personal information.¹³ A document may be amended by alteration or notation.¹⁴

Findings

12. In reaching my findings below, I note that external review by the Information Commissioner is merits review and the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.¹⁵ In this case, I have taken the steps required of a decision maker considering an amendment application under the IP Act, including deciding on the appropriate form of amendment.
13. The sentence in question in the work order is clearly the applicant's personal information.¹⁶ It records that the applicant reported a fire panel sounding, that the

⁷ Under section 72 of the IP Act.

⁸ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁹ Section 21 of the HR Act.

¹⁰ *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].

¹¹ I also note the observations made by Bell J in *XYZ* at [573] on the interaction the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) that '*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*'.

¹² External review application dated 14 December 2019 (which included an email to DHPW dated 29 November 2019), submission to OIC dated 1 May 2020, submission to OIC dated 17 July 2020 and submissions to OIC dated 23 and 28 July 2020.

¹³ Section 41(1)(a) of the IP Act.

¹⁴ Section 74 of the IP Act. Where an agency adds a notion to personal information, section 75 of the IP Act specifies the notation requirements.

¹⁵ Section 118(1)(b) of the IP Act.

¹⁶ Section 12 of the IP Act defines '*personal information*' to mean information or an opinion, including information or an opinion forming part of a database, whether true or not, 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.

applicant was irate, and recorded the applicant's mobile telephone number. The applicant therefore has a right to have the sentence in question amended if it is also inaccurate, incomplete, out of date or misleading.¹⁷

14. DHPW accepts that the sentence in question is inaccurate and misleading and an amendment to the work order can be made.¹⁸
15. Given the pro-amendment bias of the IP Act,¹⁹ and as it is accepted by both the applicant and the agency that the information in question is inaccurate and misleading, and that an amendment can be made, I have proceeded to consider the form of amendment that is appropriate in the circumstances.²⁰
16. In considering the appropriate form of amendment, I note that while section 41 of the IP Act provides the applicant with a right to amend his personal information where it is inaccurate or misleading, sections 72 and 74 of the IP Act confer upon the decision maker a discretion as to whether an amendment should be made and whether this should be by way of alteration or notation. Even where the relevant information is considered inaccurate, the decision maker is not compelled to make the amendment in the form proposed by an applicant.²¹
17. DHPW proposes the sentence in question be amended by adding the following notation:²²

The statement relating to the telephone call made by [the applicant] is inaccurate and misleading. [The applicant] contacted the After Hours Call Centre on 11 May 2019 to advise that the fire alarms and strobe lights were going off. [The applicant] did not report the fire panel sounding at the property. This information was verified after listening to an audio recording of [the applicant's] telephone call which was provided to the department by Queensland Shared Services (CRM 6658).

18. The applicant proposes the sentence in question be amended by deleting it and adding a one-page notation that he provided.²³
19. I consider that deleting the sentence in question would destroy the integrity of DHPW's record keeping process.²⁴ The sentence in question accurately records what the person issuing the work order wrote at the time, although it has since been proven to be factually incorrect.
20. DHPW's proposed notation identifies the sentence in question is incorrect and misleading and explains why without altering the integrity of its original record.²⁵
21. The applicant's proposed notation is largely irrelevant. It primarily seeks to address concerns about DHPW's conduct²⁶ and is not limited to correcting the inaccuracy of the

¹⁷ Section 41(1)(a) of the IP Act.

¹⁸ DHPW submission dated 26 June 2020.

¹⁹ Section 58 of the IP Act.

²⁰ Section 74 of the IP Act.

²¹ Specifically, section 72 of the IP Act starts with the words 'without limiting the grounds on which the agency or Minister may refuse to amend the document' indicating that an agency may refuse to amend a document on any reasonable basis, provided that it gives a statement of its reasons to the applicant under section 73 of the IP Act. See also *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) at [10] – [12] for a discussion about the discretion of an agency decision maker on whether to amend a document, even where it established that the information may be inaccurate.

²² This notation was initially proposed to the applicant by DHPW on 28 November 2019. On external review, DHPW confirmed that it would agree to add this notation to the work order.

²³ Attached to applicant's submission dated 1 May 2020.

²⁴ *DenHollander and Department of Defence* [2002] AATA 866 (*DenHollander*) at [96].

²⁵ This complies with the requirements of section 75(a) of the IP Act.

²⁶ Applicant's proposed notation attached to applicant's submission dated 1 May 2020.

work order. The amendment provisions are not intended to serve as a mechanism to re-investigate issues which an applicant considers have not been properly dealt with by the relevant agency.²⁷ In most instances, there will be other avenues and processes for making such complaints. Importantly, the provisions are concerned with ensuring the accuracy of official public records, not with the merits or legality of the official action that has been recorded in them.²⁸

22. On this basis, I consider that the Department's proposed form of amendment by notation is appropriate in the circumstances.

DECISION

23. I set aside the decision²⁹ and consider that the work order can be amended by notation.³⁰
24. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 31 July 2020

²⁷ The purpose of the amendment provision is not to re-write history (*DenHollander* at [96]) or correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters (*Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) at [57]).

²⁸ *Cowen and Queensland Building and Construction Commission* [2016] QICmr 43 (14 October 2016) at [24] citing *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 at [24].

²⁹ Section 123(1)(c) of the IP Act.

³⁰ Section 74(b) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
14 December 2019	OIC received the application for external review.
15 January 2020	OIC requested preliminary documents from DHPW.
24 January 2020	OIC received preliminary documents from DHPW.
14 February 2020	OIC advised applicant and DHPW that external review application accepted. OIC requested a copy of the document the applicant requested to have amended.
28 February 2020	OIC received a copy of the document the applicant requested to have amended.
30 March 2020	OIC wrote to DHPW asking whether it would be willing to resolve the matter based on a notation it had previously proposed to the applicant.
17 April 2020	DHPW advised OIC that would be agreeable to resolve this matter based on the notation DHPW previously proposed to the applicant.
22 April 2020	OIC asked the applicant whether they would be agreeable to resolve this matter based on DHPW's proposed notation.
1 May 2020	The applicant advised OIC that they were not agreeable to resolve this matter based on DHPW's proposed notation and proposed a notation of his own.
8 May 2020	OIC wrote to DHPW asking whether it would be willing to resolve the matter based on the applicant's proposed notation.
27 June 2020	OIC received a submission from DHPW (dated 26 June 2020) and confirmation that it was not willing to resolve the matter based on the applicant's proposed notification.
15 July 2020	OIC conveyed a preliminary view to the applicant.
17 July 2020	Applicant made a submission.
23 July 2020	Applicant made a further submission.
28 July 2020	Applicant made a further submission.