



Decision and Reasons for Decision

Citation:	<i>B47 and Department of Housing, Local Government Planning and Public Works [2024] QICmr 9 (22 February 2024)</i>
Application Number:	317481
Applicant:	B47
Respondent:	Department of Housing, Local Government Planning and Public Works
Decision Date:	22 February 2024
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - AMENDMENT APPLICATION - whether the agency is entitled to refuse to deal with a non-compliant amendment application under section 53(6) and section 44(4) of the <i>Information Privacy Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department Energy and Public Works (**Department**)² under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to amend information contained in a departmental work order.³
2. The Department refused to deal with the amendment application⁴ on the basis that it did not comply with all relevant application requirements,⁵ particularly the requirement to state the amendments the applicant claims are necessary for the information to be accurate or not misleading. The applicant sought internal review of the Department's decision. The Department's internal review decision affirmed its original decision.⁶ The applicant then applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
3. The decision under external review is the Department's internal review decision dated 11 July 2023 refusing to deal with the amendment application.
4. The issue for determination is whether the amendment application meets the application requirements under the IP Act or whether the Department was entitled to refuse to deal with the amendment application.⁸

¹ Amendment application received by the Department on 6 April 2023.

² Following a machinery of government change, the agency currently responsible for this matter is the Department of Housing, Local Government Planning and Public Works.

³ Work order 15422686 dated 11 May 2019.

⁴ Decision dated 31 May 2023.

⁵ Under section 53(6) of the IP Act and section 44(4) of the IP Act.

⁶ Decision dated 11 July 2023.

⁷ On 7 August 2023.

⁸ Under section 53(6) of the IP Act and section 44(4) of the IP Act.

5. For the reasons below, I affirm the decision under review.

Evidence considered

6. Significant procedural steps taken by OIC in this review are set out in the Appendix.
7. 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).
8. I have also had regard to the *Human Rights Act 2019* (Qld),⁹ particularly the right to seek, receive and impart information.¹⁰ 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.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.
9. The applicant provided submissions to OIC.¹² I have considered these submissions to the extent they are relevant to the issue for determination.

Relevant law

10. Under the IP Act,¹³ 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:
- the applicant has previously obtained access to the relevant document
 - the information the applicant seeks to amend is their personal information;¹⁴ and
 - the personal information is inaccurate, incomplete, out of date, or misleading.
11. Under section 44(4) of the IP Act, an amendment application must, among other things:
- state the way in which the applicant claims the information is inaccurate, incomplete, out of date or misleading; and
 - state the amendments the applicant claims to be necessary for the information to be accurate, complete, up to date or not misleading.¹⁵

Findings

12. The initial application sought amendment of information contained in a work order.¹⁶ The Department refused to deal with the application¹⁷ because it did not comply with all relevant application requirements in accordance with section 44(4) of the IP Act, particularly the requirement to provide information about how the applicant considered the work order needed to be amended.
13. As part of this external review, the Department provided¹⁸ a copy of their exchanges with the applicant during the processing of the initial application. This correspondence

⁹ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

¹⁰ Section 21 of the HR Act.

¹¹ *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].

¹² External review application dated 07 August 2023, submission to OIC dated 9 November 2023, 27 November 2023 and 6 December 2023.

¹³ Sections 41 and 44 of the IP Act.

¹⁴ '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.*'

¹⁵ Section 44(4)(e), (f) and (g) of the IP Act.

¹⁶ Work order 15422686 dated 11 May 2019.

¹⁷ Under section 53 of the IP Act.

¹⁸ By emails dated 15 August 2023 and 17 August 2023.

demonstrates the Department's efforts to explain to the applicant why the amendment application did not meet the requirements of the IP Act and its efforts to seek clarification and more information regarding how the applicant would like the work order to be amended.

14. The applicant provided a substantial amount of material to the Department to support the amendment application and to explain why the information was inaccurate, incomplete or misleading. However, the information provided did not resolve the compliance issues as the applicant failed to state the amendments required for the information to be accurate, correct up to date or not misleading.
15. Having considered the information provided from the Department and the initial submissions received from the applicant,¹⁹ OIC conveyed its preliminary view to the applicant²⁰ that the Department made the appropriate decision to refuse to deal with the amendment application. The applicant did not accept this preliminary view and lodged a submission in support of his position.²¹ In his submissions, the applicant provided supporting information to explain why the information was incorrect and inaccurate. However, the applicant did not provide information about the amendments which he considers are necessary for his personal information in the work order to be accurate or not misleading and therefore the requirements under sections 44(4)(f) and (g) of the IP Act have not met. OIC affirmed its preliminary view to the applicant.²²
16. The applicant contested this view,²³ however in his submissions, no further information addressing the specific compliance issues was provided. The applicant also raised concerns regarding the conduct of departmental officers, however, these concerns are not an issue which I have jurisdiction to consider under the IP Act. OIC's functions do not extend to investigating complaints about agency conduct. OIC's jurisdiction in this case is limited to determining whether the Department was entitled to refuse to deal with the amendment application.
17. For the above reasons I find that the application has not met the requirements under sections 44(4)(f) and (g) of the IP Act and therefore the Department was entitled to refuse to deal with the amendment application.

DECISION

18. For the reasons set out above, I affirm the decision under review.
19. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Zaidiza
A/Principal Review Officer

Date: 22 February 2024

¹⁹ External review application on 7 August 2023.

²⁰ Letter dated 18 September 2023,

²¹ By emails dated 9 November and 27 November 2023.

²² By letter dated 5 December 2023.

²³ By email dated 6 December 2023.

APPENDIX

Significant procedural steps

Date	Event
7 August 2023	OIC received the external review application. OIC requested relevant procedural documents from the Department.
15 August 2023	OIC received procedural documents from the Department.
17 August 2023	OIC received additional documents from the Department.
18 September 2023	OIC notified the applicant that it had accepted the application for external review and conveyed a preliminary view.
9 November 2023	OIC received a submission from the applicant.
27 November 2023	OIC received a submission from the applicant.
5 December 2023	OIC affirmed the preliminary view to the applicant.
6 December 2023	OIC received a submission from the applicant.