



## Decision and Reasons for Decision

---

**Application Number:** 310080

**Applicant:** AD6L9H

**Respondent:** Department of Health

**Decision Date:** 31 August 2010

**Catchwords:** ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - AMENDMENT OF PERSONAL INFORMATION - applicant sought to amend medical records of his son by deleting information - agency agreed to add a notation to the records - whether *Information Privacy Act 2009 (Qld)* permits amendment by way of deletion - whether information is inaccurate, incomplete, out of date or misleading

### Contents

REASONS FOR DECISION .....	2
Summary .....	2
Reviewable decision .....	2
Findings .....	2
Can information be deleted under the IP Act? .....	2
Is the Information in Issue inaccurate? .....	3
Meaning of 'inaccurate' .....	3
Relevant evidence.....	4
Analysis .....	4
DECISION .....	4
Appendix.....	5

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Department of Health<sup>1</sup> (**QH**) to amend his personal information in his son's medical records which he claimed to be inaccurate. The information in the medical records stated that the applicant's son was admitted to hospital after deliberately ingesting tablets following a fight with the applicant (**Information in Issue**).<sup>2</sup>
2. QH agreed to add a notation detailing the applicant's concerns. The applicant requested internal review on the basis that he wanted the Information in Issue deleted. QH decided that the *Information Privacy Act 2009* (Qld) (**IP Act**) did not permit deletion of information.
3. For the reasons set out below, I affirm QH's decision to refuse to delete the Information in Issue under the IP Act, but for different reasons.
4. Paragraph 19 of this decision has been removed on the basis that it contains information, the disclosure of which would be contrary to the public interest.<sup>3</sup>
5. A chronology of significant procedural steps in this matter is appended at page 5.

### Reviewable decision

6. The decision under review is QH's internal review decision refusing to delete the Information in Issue.
7. The decision maker provided the applicant with some relief by agreeing to add a notation to the Information in Issue to reflect the applicant's concerns about the Information in Issue. Agencies can be required to add notations of this kind under section 76(2) of the IP Act where amendment has been refused. Only where an agency is satisfied that information is inaccurate, incomplete, out of date or misleading, can it add a notation under section 74(b) of the IP Act. No such finding was made in QH's decision.

### Findings

8. The applicant seeks to have the Information in Issue deleted from the Discharge Summary on the basis that it is untrue. For this amendment to be granted under the IP Act, I must be satisfied that:
  - (i) amendment, by way of deletion, is permitted under the amendment scheme set out in the IP Act<sup>4</sup>; and
  - (ii) the Information in Issue is inaccurate.

### **Can information be deleted under the IP Act?**

9. The answer to this question is 'yes' for the reasons set out below.
10. Section 74 of the IP Act does not expressly refer to amendment being made by deletion of information but provides that an amendment can be made by '*altering the personal information*'.

---

<sup>1</sup> Known as Queensland Health.

<sup>2</sup> The Information in Issue appears in the discharge summary relating to the hospital admission which had been sent to the applicant and his GP (**Discharge Summary**).

<sup>3</sup> Under section 121(3) of the IP Act, the Information Commissioner must not, on external review, include in a decision or reasons for a decision, information that is claimed to be contrary to the public interest information.

<sup>4</sup> Specifically, sections 72 and 74-76 of the IP Act.

11. In *Doelle and Legal Aid Office (Qld)*,<sup>5</sup> the Information Commissioner considered whether amendment could occur by way of deletion in the context of an amendment application under section 55 of the repealed *Freedom of Information Act 1992 (Qld)* (**FOI Act**)<sup>6</sup> and stated:<sup>7</sup>

*The ordinary meaning of 'altering' for the purposes of s. 55 does not, in my view, include the destruction or disposal of the document containing the information which is being altered, but rather involves changing the information so that it becomes different in some respect. **This may involve deletion of the information which is found to be inaccurate, incomplete, out-of-date or misleading** but it does not encompass the destruction or disposal of the entire document.*

(my emphasis)

12. The Information Commissioner's approach in *Doelle* can be applied in the context of the IP Act.

### ***Is the Information in Issue inaccurate?***

13. The answer to this question is 'no' for the reasons set out below.

#### **Meaning of 'inaccurate'**

14. In *Re TB Jacobs and Department of Defence*,<sup>8</sup> the Tribunal accepted that the term 'incorrect'<sup>9</sup> as used in the amendment provisions in the *Freedom of Information 1982 (Cth)*:

*...covers assertions which are factually erroneous and also an opinion based on facts shown to be erroneous.*

15. A statement of opinion may be 'inaccurate' if it can be demonstrated that it was based on information that is subsequently shown to be incorrect, even where that opinion was genuinely held.<sup>10</sup> Amendment provisions do not, however, extend to determining disputed questions of opinion where the recorded opinion was '*actually held and accurately entered in the official records*'.<sup>11</sup>

16. In considering whether to amend information on the basis of inaccuracy, the focus is on '*the accuracy of official records, not with the merits or legality of the official action recorded in them*'.<sup>12</sup> This principle was applied in *Connell v Department of Justice (General)*<sup>13</sup> where a prisoner's application for amendment of information, that had been provided to a prison by a third party, was refused on the basis that:

*It is a fact that information was received by the prison authorities and the truth or otherwise of the information communicated does not detract from the fact that the information was received by the prison and the record is reflective of that fact.*<sup>14</sup>

---

<sup>5</sup> (1993) 1 QAR 207 (*Doelle*).

<sup>6</sup> The equivalent of section 74 of the IP Act.

<sup>7</sup> *Doelle* at paragraphs 56-57.

<sup>8</sup> [1988] AATA 248, 5 August 1988.

<sup>9</sup> The meaning of 'incorrect' is synonymous with 'inaccurate'. See *The New Shorter Oxford English Dictionary* (1993 ed.) which relevantly defines 'incorrect' as 'erroneous, inaccurate'.

<sup>10</sup> *Crewsdon v Central Sydney Area Health Service* [2002] NSWCA 345 (Unreported, Handley JA, Ipp and Davies AJJA) (**Crewsdon**) at paragraph 36, in the context of comparative provisions in the *Freedom of Information Act 1982 (Cth)*, citing *Director General Department of Community Services v S* [2000] NSWADTAP 27.

<sup>11</sup> *Crewsdon* at paragraph 34.

<sup>12</sup> *Crewsdon* at paragraph 24.

<sup>13</sup> [2005] VCAT 1903, 9 September 2005 (**Connell**).

<sup>14</sup> *Connell* at paragraph 25.

17. Therefore, under the IP Act, information will be '*inaccurate*' if it comprises erroneous statements of facts or opinions that are shown to be based on erroneous facts. The right of amendment does not, however, extend to rewriting the document in the words of an applicant<sup>15</sup> or to substituting an applicant's own opinion for that of the document author.<sup>16</sup>

### **Relevant evidence**

18. In making this decision, I have considered the following:
- applicant's amendment, internal review and external review applications
  - QH's original and internal review decisions
  - written submissions made by the applicant in this review
  - information provided by QH to the Office of the Information Commissioner in this external review (**Additional Evidence**)
  - Discharge Summary
  - relevant provisions of the IP Act as referred to in this decision
  - previous decisions of the Information Commissioner as referred to in this decision
  - relevant case law and decisions from other jurisdictions as referred to in this decision.

### **Analysis**

19. *[deleted – see paragraph 4]*
20. The Information in Issue describes the reasons for the applicant's son's admission to hospital. The words used record the medical practitioner's understanding of the reasons for the applicant's son's admission.
21. Having reviewed the Additional Evidence, I am satisfied that the Discharge Summary is an accurate record of the opinion '*actually held and accurately entered in the official records*' at the time. Having reached that view, I can find no basis to agree to deletion of the Information in Issue.

### **DECISION**

22. I affirm QH's decision.

---

**Julie Kinross**  
**Information Commissioner**

**Date: 31 August 2010**

---

<sup>15</sup> *Re Traynor and Melbourne & Metropolitan Board of Works* (1987) 2 VAR 186 at 190 in the context of similar amendment requirements in the *Freedom of Information Act 1982* (Cth).

<sup>16</sup> See *Lee and Ministry of Education* (1989) 3 VAR 429.

## Appendix

Chronology of significant procedural steps	
Date	Event
21 October 2009	Applicant applies to QH to amend his personal information appearing in his son's Discharge Summary.
20 November 2009	QH issues its decision to add a notation to the Discharge Summary, appearing below the Information in Issue, to: <ul style="list-style-type: none"> <li>• identify that the amendment application had been made; and</li> <li>• reflect the applicant's belief that the Information in Issue is factually incorrect.</li> </ul>
21 December 2009	Applicant applies to QH for internal review, requesting that the Information in Issue be deleted from the Discharge Summary.
14 January 2010	QH issues its decision affirming the original decision and finds that IP Act does not provide a mechanism for deletion of information.
29 January 2010	Applicant applies to the Office of the Information Commissioner ( <b>OIC</b> ) for external review.
22 February 2010	QH provides OIC with further information relating to the applicant's son's admission to hospital.
18 May 2010	OIC informs applicant of preliminary view that there is no basis on which to set aside QH's decision.
20 May 2010	Applicant informs OIC that he does not accept the preliminary view and provides submissions in response.