



## Applying the legislation

GUIDELINE *Information Privacy Act 2009*

### Amendment applications

Under section 41 of the *Information Privacy Act 2009* (Qld) (**IP Act**) individuals can apply to an agency<sup>1</sup> to have their personal information amended if it is inaccurate, incomplete, out of date, or misleading. This guideline is intended to assist agency decision makers to assess amendment applications, process them, and decide whether to grant or refuse the amendment.

Decision makers may also find these resources helpful when giving information to applicants: [Can I Amend my Medical Records](#) and [How to Amend Personal Information](#).

#### Assessing the amendment application

The requirements of a compliant amendment application are similar to the requirements of a compliant access application. As set out by the Commissioner in *Poyton and Department of Education* [2023] QICmr 13 (16 March 2023), the processing period, ie the time an agency has to make a reviewable decision, begins when your agency receives the application, even if it's not compliant. This means it's important to be aware of your timeframes and ask for extensions if needed. If the applicant makes a noncompliant application compliant, the processing period will restart.

For more information and guidance refer to: [Timeframes for noncompliant and other defective applications](#).

#### Requirements of a compliant application

An amendment application must:

- be made on the approved form
- be accompanied by the applicant's certified ID
- if made on *behalf* of the applicant, be accompanied by the agent's authority to Act and certified ID
- if made by a parent on behalf of a *child applicant*, be accompanied by proof of relationship and certified ID of the parent
- relate only to the applicant's personal information that is contained in agency documents; and
- provide enough information about the document to enable it to be identified.

#### Previous access to the information

Additionally, to apply to have their personal information amended, the applicant must have previously accessed it.<sup>2</sup> This does not need to have been under the IP

<sup>1</sup> in this guideline agency includes a Minister.

<sup>2</sup> Section 44 of the IP Act.



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Act or the *Right to Information Act 2009* (Qld). For example, the applicant may have:

- viewed the document on a computer screen
- read it but not been given a copy of it
- seen an extract from it; or
- had it read to them over the phone.<sup>3</sup>

The decision maker must confirm the applicant has previously had access to the information.

This could be done by, for example, asking the applicant to:

- provide a copy of the document
- describe it in enough detail to satisfy the decision maker that the applicant has had access to it; or
- provide details about when and how the access was obtained.

If an individual has not had access to the information they cannot make a compliant application for amendment under the IP Act.

**Note**

If someone applies for amendment and the decision maker decides they have not had access to the information, the decision maker could suggest they make an access application under the IP Act.

**Set out how the information is inaccurate, incomplete, out of date, or misleading**

The applicant is also required to describe:

- the personal information they want to amend;
- how they think it is inaccurate, incomplete, out of date or misleading; and
- the changes or additions they believe are necessary to correct it.

The applicant needs to provide evidence to support their claims, as the onus is on them to prove the information is inaccurate, incomplete, out of date or misleading.

**Processing an amendment application**

Processing an amendment application is very similar to processing an access application. The agency has a 25 business day processing period to give a decision to the applicant and can request extra time before the end of the processing period. If a decision is not made in time, the principal officer of the agency is deemed to have made a decision refusing to amend the document. See [Timeframes for Access and Amendment](#) for more information.

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<sup>3</sup> *Cowen and Queensland Building and Construction Commission* [2016] QICmr 43 (14 October 2016)



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If the agency does not hold the documents the applicant has applied to amend but they know another agency does, the application can be transferred if the other agency consents. See [Transferring access applications](#) for more information.

### Refusing to deal with an amendment application

In some circumstances an agency can refuse to deal with an amendment application. These include where:

- processing the application would substantially and unreasonably divert the agency's resources; and
- the applicant has previously applied to amend the same documents and gives no reasonable basis for again applying to have them amended.

See [Previous application for same documents](#) and [Processing RTI applications: Refusal to deal](#) for more information.

### Refusing to amend a document

There are several grounds<sup>4</sup> on which an agency can refuse to amend a document. These include where the agency is satisfied that:

- the personal information is not inaccurate, incomplete, out of date or misleading
- the information sought to be amended is not the applicant's personal information; or
- if the application was made by an agent—that the agent was not suitably authorised.

### Discretion to refuse amendment

Even where an agency determines that personal information *is* inaccurate, incomplete, out of date, or misleading it still has the discretion to refuse to amend it. In *3DT2GH*, the Information Commissioner explained the operation of the discretion:

*To replace words actually used by the authoring officer with the text sought by the applicant would result in a contrived document containing invented contents, essentially putting words into the mouth of the author in a manner that would distort the official historical record.*

An agency choosing to exercise this discretion may take into account “*the fact that the purpose of amending a document is not to:*

- *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; or*

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<sup>4</sup> Set out in section 72 of the RTI Act, which does not provide an exhaustive list.



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- *correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.*<sup>5</sup>

In Z18, the Commissioner discussed exercising the discretion not to amend, noting that in making an amendment application the applicant was attempting to redress injustices he felt had occurred and rewrite several aspects of his history with the agency and the courts. Granting amendment would

*result in the Letter being an incomplete representation of the Author's understanding of the facts surrounding [the applicant's] court matter and his subsequent complaint, thereby detracting from the accuracy and integrity of the Letter. It would also be an attempt to rewrite the history of the actual events...*<sup>6</sup>

### **A functional record**

An agency can also refuse to amend where the document does not form part of a *functional record*. A *functional record* is a record available for use in the day-to-day or ordinary performance of the agency's functions. Whether a document is part of a functional record is not a question of whether agency officers *would* access the document, but whether agency officers could access it if they had a reason to do so.<sup>7</sup>

### **Methods of amendment**

If a decision maker decides that personal information is inaccurate, incomplete, out of date or misleading, they can grant the amendment by:

- altering the personal information; or
- adding a note to the personal information.

### **Evidence required for an amendment application**

When applying for amendment, the applicant must establish that their information is inaccurate, incomplete, out of date or misleading. This means they must:

- provide evidence that proves their personal information is inaccurate, incomplete, out of date or misleading; and
- show what amendments or additional information is required to correct the information.

Where the applicant is applying to have their interpretation of events or issues amended, they must establish

*not only that the relevant information inaccurately, incorrectly or misleadingly represents the underlying events or issues, but that the authoring individual had not actually held and accurately entered into the official record their particular understanding of those events.*<sup>8</sup>

<sup>5</sup> Z18 and Queensland Police Service [2020] QICmr 8 (14 February 2020) (Z18) at paragraph 27 (footnotes omitted)

<sup>6</sup> Z18 at paragraph 63

<sup>7</sup> Z18

<sup>8</sup> U5OR8D and Department of Justice and Attorney-General [2018] QICmr [18] (19 April 2018) at [10].



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The decision maker must decide how much verification is required, taking into account:

- the type and extent of the personal information; and
- the ways in which it is claimed by the applicant to be inaccurate, out of date, misleading or incomplete.

### Example

Where the applicant contends that a simple, readily verifiable fact is wrong, they can give the agency information that demonstrates this. For example, if the applicant's date of birth is wrong in agency records, they can provide a copy of their birth certificate.

If the applicant provides no evidence to support their amendment application, and the decision maker has no evidence to demonstrate that the information is inaccurate, incomplete, out of date or misleading, they will generally not be able to amend the documents.

However, while the decision maker is not required to conduct a full-scale investigation into the applicant's claims, they should take reasonable steps to acquire copies of any documents that support or refute the applicant's submissions.

### The meaning of inaccurate, incomplete, out of date or misleading

These words have the following meanings:

- *inaccurate*: not accurate.
- *incomplete*: 1. not complete; lacking some part. 2. not to the entire extent: incomplete combustion.
- *out of date*: 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.<sup>9</sup>

### Misleading and inaccurate

Information can also be misleading if:

- it could lead a person reading it into error or could, even if it is literally true, convey another meaning that is untrue, for example, if there is insufficient detail to fully explain something; or
- it misleads, or is likely to mislead, people who might read the information.

The Information Commissioner has observed<sup>10</sup> that the amendment provisions are aimed at:

*...ensuring that personal information concerning an applicant and read by third persons, does not unfairly harm the applicant or misrepresent*

<sup>9</sup> Susan Butler (ed), Macquarie Dictionary (7<sup>th</sup> ed, 2017) at pages 765, 768, 1067 and 960 respectively, referred to in Z18

<sup>10</sup> 3DT2GH and Department of Housing and Public Works (Unreported, Queensland Information Commissioner, 26 November 2012) (3DT2GH) at [15] citing *Buhagiar and Victoria Police* (1989) 2 VAR 530, per Jones J; see also *Cowen and Queensland Building and Construction Commission* [2016] QICmr 43 (14 October 2016)



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*personal facts about the applicant. It is concerned that the third persons reading the personal information do not get the wrong impression...*

A misleading impression is not the same as an inaccuracy, although inaccurate facts may also be misleading. Accurate facts can also give a misleading impression, either because they are incomplete or because they are written in highly specialised technical terms and made available to the general public who are unlikely to be familiar with them. However, a failure to use precise language will not necessarily make information misleading or inaccurate as long as the information is generally consistent with the facts.<sup>11</sup>

### **Out of date vs old**

Information is not out of date just because it is old. It can only be out of date where newer information makes it obsolete or no longer valid. For example, medical records often contain information which has been superseded by current events, eg that two years ago an applicant's leg was broken. The fact that the applicant's leg is no longer broken does not make that information out of date.

### **Amendment is not a form of review**

Some applicants may attempt to use an amendment application to change the outcome of other agency processes. However, "[t]he amendment provisions of the IP Act cannot be used to determine disputed questions of opinion when that opinion was held by the author and the record merely reflects this".<sup>12</sup> The right to apply for amendment under the IP Act is not intended to "permit a re-writing of history"<sup>13</sup>. Agency decisions cannot be changed or appealed by way of amendment.

In *Resch and Department of Veterans Affairs*,<sup>14</sup> the applicant wished to have the description of his disability altered by amending his records under the corresponding provisions in the Commonwealth FOI Act. The Administrative Appeals Tribunal refused the amendments, noting that: "the medical opinions of the departmental medical officers and consultants are not shown to be 'incorrect' merely by producing medical opinions to the contrary."

Similarly, in Z18, the Commissioner observed that, as part of the review of his amendment application, the applicant was attempting to litigate the status of his mental health at the time a charge was dismissed and stated that "it is not a function of the Information Commissioner to reconsider or overturn the Magistrate's decision to dismiss the charge."<sup>15</sup>

### **Amendment of factual information**

Where an applicant applies to amend purely factual personal information and the decision maker decides to grant the amendment, they should consider amending

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<sup>11</sup> Z18 at paragraph 52

<sup>12</sup> *U5OR8D and Department of Justice and Attorney-General* [2018] QICmr [18] (19 April 2018) at paragraph [30]

<sup>13</sup> *ibid*

<sup>9</sup> (1986) 9 ALD 380.

<sup>15</sup> At paragraph 50.



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the information by alteration. 'Altering' includes deletion of the information but does not include the destruction or disposal of the entire document.<sup>16</sup>

For example, where a decision maker is satisfied that the applicant's date of birth in an agency database is incorrect, they can delete the incorrect date of birth and replace it with the correct date of birth.

However, in some circumstances the original record may need to be preserved, for example, because the *Public Records Act 2002* (Qld) requires it to be retained unaltered. In those circumstances, a notation will be more appropriate.

### Amendment of opinion

Applicants may apply to amend an opinion—or an advice or recommendation based on an opinion—which is also their personal information. These will generally be specialist opinions based on facts and information available to the author at the time of writing, often contained in a medical or other professional's report. For example, in most circumstances a doctor's report will be based on the doctor's own observations made during an examination of the patient or the patient's records.

### Opinion claimed to be incorrect

It will be difficult for an applicant to succeed in amending an expert opinion, particularly a medical opinion. Amendment of an expert opinion would only be in contemplation where:

- the facts underlying the opinion have been thoroughly discredited or have been demonstrated to be totally inadequate
- some of the facts underlying the opinion have been disproved and there is alternative expert opinion that the original opinion could not be held by any competent expert based on the facts that remain.
- the person forming the opinion was tainted by bias or ill will, incompetence or lack of balance, or necessary experience
- the factual basis underlying the opinion is so trivial that the opinion formed is dangerous to rely on and likely to result in error; or
- the facts upon which the opinion was based were misapprehended.<sup>17</sup>

However, these are serious conclusions that are difficult to establish, and the onus lies on the applicant to provide evidence that proves them. The fact that another expert might have taken a different view on the same facts, or that the agency preferred one report over another, does not necessarily make a conflicting opinion incorrect.

If an applicant does provide information that leads a decision maker to believe one of these might be relevant to their application, the decision maker should consider the matter carefully and consult the author of the report or other experts as appropriate.

<sup>16</sup> *Doelle and Legal Aid Office* (1993) 1 QAR 207; *AD6L9H and Department of Health* (Unreported, Queensland Information Commissioner, 31 August 2010) at paragraph 11.

<sup>17</sup> *Secretary, NSW Treasury v C* (GD). [2004] NSWADTAP 6. *Connell v Department of Justice (General)* [2005] VCAT 1903 at paragraphs 24–26.



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Even if a decision maker was satisfied that the expert opinion was incorrect or misleading, the discretion still exists to refuse to amend the information (see above). If the decision maker decided to amend the opinion, the form of amendment would generally not involve removing the original report (or any part of it) from the file. The amendment could be made by way of:

- cross-referencing to another more reliable report
- including a copy of a more reliable report on the file
- including a notation that sets out the basis on which the original report is incorrect or misleading; or
- a combination of the above.

### **Opinion out of date**

Different issues will be raised where amendment is sought because the applicant believes an opinion is out of date.

A medical or other expert's opinion often represents a 'snapshot in time', describing particular circumstances, symptoms, or treatments. In the sense that the report or opinion might only apply for a set period of time, the report may almost immediately go 'out of date'. However, because it is still an accurate statement of the expert's opinion at the time it was made, it is not likely to be out of date within the meaning of the IP Act.

### **Opinion incomplete or misleading**

An expert opinion that is not out of date or inaccurate could still be incomplete or misleading if the record failed to show there had been disagreement between competent experts, for example between doctors about a diagnosis. If the applicant can provide evidence of these, demonstrating that the document is incomplete or misleading, it could be amended by, for instance, including a notation of the other opinions, or including more recent reports from other equally qualified experts.

Additional material should be accepted if it provides more complete or more recent information.

### **Important considerations when deciding whether to amend an opinion**

When making a decision about amendment of an opinion, relevant issues include:

- How old is the document? It may be that, although the opinion was correct at the time of writing, it has since been rendered obsolete or no longer valid by time or events.
- How was the opinion reached? For example, was it based on facts? Did it take account of all the available facts?
- Were the circumstances surrounding the creation of the document considered?
- What evidence has the applicant produced in support of their claim? Has this evidence been provided by a person as qualified as the person making the original report, such as another doctor or specialist?



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- What form does this evidence take? For example, is it a statutory declaration sworn by the applicant, another report, or a reference from an employer?
- Can the author be contacted? It may be helpful to discuss the matter with the author, and to give the original author a copy of the applicant's claims and supporting evidence.
- If the author cannot be contacted, an alternative may be to discuss the record with an equally qualified person.

### **Form of amendment**

As noted above, the agency can grant the amendment by altering the personal information or adding an appropriate notation.<sup>18</sup>

When making an alteration it is usually sufficient to strike through the words to be amended, add a side note indicating the nature of the defect, and insert the correct details or a note of where the correct details are to be found. It is also possible to include a copy of more accurate or up to date information on the file.

Any notation must:

- state how the information is inaccurate, incomplete, out of date or misleading; and
- if the information is claimed to be incomplete or out of date, set out the information required to complete the information or bring it up to date.<sup>19</sup>

The existence of the notation should be clearly indicated on the cover of each of the applicant's files and the amendment itself should include a reference to the fact that the record was amended under the IP Act.

#### **Sample notation**

'The attached document is [inaccurate, incomplete, out-of-date or misleading] within the meaning of section 44 of the Information Privacy Act 2009. Specifically, [insert details of information] is incorrect in the following respects [set out how and any information necessary to update or complete it].

### **Disposal or destruction not permitted**

The IP Act provides for amendment by alteration or notation; it does not provide for the disposal or destruction of public records. Public records containing inaccurate, incomplete, out of date or misleading information cannot be removed or destroyed unless their disposal is authorised under the *Public Records Act 2002*.

<sup>18</sup> Section 74 of the IP Act.

<sup>19</sup> Section 75 of the IP Act.



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## Notation if amendment refused

If the agency refuses to amend the applicant's personal information the applicant can give the agency a notice requiring the agency to add a notation to the document that:

- states the way the applicant claims the information to be inaccurate, incomplete, out of date or misleading
- if the applicant claims the information is inaccurate or misleading – sets out the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
- if the applicant claims the information to be incomplete or out of date – set out the information the applicant claims is necessary to complete the information or to bring it up to date.

The decision maker is not required to use the applicant's exact wording in any notation.

## Delivering the decision

The agency must give the applicant a prescribed written notice of the decision. It must include:

- the decision
- the reasons for the decision
- the day on which the decision is made
- the name and designation of the person making the decision
- any rights of review available, including timeframes for seeking review.

See [Statement of Reasons – making decisions under the RTI Act and IP Act](#) for more information.

For additional information and assistance please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au).

**This guide is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.**

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