



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Act**) individuals can apply to an agency¹ to have their personal information amended if it is inaccurate, incomplete, out of date, or misleading.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 assess amendment applications, process them if they are valid, 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 basic requirements for a valid amendment application are the same as those for an access application and the same requirements for compliance apply—see [Noncompliant applications](#) for details.

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
- 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.² This does not need to have been under the IP 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.³

¹ in this guideline agency includes a Minister.

² Section 44 of the IP Act.

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



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As part of assessing the validity of the application, 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
- to 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 valid 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, they could suggest that they apply to access it under the IP Act.

Set out how the information is inaccurate, incomplete, out of date, or misleading

As part of their application, the applicant is also required to describe the personal information and detail how they believe it is inaccurate, incomplete, out of date or misleading. The applicant is also required to state the changes or additions they believe are necessary to correct it.

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provide evidence that supports their claims, as the onus is on them to prove the information is inaccurate, incomplete, out of date, or misleading.

Processing an amendment application

The procedure for processing an amendment application is very similar to that necessary to process an access application and many of the same requirements apply.

The agency has 25 business days from the date of a valid application to give a decision to the applicant and the agency can request an extension of time as long as they ask 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.

If the agency does not hold the documents the applicant has applied to amend, and they know that another agency does hold them, they can transfer the application to the other agency. See [Transferring access applications](#) for more information.



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Refusing to deal with an amendment application

In some circumstances an agency may 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.

Making a decision

The decision maker has the discretion to grant the amendment by either:

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

Evidence required for an amendment application

It is the applicant's responsibility to:

- 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 information the applicant is applying to have amended is their interpretation of events or issues, 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".⁴

If the applicant provides no evidence to support their amendment application the decision maker will generally not be able to amend the documents, as they will have nothing to show that the information is inaccurate, incomplete, out of date or misleading.

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.

⁴ U5OR8D and Department of Justice and Attorney-General [2018] QICmr [18] (19 April 2018) at [10].



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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.

The decision maker doesn't have to conduct a full-scale investigation into the applicant's claims, but 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

Inaccurate, incomplete, or out of date

The words 'inaccurate, incomplete, misleading and out of date' are used in the IP Act in their ordinary meaning. *Inaccurate* means not completely correct or exact. *Incomplete* means missing some information or not finished. *Out of date* means no longer valid or relevant.

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. For example, medical records contain information that no longer reflects the current state of affairs, such as that two years ago an applicant's leg was broken, but it is not out of date. Even though the applicant's leg is no longer broken, that information is still relevant.

Misleading and inaccurate

Information can be misleading if the following apply:

- 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 observed⁵ 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 personal facts about the applicant. It is concerned that the third persons reading the personal information do not get the wrong impression...

There is a distinction between a misleading impression and an inaccuracy, although there will often be significant overlap. Inaccurate facts may well be misleading. However, accurate facts may also give a misleading impression, either because they are incomplete or because the language used in recording the facts could convey a misleading impression. For example, information could

⁵ 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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be misleading where technical terms, unlikely to be known to the general public, are used in information that is available to the general public.

In *Foster and Victoria Police*,⁶ it was observed that the object of amendment provisions is to allow members of the public to correct or amend their information so that an injustice does not occur as a result of incorrect or misleading information.

Amendment is not a form of review

Some applicants may attempt to use an amendment application to change the outcome of other agency processes. "The 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"⁷ and "it is not the purpose of the amendment provisions of the IP Act to permit a re-writing of history"⁸. Agency decisions cannot be changed or appealed by way of amendment.

In *Resch and Department of Veterans Affairs*⁹, 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."

Amendment of factual information

If the applicant is trying to amend purely factual personal information and the decision maker decides to grant the amendment, they should consider amending the information by alteration. 'Altering' may include deletion of the information but not the destruction or disposal of the entire document.¹⁰

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, it may be important to preserve the record, for example, because it may be needed as evidence in litigation or the *Public Records Act 2002* (Qld) may require it to remain unaltered. In those circumstances, it may be more appropriate to amend the record by inserting a notation.

Amendment of opinion

Sometimes applicants will seek to amend personal information which is an opinion, or advice or a recommendation based on an opinion, such as a medical or other professional report. These are generally specialist opinions based on facts and other information available to the author at the time of writing. For

⁶ (1989) 3 VAR 110.

⁷ *U5OR8D and Department of Justice and Attorney-General* [2018] QICmr [18] (19 April 2018) at paragraph [30]

⁸ *ibid*

⁹ (1986) 9 ALD 380.

¹⁰ *Doelle and Legal Aid Office* (1993) 1 QAR 207; *AD6L9H and Department of Health* (Unreported, Queensland Information Commissioner, 31 August 2010) at paragraph 11.



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example, a doctor's report will generally be based in part on the doctor's own observations made during an examination of the patient.

Opinion claimed to be incorrect

Generally, an applicant will find it difficult to succeed on an application to amend an expert opinion, particularly a medical opinion. The mere fact that an agency preferred one report over another does not necessarily make a conflicting opinion incorrect.

Amendment of an expert opinion would only be in contemplation where¹¹:

- 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.

However, these are serious conclusions that are difficult to establish, and the onus lies on the applicant to provide the evidence that proves them. The fact that another expert might have taken a different view on the same facts is not enough.

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.

Even if a decision maker was satisfied that the expert opinion was incorrect or misleading, 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

Amendment applications made on the basis that opinion-based personal information is out of date raises different issues. A medical or other expert's opinion often represents a 'snapshot in time', describing particular circumstances, symptoms or treatments.

¹¹ *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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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, as 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 is able to 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 overtaken by time and 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?
- 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.

Discretion to amend

A decision maker has a discretion to refuse to amend personal information even where it is inaccurate, incomplete, out of date or misleading.¹² In *3DT2GH*, the Information Commissioner explained the operation of the discretion as follows:

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

¹² *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (*3DT2GH*) at [19].



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in a manner that would distort the official historical record. This alone would, in my view, justify an exercise of the discretion to refuse to amend the [document] in terms as requested by the applicant.

This discretion should be exercised bearing in mind the purpose of the amendment provisions of the IP Act noted above and taking into account various relevant factors, including:

- (a) the character of the record, in particular whether it purports to be an objective recording of purely factual material or whether it merely purports to be the record of an opinion/report of one person;*
- (b) whether the record serves a continuing purpose;*
- (c) whether retention of the record in unamended form may serve a historic purpose;*
- (d) whether the record is dated;*
- (e) whether amendment is being sought as a de facto means of reviewing another administrative decision;*
- (f) the extent to which access to the record is restricted;*
- (g) whether creation of the record or any of its contents was induced by malice;*
- (h) whether the record is part of a group of records and, if so, whether the other records modify the impact of the record in dispute.¹³*

Form of amendment

If the agency decides to grant the amendment application, it may do so by¹⁴:

- altering the personal information; or
- adding an appropriate notation to the personal information.

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 must¹⁵:

- 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.

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.

¹³ As set out in *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) (**Shaw**) at [41] quoting with approval the decision of Deputy President Todd of the Administrative Appeals Tribunal in *Cox and Department of Defence* (1990) 20 ALD 499 at [6]

¹⁴ Section 74 of the IP Act.

¹⁵ Section 75 of the IP Act.



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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*.

Notation if amendment refused

If the decision maker refuses to amend the applicant's personal information the applicant can require 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.



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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.

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.

If you have any comments or suggestions on the content of this document, please submit them to feedback@oic.qld.gov.au.

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