



Decision and Reasons for Decision

Citation:	<i>L25 and Queensland Police Service [2022] QICmr 53 (24 November 2022)</i>
Application Number:	316736
Applicant:	L25
Respondent:	Queensland Police Service
Decision Date:	24 November 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - information contained in a letter from agency - whether agency entitled to exercise discretion to refuse amendment - section 72(1) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to amend his personal information contained in a letter addressed to him from QPS dated 23 July 2021 (**Letter**) on the basis that it is inaccurate and misleading.
2. QPS decided² to refuse to amend the Letter on the basis that the information sought to be amended was not inaccurate, incomplete, out of date or misleading.³ QPS also decided that the Letter was not a 'functional record'.⁴
3. The applicant sought internal review of QPS' decision.⁵ While QPS acknowledged that the information sought to be amended incorrectly attributed a link to '*criminal motorcycle gangs*' to the applicant rather than the subjects of the applicant's complaint, QPS nonetheless decided that amendment of the Letter was not appropriate.⁶ However, QPS did arrange for a new letter to be issued which addressed the issues raised in the amendment application and placed a notation on the file, addressing the applicant's request for a notation pursuant to section 76(1) and (2) of the IP Act.

¹ On 9 December 2021.

² On 17 May 2022.

³ Under section 72(1)(a) of the IP Act.

⁴ As outlined under section 72(1)(b) of the IP Act.

⁵ On 23 May 2022.

⁶ On 20 June 2022.

4. The applicant then applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision not to amend the Letter.
5. For the reasons set out below, I affirm QPS' decision and find the applicant's request to amend the Letter may be refused.

Reviewable decision and evidence considered

6. The decision under review is QPS' internal review decision dated 20 June 2022.
7. Significant procedural steps in this external review are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ 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 and the *Right to Information Act 2009* (Qld) (**RTI Act**).⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁰

Relevant law

9. Under the IP Act,¹¹ 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:
 - a. the applicant has previously obtained access to the relevant document
 - b. the information the applicant seeks to amend is their personal information;¹² and
 - c. the personal information is inaccurate, incomplete, out of date, or misleading.
10. The terms '*inaccurate*', '*incomplete*', '*out of date*' and '*misleading*' are not defined in the IP Act, nor the *Acts Interpretation Act 1954* (Qld). These terms are therefore used in their ordinary sense and the dictionary definitions¹³ of them, as set out below, are relevant:
 - '*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.*

⁷ The applicant initially applied for external review on 1 June 2022. However, it later became apparent that the applicant had also sought internal review on or about the same date. The applicant subsequently sought external review of QPS' internal review decision on 28 June 2022.

⁸ Section 21(2) of the HR Act. I note that this section may not be relevant to the facts of this matter given the applicant appears not to be a resident of Queensland.

⁹ *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].

¹⁰ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

¹¹ Sections 41 and 44 of the IP Act.

¹² '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.*'

¹³ *Macquarie Dictionary* (7th ed, 2017).

2. to lead into error of conduct, thought or judgement.

11. Section 72(1) of the IP Act sets out non-exclusive grounds on which a decision-maker may refuse to amend a document.¹⁴ While an agency has the onus on external review of establishing that its decision was justified,¹⁵ *‘the practical or evidentiary onus shifts to the party challenging the decision to provide evidence in support of the contention that the party is entitled to amendment on the basis that the documents in question contain information which is inaccurate, incomplete, out of date or misleading’*.¹⁶
12. However, even if it is shown that the information an applicant seeks to amend is inaccurate, incomplete, out of date or misleading, the opening words of section 72(1) of the IP Act—*‘[w]ithout limiting the grounds on which the agency or Minister may refuse to amend the document’*—confer a discretion on the decision-maker to refuse amendment.¹⁷
13. The exercise of this discretionary refusal may take into account the fact that the purpose of amending a document is not to:
 - re-write history,¹⁸ as this destroys the integrity of the record-keeping process¹⁹
 - determine disputed questions of opinion (including expert opinion), when that opinion was actually held and accurately entered in the official record²⁰
 - re-write a document in words other than the author’s²¹
 - review the merits or validity of official action;²² or
 - correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.²³

Issues for determination

14. There is no dispute that the applicant has previously obtained access to the Letter or that the Letter contains the applicant’s personal information.²⁴ I am therefore satisfied the applicant was entitled to apply for amendment under the IP Act.
15. As set out at paragraph 2 above, QPS initially decided that the Letter was not a ‘functional record’. In seeking an internal review, the applicant contended that the Letter was a functional record.²⁵ QPS did not address the issue of whether or not the Letter comprised a ‘functional record’ in the internal review decision and have not raised it as an issue in this review. Therefore, I am satisfied that QPS no longer considers that the Letter does not comprise a ‘functional record’. Accordingly, I have not considered whether 72(1)(b) of the IP Act cannot be relied on to refuse amendment of the Letter.

¹⁴ These include where an agency is not satisfied the information sought to be amended is personal information of the applicant (section 72(1)(a)(ii) of the IP Act) and where the document does not form part of a functional record (section 72(1)(b) of the IP Act).

¹⁵ Section 100(1) of the IP Act.

¹⁶ *Purrer v Office of the Information Commissioner & Anor* [2021] QCATA 92 (**Purrer**) at [32].

¹⁷ In *Purrer*, Daubney J observed at [28] that *‘the prefatory words of the section clearly operate to retain in the relevant agency or Minister a general discretion to refuse to amend’*.

¹⁸ *DenHollander and Department of Defence* [2002] AATA 866 at [96].

¹⁹ To ensure that, in a record keeping context, the document is preserved without any alteration as a public record.

²⁰ *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 (**Crewdson**) at [34].

²¹ *Re Traynor and Melbourne and Metropolitan Board of Works* (1987) 2 VAR 186 (**Traynor**) at [190], cited in *3DT2GH* at [18]. *Traynor* considered the requirements of the *Freedom of Information Act 1982* (Cth), the terms of which are substantially similar to the amendment provisions in the IP Act.

²² *Crewdson* at [24].

²³ *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) (**Shaw**) at [57].

²⁴ Including the applicant’s name and email address.

²⁵ In his application for internal review, the applicant stated the Letter *‘forms part of a functional record of the QPS as [the Letter] can be accessed by other law enforcement bodies, not just QPS.’*

16. I am also satisfied that there is no dispute that the information sought to be amended is inaccurate or misleading as QPS' internal review decision accepted that the Letter incorrectly attributed a link to 'criminal motorcycle gangs' to the applicant rather than the subjects of the applicant's complaint.
17. Therefore, the issue remaining for determination in this review is that notwithstanding that a part of the letter is inaccurate or misleading, whether amendment of the information may still be refused under section 72(1) of the IP Act.

Findings

18. The applicant seeks to have amended in the Letter a statement that attributes to him a link to 'criminal motorcycle gangs'. The applicant submits that he 'never indicated that [he] had connections with motorcycle gangs' as suggested in the Letter.²⁶ QPS has acknowledged that 'the outcome letter [the applicant was] provided with does state that the link with "bikies" or criminal motorcycle gangs is with [the applicant] as opposed to the suspects in [the applicant's] matter.'²⁷ QPS acknowledged this to be inaccurate in its internal review decision and issued the applicant with a new letter and added a notation to its records identifying the inaccuracy in the original letter.
19. In *3DT2GH and Department of Housing and Public Works*,²⁸ a matter in which the applicant sought review of the agency's decision refusing to amend an agency letter addressed to the applicant, the Assistant Information Commissioner stated that:²⁹

...it is not the purpose of the amendment provisions to permit the 're-writing of history', particularly where to do so would violate the integrity of the original record. Yet this is precisely what would occur were the amendments requested by the applicant to be made.

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. This alone would, in my view, justify an exercise of the discretion to refuse to amend the Letter in terms as requested by the applicant.

20. Further to the above, in *Purrer v Office of the Information Commissioner & Anor*,³⁰ His Honour Justice Daubney, then President of the Queensland Civil and Administrative Tribunal, stated:

The legal principles to be applied ... are derived from the judgment of Handley JA in Crewdson.^[31]

- (a) *The IPA is not a vehicle for the determination of disputed questions of expert or other opinion when the recorded opinion was actually held and accurately entered in the official records.*
- (b) *The position might be different if an expert whose opinion had been accurately recorded recognised later that it was incorrect at the time and withdrew it. However, the proper course would be to add a notation that the opinion had been withdrawn rather than to remove the original opinion. An amendment in the latter form would falsify the records and attempt to rewrite history. Without the original opinion the records would not tell the whole story and would be misleading.*

²⁶ Internal review application dated 23 May 2022.

²⁷ Page 3 of the internal review decision.

²⁸ (Unreported, Queensland Information Commissioner, 26 November 2012) (*3DT2GH*).

²⁹ *3DT2GH* at [50-51].

³⁰ Citation at footnote 16 above.

³¹ *Crewdson* at [34]-[35].

21. In this matter, while it has been demonstrated that the information was inaccurate or misleading, I consider that it is reasonable for QPS to exercise its discretion to not amend the relevant letter by deleting parts, as requested by the applicant in this case. The letter was written and sent to the applicant using particular words, and to now rewrite how this letter appears in QPS records would impact on the integrity of QPS record keeping³² and attempt to rewrite history. Consistent with the reasoning in *Crewdson*, *Purrer* and *3DT2GH*, I consider that QPS has taken appropriate action by acknowledging that the information sought to be amended incorrectly attributed a link to '*criminal motorcycle gangs*' to the applicant rather than the subjects of the applicant's complaint, arranging for a new letter to be issued which addressed the issues raised in the amendment application and placing a notation on the file. I do not consider that QPS is then required to go further to delete parts of the original version, where a notation has been included to identify the inaccuracy.
22. For these reasons, I find that the amendments requested by the applicant may be refused under section 72(1)(a) of the IP Act.

DECISION

23. As a delegate of the Information Commissioner, under section 139 of the IP Act, I affirm³³ the decision of QPS to refuse the applicant's requested amendments.

Shiv Martin
Assistant Information Commissioner

Date: 24 November 2022

³² See footnote 17 above.

³³ Under section 123(1) of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
1 June 2022	OIC received an application for external review of QPS' decision dated 17 May 2022.
2 June 2022	OIC requested preliminary documents from QPS.
22 June 2022	OIC received the preliminary documents from QPS.
28 June 2022	OIC received an application for external review of QPS' internal review decision dated 20 June 2022.
1 July 2022	OIC advised QPS and the applicant that the external review application regarding QPS' internal review decision had been accepted.
10 August 2022	The applicant requested an update.
11 August 2022	OIC provided the applicant with an update.
9 September 2022	OIC conveyed a preliminary view to the applicant.
26 September 2022	The applicant contested the preliminary view and requested a formal decision.