



Decision and Reasons for Decision

Citation:	<i>4UI2PS and Department of Child Safety, Youth and Women [2018] QICmr 23 (18 May 2018)</i>
Application Number:	313524
Applicant:	4UI2PS
Respondent:	Department of Child Safety, Youth and Women
Decision Date:	18 May 2018
Catchwords:	ADMINISTRATIVE LAW - AMENDMENT OF PERSONAL INFORMATION - application to amend case notes, meeting notes and information provided by third parties held on departmental files - whether applicant has obtained access to the information sought to be amended - whether information is the personal information of the applicant - whether information is inaccurate, incomplete or misleading - discretion to refuse amendment - section 72(1)(a) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Communities, Child Safety and Disability Services² (**Department**) for amendment of information about him contained in departmental records (**Records**). The Records the applicant sought to have amended can be broadly categorised as:
 - case notes comprising the authors' professional opinion³
 - information provided by third parties;⁴ and
 - meeting notes recording the recollections and perceptions of departmental officers.⁵

¹ Amendment application dated 19 August 2017.

² Machinery of government changes in December 2017 transferred relevant responsibility from the Department of Communities, Child Safety and Disability Services to the Department of Child Safety, Youth and Women. Accordingly, existing *Right to Information Act 2009* (**RTI Act**) and *Information Privacy Act 2009* (**IP Act**) applications and reviews involving certain applications made to the Department of Communities, Child Safety and Disability Services before the machinery of government changes now rest with Department of Child Safety, Youth and Women, including this external review. For ease of reference, I will simply refer to 'the Department' in these reasons.

³ Child Safety Support Officer Referral Form; section 3 – page 29; Assessment and Outcome; Investigation and Assessment Outcome; Record abuse and resulting harm – page 97; Notified Concerns; Risk Factors; - page 101; Safety Assessment; Immediate Harm Indicators – page 118; Record of Concerns; Other Relevant Information; Case Consult – page 163.

⁴ Notifications – pages 100,101, 134, 135-137,141,142,144, 148, 149, 152,160 and 161; Case plans – pages 7,77; Child Strengths and Needs Assessment – page 15; Child Safety Support Officer Referral Forms (Section 4) – page 29,32; Case Notes – pages 46,57,123,130 and Safety Assessment – page 118.

⁵ Case Note (15 December 2016) – page 50; Handwritten Case Note (15 December 2016) – pages 78,79, 80 and 83; Record of Interviews (23 May 2016; 26 April 2016) – pages 107 and 108.

2. The Department decided⁶ to permit the requested amendment to the applicant's date of birth and refused the remainder of the amendment requests on the basis that the information sought to be amended was not inaccurate, incomplete, out of date or misleading.⁷ Despite its decision, the Department advised that it would place a copy of the applicant's amendment application on the relevant file, to serve as a notation of his concerns.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse his amendment application.⁸
4. For the reasons set out below, I affirm the Department's decision to refuse the applicant's amendment of the Records as requested by the applicant.

Background

5. The applicant provided extensive submissions to OIC. In summary, he submitted that all of the Records of the Department are inaccurate or misleading, excluding the majority of the description of the applicant's meeting with the children.⁹ The applicant also submitted that the Records repeat false allegations about him and amending the Records could not '*re-write what was not written in the first place*' and would not affect the integrity of the Department's record-keeping process.¹⁰
6. Significant procedural steps taken by OIC in conducting this external review are set out in the Appendix to these reasons.

Reviewable decision

7. The decision under review is the Department's decision dated 25 September 2017, refusing amendment of the Records under section 72 of the IP Act.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
9. The applicant provided detailed written submissions to OIC¹¹, including supplying extracts of the redacted Records imputed with his own views and recollection of events. The applicant also provided a Statutory Declaration from his former partner and unsworn statements from his friends and his General Practitioner. OIC obtained a full copy of the Records the applicant sought to amend from the Department. I have carefully considered all of this information to the extent that it is relevant to the issues for determination in this review.

Issue for determination

10. The issues for determination in this external review are whether the applicant's requested amendments of the Records, as set out in the amendment application, may be refused under section 72 of the IP Act. In examining this issue, the following questions arise for consideration:

⁶ Decision dated 25 September 2017.

⁷ Section 72(1)(a)(i) of the IP Act.

⁸ Application for external review dated 3 October 2017.

⁹ Amendment application dated 19 August 2017.

¹⁰ Submission to OIC dated 21 February 2018.

¹¹ Application for external review dated 3 October 2017 and submission to OIC dated 21 February 2018.

- a) Is the applicant entitled to apply for amendment?
 - b) Is the applicant seeking to amend his personal information?
 - c) Is the information sought to be amended inaccurate, incomplete, out of date or misleading?
11. During the review, the applicant raised a number of issues that are beyond OIC's external review jurisdiction under the IP Act.¹² Importantly, OIC does not have any power to investigate complaints about the actions of departmental officers, departmental record keeping practices, departmental procedures for recording interviews, or the Department's investigation and decision-making processes.¹³ As these matters fall outside OIC's jurisdiction in this external review relating to an application for amendment, they are not addressed in these reasons for decision.

Relevant law

12. The cumulative effect of sections 41 and 44(1) of the IP Act is to confer on an individual the right to apply for amendment of documents of an agency, or Minister, containing the individual's personal information, where the following requirements are satisfied:
- (i) the applicant has previously **obtained access** to the documents said to contain the applicant's personal information
 - (ii) the information which the applicant seeks to amend is the **applicant's personal information**; and
 - (iii) the personal information is **inaccurate, incomplete, out of date or misleading**.
13. In respect of element (ii), '*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.*
14. For information to be considered '*inaccurate*', the Information Commissioner has previously found that an applicant must establish not only that the information inaccurately 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.¹⁴
15. The term '*misleading*' is not defined in the IP Act. The ordinary dictionary definition¹⁵ of '*mislead*', as set out below, is therefore relevant:
- 1. *to lead or guide wrongly; lead astray.*
 - 2. *to lead into error of conduct, thought or judgement.*
16. In considering whether information is misleading, the Information Commissioner has previously observed¹⁶ that amendment provisions are aimed at:

¹² Amendment application dated 19 August 2017, application for external review dated 3 October 2017 and submissions to OIC dated 21 February 2018.

¹³ Amendment application dated 19 August 2017.

¹⁴ *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) (**A4STL6K**) at [27].

¹⁵ Online Macquarie Dictionary: www.macquariedictionary.com.au (accessed 18 May 2018).

¹⁶ *In 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.

...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...

17. Satisfaction of the preceding requirements does not itself entitle an applicant to amendment. Due to 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’*, a decision-maker may still refuse to amend a relevant document—this provision confers on a decision-maker discretion whether to grant or refuse an amendment application. While the section sets out specific grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds. Consequently, even where an applicant has satisfied each of the requirements noted above, discretion is retained to refuse to amend a relevant document.¹⁷ 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 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.

18. In deciding whether to exercise the discretion to amend information, a decision maker may take various factors into account, 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.*¹⁸
19. A decision maker may also take into account the fact that it is not the purpose of the amendment provisions to:
- re-write history,¹⁹ as this destroys the integrity²⁰ 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 record²¹
 - re-write a document in words other than the author’s²²
 - review the merits or validity of official action;²³ or

¹⁷ *3DT2GH* at [11].

¹⁸ 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 [502].

¹⁹ *DenHollander and Department of Defence* [2002] AATA 866 at [96].

²⁰ To ensure that the document, as a public record, is preserved without any alteration.

²¹ *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 (**Crewdson**) at [34].

²² *Re Traynor and Melbourne and Metropolitan Board of Works* (1987) 2 VAR 186 (**Traynor**) at 190, cited *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.

²³ *Crewdson* at [24].

- correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.²⁴
20. In summary, the amendment provisions in the IP Act have limited scope and effect and are not intended to serve as a mechanism to re-investigate issues which an applicant considers have not been properly dealt with by the relevant agency. In most instances, there will be other avenues and processes for making such complaints. Importantly, the provisions are concerned with ensuring the accuracy of official public records, not with the merits or legality of the official action that has been recorded in them.²⁵

Findings

21. In its decision, the Department stated that the applicant had previously obtained access to the documents which he seeks to amend.²⁶ The Records are about the applicant and contain his personal information. Accordingly, I am satisfied that the first two requirements specified in paragraph 12 have been met.

Is the information sought to be amended in the Records inaccurate, incomplete, out of date or misleading?

22. No, for the reasons that follow.
23. The requirements of section 44 of the IP Act²⁷ are such that in an external review of a decision refusing amendment, a practical onus shifts to an applicant²⁸ to provide evidence to support their case in favour of amendment.²⁹
24. The applicant makes a number of separate amendment requests in relation to the Records. Broadly speaking, the applicant seeks to amend the content of various Records created by the Department in assessing a range of matters associated with children in his care and various allegations of violence. The applicant wholly denies making some of the statements³⁰ and in some instances, contends that words used do not accurately or sufficiently convey the statements he made, or the opinions he expressed, during meetings with departmental officers. Throughout his submissions, the applicant contends that the information recorded is factually incorrect, incomplete and misleading and based on false accusations that were never fully investigated.³¹ The applicant is also concerned that information contained in the Records would lead a third party to the wrong impression.³²
25. I have carefully considered the information which the applicant considers is inaccurate. In essence, this information comprises information provided by third parties, case notes comprising the author's professional opinion and notes taken by departmental officers during meetings with the applicant. I have also taken into account the content of the contemporaneous notes taken by departmental officers and subsequently entered into

²⁴ *Shaw* at [57].

²⁵ *Crowdson* at [24].

²⁶ The applicant received a copy of the Records, subject to the redaction of certain information.

²⁷ Section 44(4) of the IP Act requires an applicant to, among other things, state both the way in which the applicant claims the information is inaccurate, incomplete, out of date or misleading and the amendments the applicant claims are necessary for the information to be accurate or not misleading. In his amendment application and various submissions to OIC, the applicant explained, at length, the basis for his amendment requests and his preferred alterations to the Records. In making this decision, I have carefully considered all of those submissions, however, I have not found it necessary to set out the applicant's submissions in detail in these reasons.

²⁸ Generally, on external review, the agency bears the onus to justify its decision (section 100(1) of the IP Act).

²⁹ *Doelle and Legal Aid Office* (Qld) (1993) 1 QAR 207 at [18] in the context of equivalent provisions of the repealed *Freedom of Information Act 1992* (Qld).

³⁰ Amendment application dated 19 August 2017.

³¹ Amendment application dated 19 August 2017 and submission to OIC dated 21 February 2018.

³² External review application dated 3 October 2017.

the Department's Integrated Client Management System (**ICMS**) database. On this basis, I am satisfied that departmental officers held and accurately entered their recollection of events and information provided by third parties into the ICMS at the time of its creation.

26. The applicant has a different recollection of what he said during meetings with the Department and contends that the Records require amendment to include content that reflects his recollection of events.³³ However, the Records are public records, which have been authored by officers employed by the Department. In this regard, the integrity of the public records must be upheld by ensuring information that was publically recorded at the time of the record's creation is retained, particularly for future use by the Department.
27. The applicant further contends that conclusions made by various authors contained within the Records are based on false accusations and insufficient investigation.³⁴ The purpose of the amendment provisions is not to determine disputed questions of opinion or to re-investigate issues of concerns to an applicant. The applicant has not provided any evidence that departmental officers did not hold, and accurately enter, their professional opinion into the records.
28. The applicant has provided extensive submissions supporting his case, including a Statutory Declaration from his former partner, unsworn statements from friends about the applicant's character (more akin to a character reference) and medical opinion from the applicant's General Practitioner. I consider the Statutory Declaration and the applicant's submissions to be of limited evidentiary value in disproving the departmental officers actually held and entered their recollection of events into the ICMS records. None of the parties providing statements in support of the applicant's amendment requests were present during meeting meetings with the applicant. Other than the applicant's assertions, there is no evidence before me that the Department has not accurately recorded information provided by third parties, or that the notes of meetings do not accurately represent the authoring officers' recollections and perceptions of those meetings. On that basis, I find that the Records are not inaccurate.
29. With respect to the requests alleging incomplete information,³⁵ the applicant acknowledges the Department's duty to record the statements made by third parties. However, the applicant contends that his statements have not been recorded as clearly or in as much details as those of other parties, with important parts left out.³⁶ The applicant seeks to have additional information included to supplement the Records and convey his responses in a much more comprehensive and detailed way. The fact that a statement is not as fulsome as an applicant would like does not of itself, result in the statement being incomplete.³⁷ Public officers have a duty to be concise in their reporting and the amendment provisions are not intended to be used as a means of placing words into the mouth of the author. Accordingly, and notwithstanding the applicant's submission, I am satisfied that, when objectively assessed, the Records contain a summary of issues discussed with the applicant during the meeting and record of interviews with the Department. Therefore, I find that the Records are not incomplete.
30. The applicant also contends that the Records are misleading³⁸ because they contain inaccurate information. While I acknowledge that the information relates to the applicant,

³³ Amendment application dated 19 August 2017.

³⁴ Amendment application dated 19 August 2017 and submission to OIC dated 21 February 2018.

³⁵ Amendment application dated 19 August 2017 and submission to OIC dated 21 February 2018.

³⁶ External review application dated 3 October 2017.

³⁷ 3DT2GH at [33].

³⁸ Amendment application dated 19 August 2017.

it appears in the context of information provided by third parties and the authors' professional opinions and recollections of what the applicant said during meetings. Notwithstanding, the applicant's submissions, I am unable to find any evidence, other than mere assertions by the applicant, that the Records would lead a third party to the wrong impression. On that basis, I am not satisfied that the information is misleading.

31. I am satisfied that amending the Records in accordance with the applicant's request would not be appropriate. It would re-write information received from third parties and recorded by the Department and consequently damage the integrity of the record-keeping process. As previously noted, the amendment provisions in the IP Act are limited in scope and effect and cannot be used to determine disputed questions of opinion when that opinion was held by the author and the record merely reflects this, as is the case here.
32. Even if the applicant could demonstrate that the information was inaccurate, incomplete, out of date or misleading, I am satisfied that the discretion to refuse amendment could be exercised in this case. I acknowledge that the applicant disputes the version of events and the records may not entirely reflect the applicant's point of view. However, they are the notes recorded contemporaneously by the departmental officer in performing their statutory functions and other than the applicant's assertions, there appears to be no basis to amend under the IP Act. The amendments the applicant is seeking go to the integrity of the Records created by the Department in assessing various matters associated with his case about allegations of violence and children in his care. Permitting the requested amendments to the Records in this circumstance would, in my view, destroy the integrity of the relevant public records and amount to a re-writing of history.

DECISION

33. For the reasons set out above, I affirm the Department's decision to refuse to amend the Records under section 72(1)(a) of the IP Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Shanley
Acting Assistant Information Commissioner

Date: 18 May 2018

APPENDIX

Significant procedural steps

Date	Event
3 October 2017	OIC received the external review application.
4 October 2017	OIC notified the Department that the external review application had been received and requested various procedural documents from the Department.
10 October 2017	The Department provided the requested procedural documents.
23 October 2017	OIC notified the Department and the applicant that it had accepted the external review application.
27 November 2017	OIC requested that the Department provide a full copy of the Records the applicant sought to amend.
11 December 2017	OIC provided the applicant with an update on the status of the external review.
2 February 2018	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 16 February 2018. OIC provided the Department with an update on the status of the external review.
21 February 2018	OIC received submissions from the applicant.
28 February 2018	OIC conveyed by telephone a further preliminary view to the applicant.
5 March 2018	OIC provided the Department and the applicant with an update on the status of the external review.