



Decision and Reasons for Decision

Citation:	<i>I49 and Department of Education [2021] QICmr 7 (4 March 2021)</i>
Application Number:	315638
Applicant:	I49
Respondent:	Department of Education
Decision Date:	4 March 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - information appearing in a teaching appointment form - whether information is inaccurate or misleading - section 72 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to amend certain information contained in two documents.
2. The Department refused¹ to make the requested amendments on the grounds that it was not satisfied that the information in question was inaccurate, incomplete, out of date or misleading.
3. The applicant applied² to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. For the reasons explained below, I affirm the decision under review.

Background

5. The applicant is a teacher. She applied to the Department to amend information contained in two documents that she considered was inaccurate or misleading. During the course of this external review, the applicant advised that she did not wish to pursue her amendment application in respect of one segment of information. However, she maintained that the other segment of information, contained in her Appointment Form for a teaching position at a primary school, was inaccurate or misleading. Specifically, she argued that she had been appointed to the position of a Health and Physical Education

¹ Decision dated 18 September 2020.

² Email of 18 September 2020.

teacher at the school. However, the Appointment Form, in the box appearing under the heading '*Position Title*', contained the word '*General*', indicating that she was appointed to general teaching duties. The applicant sought to have the word '*General*' struck out, and the words '*Health and Physical Education*' inserted.

6. After reviewing the applicant's amendment application and the Department's decision, Assistant Commissioner Jefferies wrote to the applicant³ to advise that she had formed the preliminary view that the Department's decision to refuse to make the amendment was justified and should be affirmed on external review. In the event that the applicant did not accept that view, she was invited to provide submissions in support of her position.
7. In a telephone conversation with OIC,⁴ the applicant indicated that she would consider resolving the review if the Department would agree to add a notation⁵ to the Appointment Form.
8. OIC approached the Department, which agreed to add a notation to the Appointment Form that stated that the applicant believed she had been appointed as a Health and Physical Education teacher. The Department made the notation on a separate page, which it stapled to the Appointment Form. OIC considered the review resolved on this basis and the file was closed.
9. However, the applicant subsequently contacted OIC to advise that she did not agree to the notation being attached on a separate page. She also appeared to object to the notation itself, complaining that the word '*General*' was still visible on the Appointment Form, indicating a misunderstanding of the purpose and form of a notation.
10. In light of the applicant's dissatisfaction with the resolution of the review, the review was re-opened. If the applicant wished to pursue her application for amendment of the information (rather than agreeing to a notation), she was invited to provide submissions in support of her position. She did so on several occasions.⁶ I will discuss those submissions below to the extent that they are relevant to the issue to be determined.

Reviewable decision

11. The decision under review is the Department's decision dated 18 September 2020.

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the appendix).

Application of the Human Rights Act

13. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly to the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the IP Act, a decision maker will be '*respecting*' and '*acting compatibly with*'⁷ this right and others prescribed in the HR Act, and that I have done so in making this decision, as required under section 58(1) of the

³ Letter dated 28 October 2020.

⁴ On 29 October 2020.

⁵ See section 76 of the IP Act.

⁶ In various telephone calls with OIC and also in emails (with attachments) sent on 7 December 2020, 18 December 2020, 20 December 2020, 24 December 2020, 30 January 2021, 31 January 2021 and 12 February 2021.

⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI/IP Acts and HR Act: *'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'*.⁸

Issue for determination

14. The applicant has not sought to argue that the information in question is incomplete or out of date. The issue to be determined, then, is whether the Department was entitled, under section 72 of the IP Act, to refuse to amend the Appointment Form because it was not satisfied that the personal information sought to be amended is inaccurate or misleading.

Relevant law

15. Under the IP Act an individual has a right⁹ to apply for amendment of documents of the agency containing the individual's personal information¹⁰ where the following cumulative requirements are satisfied:
 - a) the applicant has previously obtained access to the document said to contain the applicant's personal information
 - b) the information which the applicant seeks to amend is the applicant's personal information; and
 - c) the personal information is inaccurate, incomplete, out of-date or misleading.¹¹
16. On external review, the applicant bears a practical onus to provide evidence to support their case for amendment.¹²
17. Section 72 of the IP Act confers on a decision-maker a discretion whether to grant or refuse an amendment application. While it sets out specific grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds.¹³
18. The terms *'inaccurate'* and *'misleading'* are not defined in the IP Act or in the *Acts Interpretation Act 1954* (Qld), and therefore assume their ordinary meaning. Guidance in relation to the interpretation of these terms, and their application in the context of amendment applications under the IP Act can, however, be drawn from previous decisions of OIC, and decisions from courts and tribunals in Queensland and other jurisdictions.
19. The Information Commissioner considered the term *'inaccurate'*, as it applies to the amendment provisions under the IP Act, in *AD6L9H and Department of Health*:¹⁴

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

⁸ XYZ at [573].

⁹ See sections 41 and 44 of the IP Act.

¹⁰ *'Personal information'* is defined in section 12 of the IP Act.

¹¹ See sections 41 and 44(1) of the IP Act.

¹² See *Cowen and Queensland Building and Construction Commission* [2016] QICmr 43 (14 October 2016) at [36], applying *Doelle and Legal Aid Office (Qld)* (1993) 1 QAR 207 at [18].

¹³ For an explanation of the operation of this discretion, see *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (*3DT2GH*); *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008).

¹⁴ (Unreported, Queensland Information Commissioner, 31 August 2010) at [17] (*AD6L9H*).

amendment does not, however, extend to rewriting the document in the words of an applicant or to substituting an applicant's own opinion for that of the document author.

20. 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.¹⁵

21. The ordinary dictionary definition¹⁶ of 'mislead' is:

1. to lead or guide wrongly; lead astray.
2. to lead into error of conduct, thought or judgement.

22. In considering whether information is misleading, the Information Commissioner has previously observed¹⁷ that 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 ...

23. Information can therefore be said to be misleading if the following conditions apply:

- it could lead a person reading it into error or could, although literally true, convey to a reader 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.

Findings

24. There is no dispute that the applicant has previously obtained access to the Appointment Form, or that it contains her personal information¹⁸ (dealing, as it does, with her terms of employment). I find that each of these requirements is satisfied. The applicant is therefore entitled to apply to have the information amended under the IP Act.

25. However, I am not satisfied that the applicant has discharged the practical onus of establishing that the information in question is inaccurate or misleading.

26. In its decision, the Department stated as follows:

The Appointment Form refers to your Position Title as 'General,' which you contend is incorrect and should actually be 'Health and Physical Education Teacher' as you had replaced [name deleted], who was a Health and Physical Education Teacher.

The Appointment Form states "I certify that the above personal details are correct and acknowledge the working arrangements as approved by the Principal/Approving Officer." Your signature appears next to this certification, dated 29 April 2020.

Mrs [name deleted], Principal of [name deleted] State School was the approving officer on the Appointment Form. Mrs [name deleted] has informed me that where teachers have multiple

¹⁵ A4STL6K and Queensland Health (Unreported, Queensland Information Commissioner, 6 September 2013) at [27].

¹⁶ Online Macquarie Dictionary: www.macquariedictionary.com.au (accessed 4 March 2021).

¹⁷ In 3DT2GH at [15] citing *Buhagiar and Victoria Police* (1989) 2 VAR 530, per Jones J.

¹⁸ '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 be reasonably ascertained, from the information or opinion'.

specialities, they are hired as general teachers in order to be able to work across different roles (such as in a classroom if needed). Mrs [name deleted] has advised that you were one such candidate as you were listed as having multiple specialities (prep to year 6 plus physical education, according to your CV), and that you had expressed a desire to work in the classroom. I am advised that due to this, you were hired with the Position Title of a 'General' teacher to keep the option open for you to be placed in a classroom if needed.

27. As noted, the applicant provided a number of submissions in support of her position during the course of the external review. However, many of the arguments and issues raised by the applicant are irrelevant to the only issue to be determined in this review, namely, whether the Position Title information contained in the Appointment Form is inaccurate or misleading. I advised the applicant that issues or complaints she had raised about the following matters were irrelevant:

- when the Principal signed the Appointment Form
- whether the applicant was given sufficient time to read the Appointment Form
- when the applicant collected the Appointment Form from the school
- when the Appointment Form was printed or emailed
- position titles held by the applicant for teaching contracts at other schools; and
- the applicant's communications with the Department about other issues connected to her employment.

28. In her submissions, the applicant also raised public interest factors that she contended were relevant. However, I advised her that amendment applications are not subject to a public interest balancing test under the IP Act.

29. In her email of 30 January 2021, the applicant stated: '*... I did not see any writing under the box of the Position Title. No 'Details: General' was written on the contract when I signed the contract on 29/04/2019 at [the school]*'.

30. In my letter dated 3 February 2021, I stated:

While you have said that you 'did not see it', there is nothing before me to indicate that the Position Title information ('General') was not present when you signed the Appointment Form. There is no evidence before me to suggest that that information was either inserted or changed without your knowledge or consent after you signed the Form.

31. The applicant responded:¹⁹

*I did not state in my email on 30/1/2021 at 3:23pm to the Office of the Information Commissioner (OIC) Queensland (Qld) that there was **no** writing in the box. According to point 2d, I simply stated that I did not see any writing under the box of the 'Position Title'. No 'Details: General' was written on the contract when I signed the contract on 29/04/2019 at [the school]. Please do not misinterpret my message according to your own perceptions.*

[original emphasis]

32. The applicant's submission remains unclear to me. She apparently does not contend that there was no writing in the relevant box; only that she did not see it. However, she also contends that whatever was written in the box, it was not the word 'General', indicating that she did, in fact, see what was written in the box.

33. I can only reiterate my finding that there is no evidence before me to indicate or suggest that the word 'General' did not appear on the Appointment Form when the applicant

¹⁹ Email of 12 February 2021.

signed it, or that the Form was altered or amended after the applicant signed it and without her knowledge.

34. The central arguments made by the applicant in support of her contention that the word '*General*' in the Appointment Form is inaccurate or misleading are:
 - the teacher she was employed to replace was employed as a Health and Physical Education teacher
 - the relevant Job Position was advertised as a temporary, part-time Health and Physical Education teacher
 - the details on an Appointment Form should be compliant with the Job Position details, rather than with a teacher's resume; and
 - she did not, in fact, carry out any other teaching duties while employed at the school except as a Health and Physical Education teacher.
35. As to the last point immediately above, what occurred during the course of the applicant's employment at the school is not relevant to a consideration of what was an accurate statement of the applicant's position title at the time of the commencement of her employment.
36. I acknowledge the relevance of the other points raised by the applicant. However, I must also take account of the explanation provided by the Principal (as contained in the Department's decision, set out at paragraph 26 above) as to why the applicant's Position Title on the Appointment Form was stated to be '*General*'. That explanation appears to be reasonable and to reflect the genuine belief of the Principal that there was a possibility that the applicant might be required at some stage, or be given the opportunity, to perform classroom teaching duties, and that this was also in accordance with the applicant's expressed desire to work in a classroom. By designating the applicant's position title as '*General*', this option was left open.
37. In addition, as I have noted, although the applicant has submitted that she did not see the word '*General*' on the Appointment Form when she signed it, there is nothing before me to suggest that this word was inserted after she signed it and without her knowledge. I consider it is reasonable to believe that the word '*General*' was contained on the Appointment Form when the applicant signed it, and that she indicated her acceptance of the contents of the Form, and the terms of her employment, by signing the Form, thereby entering into a contract of employment with the school on the stated terms.
38. In summary, I have considered the applicant's reasons for believing that the Appointment Form should state that she was appointed to the position of Health and Physical Education teacher. I have also considered the Principal's reasons for appointing the applicant to general teaching duties. I am not satisfied that the applicant has discharged the practical onus upon her of establishing that the word '*General*' comprises an erroneous statement of fact, or an opinion that has been shown to be based on erroneous facts. There is nothing before me to indicate that the Principal did not actually hold, and accurately enter onto the Appointment Form, her particular understanding of the circumstances of the applicant's appointment. As noted in *AD6L9H*, the right of amendment does not extend to substituting an applicant's opinion for that of the document author. This is particularly so when the document in question is in the form of a legally binding agreement that has been signed by the parties.
39. Nor am I satisfied that a person reading the Appointment Form would be led into error regarding the applicant's appointment by conveying a meaning that is untrue.

40. For these reasons, I am not satisfied that the word '*General*' as it appears on the Appointment Form can properly be regarded as either inaccurate or misleading within the meaning of those words as discussed at paragraphs 18-23 above.
41. Although the applicant has not sought to argue it, for the sake of completeness I will also record my finding that I am not satisfied that the information in question is either incomplete or out of date.

Notation

42. As explained above, this review was initially informally resolved on the basis that the Department would add a notation to the Appointment Form under section 76 of the IP Act, recording the applicant's belief that she was appointed as a Health and Physical Education teacher. The proposed notation was in the following form:

Notation under section 76 of the Information Privacy Act 2009 (Qld). [The applicant] believes that she was not appointed to a General position but as a Health and Physical Education teacher.

43. The applicant initially complained to OIC that the Department had made the notation on a separate page, rather than on the Appointment Form itself. OIC then arranged for the Department to make the notation in the margin of the Appointment Form, and a copy of the Form was sent to the applicant for approval. However, the applicant refused to accept the notation as a way of resolving the review, and indicated that she required OIC to proceed to make a decision about her amendment application.

DECISION

44. For the reasons explained, I affirm the Department's refusal to amend the Appointment Form on the grounds that I am not satisfied that the information in question is inaccurate, incomplete, out of date or misleading.
45. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 4 March 2021

APPENDIX

Significant procedural steps

Date	Event
18 September 2020	OIC received the application for external review. OIC made preliminary inquiries with the Department.
28 October 2020	OIC accepted the application for external review and expressed a preliminary view to the applicant.
29 October 2020	OIC discussed the possibility of notation with the applicant and Department by phone and email.
2 November 2020	OIC emailed the Department regarding the notation.
17 November 2020	OIC received an email from the Department advising it was agreeable to the notation.
30 November 2020	The Department confirmed the notation had been made by email.
4 December 2020	OIC sent letters to the applicant and Department confirming the review had been finalised.
7 December 2020	OIC received an email from the applicant advising the notation was not acceptable. OIC emailed the applicant advising of steps to re-open review.
18 December 2020	OIC received submission/s from the applicant.
20 December 2020	OIC received further submission/s from the applicant.
24 December 2020	OIC re-opened the external review. OIC received further submission/s from the applicant.
21 January 2021	OIC conveyed a written preliminary view to the applicant.
30 January 2021	OIC received submission/s from the applicant.
31 January 2021	OIC received further submission/s from the applicant.
3 February 2021	OIC conveyed a second written preliminary view to the applicant.
12 February 2021	OIC received submission/s from the applicant.