



## Decision and Reasons for Decision

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Citation:	<b><i>G78QTW and Department of Education [2019] QICmr 5 (20 February 2019)</i></b>
Application Number:	<b>313883</b>
Applicant:	<b>G78QTW</b>
Respondent:	<b>Department of Education</b>
Decision Date:	<b>20 February 2019</b>
Catchwords:	<b>ADMINISTRATIVE LAW - AMENDMENT OF PERSONAL INFORMATION - application to amend information contained in OneSchool records created by school principal and deputy principal - whether the information sought to be amended is inaccurate, incomplete, out of date or misleading - section 72(1)(a) of the <i>Information Privacy Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for amendment of three OneSchool<sup>2</sup> records (**Records**) on the OneSchool profile regarding the applicant's child. The three Records are:
  - **Record 1** – a record created by the Deputy Principal regarding a meeting between the applicant, child's other parent, Principal and Deputy Principal on a certain date
  - **Record 2** – a record created by the Principal regarding a telephone call between the applicant and Principal the day before the meeting; and
  - **Record 3** – a record created by the Deputy Principal regarding telephone calls between the applicant and Deputy Principal the day before the meeting.
2. The Department decided<sup>3</sup> to refuse to amend the Records on the basis that the information was not inaccurate, incomplete, out of date or misleading.
3. On internal review,<sup>4</sup> the Department decided<sup>5</sup> to amend some information in Record 1 on the basis that it was incomplete and therefore misleading, and made the amendment

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<sup>1</sup> On 30 October 2017.

<sup>2</sup> OneSchool is the Department's software suite that schools use to run reporting and administrative processes: <https://education.qld.gov.au/parents-and-carers/school-information/oneschool-qparents>.

<sup>3</sup> On 13 February 2018.

<sup>4</sup> Sought by the applicant on 1 March 2018

<sup>5</sup> On 29 March 2018.

by notation. In terms of the remaining information in Record 1, and Records 2 and 3 in their entirety, the Department again refused to amend these Records.

4. The applicant then applied<sup>6</sup> to the Office of the Information Commissioner (**OIC**) for an external review. The applicant requested that OIC review the notation used by the Department to amend some of the information in Record 1, as well as the Department's refusal to amend the balance of the information in the Records.
5. For the reasons set out below, I affirm the Department's decision to refuse the applicant's requested amendments.

## Background

6. In accordance with OIC's obligation to promote settlement of external review applications,<sup>7</sup> OIC asked the applicant to consider the content of notations to the child's OneSchool profile that would be acceptable. OIC proposed, as a starting point for the applicant's considerations, text drawn from the amendment application,<sup>8</sup> which outlined concerns about each of the three Records. The applicant agreed with this content, provided it was amended to include statements that there was an agreement between the applicant and the Department that the Records were inaccurate, incomplete or misleading. While the Department was agreeable to the text drawn from the amendment application being added as notations, it would not accept the statements about it agreeing that the Records were inaccurate etc, given it did not so agree. Accordingly, the Department rejected this proposal. OIC then secured the Department's agreement to add transcripts of the applicant's audio recordings relating to two of the Records (which the applicant referred to as evidence that the Records were inaccurate etc) as notations. However, the applicant rejected this proposal.<sup>9</sup> Having exhausted informal resolution opportunities, OIC then conveyed a preliminary view to the applicant and received submissions in response. In these circumstances, a decision is necessary to finalise the external review.
7. The appendix to these reasons for decision sets out the significant procedural steps taken during the external review relating to OIC's informal resolution attempts and, on exhaustion of them, the opportunity afforded to the applicant to make submissions regarding their<sup>10</sup> case.

## Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and appendix).
9. Notably, the evidence before me includes an audio recording of the meeting that is the subject of Record 1. The applicant advised OIC that there was also an audio recording of the telephone call that is the subject of Record 2, but no audio recording relating to Record 3.
10. OIC attempted to obtain a copy of the audio recording for Record 2. The Department was unable to locate a copy and questioned whether the applicant had provided it with

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<sup>6</sup> On 17 April 2018.

<sup>7</sup> Section 103 of the IP Act.

<sup>8</sup> In the document attached to the amendment application titled 'RFI – Change Record'.

<sup>9</sup> As noted at paragraph 10 below, it subsequently became apparent that only one of the audio recordings (for Record 1) was available for the purpose of this review in any event.

<sup>10</sup> So as to avoid inclusion of information that could possibly connect the applicant and other individuals with sensitive personal information, this decision uses 'they' and 'their' rather than singular pronouns for the applicant, child, child's other parent, Principal and Deputy Principal.

one. The applicant advised that they could not provide a copy of the recording in a reasonable amount of time, and was therefore willing to proceed in its absence, but pointed out that the amendment application included a transcript of this recording. I accept that the applicant's amendment application includes<sup>11</sup> what appears to be a transcript of an audio recording for Record 2, setting out a telephone conversation between the applicant and the Principal. However, I also note that the amendment application includes text<sup>12</sup> of the audio recording for Record 1 and that—on comparison of this text with the recording—it becomes apparent that the text comprises excerpts selected by the applicant, rather than the full conversation.<sup>13</sup> Given this, I cannot be satisfied that the text regarding the audio recording for Record 2 set out in the amendment application constitutes a transcript of the entire telephone call that is the subject of Record 2. However, I can proceed on the basis that it reflects an accurate representation of the applicant's recollection and understanding of the conversation.

## Reviewable decision

11. The decision under review is the Department's internal review decision dated 29 March 2018. The applicant has requested external review regarding:
  - a. the notation added to some of the information in Record 1 in accordance with the Department's decision to amend this information;<sup>14</sup> and
  - b. the Department's refusal to amend the balance of the information in the Records.
12. The Information Commissioner's functions include reviewing decisions of agencies made subject to external review under the IP Act.<sup>15</sup> Section 99 provides that a person affected by a "reviewable decision" may apply to have that decision reviewed by the Information Commissioner. Accordingly, the Information Commissioner's external review functions include conducting external reviews of "reviewable decisions". The definition of "reviewable decision" in schedule 5 of the IP Act includes '(f) a decision ... **refusing amendment of a document under section 72**' (my emphasis). This definition does not, however, include any reference to a decision **permitting** amendment of a document, nor any resulting amendment made by notation under section 74(b) of the IP Act.
13. Given these provisions, my jurisdiction on external review, as a delegate of the Information Commissioner, enables me to review the Department's **refusal** to amend information in the Records (b. in paragraph 11 above). However, it does not extend to review of the Department's decision to **permit** amendment of part of Record 1, nor the resulting amendment by notation (a. in paragraph 11 above). Even if I were able to review the Department's decision to permit amendment, I note that the applicant's concerns regarding the notation to part of Record 1 are the same as the applicant's concerns regarding Record 1 in its entirety (that is, that Record 1 is an inaccurate, incomplete, out of date and misleading representation of the meeting in question), and further note that these concerns are addressed in the below reasons.

<sup>11</sup> At page 11 of the document titled 'RFI – Change Record'.

<sup>12</sup> Within the document titled 'RFI – Change Record'.

<sup>13</sup> See, for example, the text at pages 2-3 of the document titled 'RFI – Change Record' regarding one of the applicant's submissions regarding Record 1, which includes numerous excerpts of the conversation during the meeting commencing at periods between 6:40 and 30:42 of the audio recording.

<sup>14</sup> The information that the Department decided to amend appears at the end of the first numbered paragraph set out at paragraph 22 below.

<sup>15</sup> Specifically, chapter 3, part 9 of the IP Act—see section 137 of the IP Act.

## Relevant law

14. Under the IP Act, an individual has a right to apply for amendment of a document of an agency, or Minister, containing the individual's personal information where the following requirements are satisfied:<sup>16</sup>
- 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;<sup>17</sup> and
  - c) the personal information is inaccurate, incomplete, out of date or misleading.
15. 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 definitions<sup>18</sup> 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.*  
2. *to lead into error of conduct, thought or judgement.*
16. Where disputed information comprises an individual's interpretation of events or issues, an applicant seeking amendment 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>19</sup>
17. Section 72(1) of the IP Act sets out grounds on which a decision-maker may refuse to amend a document. These include if requirements b) and c) at paragraph 14 above are *not* satisfied,<sup>20</sup> or if the document in question does *not* form part of a functional record.<sup>21</sup> However, even if these requirements *are* satisfied, and the document *is* part of the functional record, the decision-maker may still refuse to amend the document. This is 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*'—which confer on a decision-maker discretion whether to grant or refuse an amendment application.<sup>22</sup> In other words, 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, the decision-maker retains discretion to refuse to amend a relevant document.

<sup>16</sup> Sections 41 and 44 of the IP Act.

<sup>17</sup> '*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*'.

<sup>18</sup> Online Macquarie Dictionary: [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au) (accessed 20 February 2019).

<sup>19</sup> *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) (**A4STL6K**) at [27], paraphrasing the relevant principle as stated in *Crewdson v Central Sydney AHS* [2002] NSWCA 345 at [34].

<sup>20</sup> Section 72(1)(a) of the IP Act.

<sup>21</sup> Section 72(1)(b) of the IP Act.

<sup>22</sup> *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (**3DT2GH**) at [10]-[12].

18. While an agency has the onus of establishing that its decision was justified,<sup>23</sup> in an external review of a decision to refuse to amend information:<sup>24</sup>

*... a practical or evidentiary onus shifts to [an applicant] to provide evidence to support [their] entitlement to relief under [the IP Act] on the basis that the documents in issue contain information that is inaccurate, incomplete, out-of-date or misleading.*

### Issues for determination

19. There is no dispute that the applicant has previously obtained access to the Records or that they contain the applicant's personal information.<sup>25</sup> I find that these two requirements are satisfied, and that the applicant was therefore entitled to apply to have the information amended under the IP Act.
20. There is also no dispute that the Records form part of a functional record.<sup>26</sup> I am satisfied that the ground that they do not form part of a functional record<sup>27</sup> cannot be relied on to refuse amendment of the Records.
21. The applicant disputes the contents of the Records. Therefore, the issues for determination in this review are whether:
- the applicant has demonstrated that the information sought to be amended within the Records<sup>28</sup> is inaccurate, incomplete, out of date or misleading; and
  - if so, whether under section 72(1) of the IP Act, amendment of the information may still be refused.

### Record 1

22. Record 1 sets out the Deputy Principal's recollection and opinions about interactions with the applicant and the child's other parent during a meeting on a certain date as follows:<sup>29</sup>

*Meeting with parents 7am ... Principal and DP met with parents to discuss suspension of [child] for pulling down the pant of a student during recess.*

1. *Parents said that the law states that in Australia you have the right to return force with due force. Parent said [child] had every right to pull down the pants of another student in full view of the majority of the school and that [child] should not be suspended for doing that. [The applicant] stated that [they] has told [child] that [child] did the right thing and was "proud of [child] dacking "supported [child] for the behaviour.*
2. *[The applicant] said that the teachers of the school are not to issue directions to [child] and that [child] is to walk away from any teacher at any time that issues [child] a direction and to call [the applicant] for legal advice as to whether [child] will comply with the direction.*
3. *Principal advised was practical in a school environment and there is an expectation that all students follow teacher directions. Parent became angered at the response and stated various laws [they] could use. No conclusion was reached in this matter.*
4. *Also when told the suspension would stand, the parent advised there were case laws and that [they] would support [child] if [child] chose to return fight with fight.*

<sup>23</sup> Section 100(1) of the IP Act.

<sup>24</sup> *Doelle and Legal Aid Office (Qld)* (1993) 1 QAR 207 [18], where the Information Commissioner considered the issue of onus in an equivalent context under the now repealed *Freedom of Information Act 1992* (Qld). In *3DT2GH*, the Assistant Information Commissioner found this reasoning to be applicable to the provisions of the IP Act.

<sup>25</sup> See definition at footnote 17.

<sup>26</sup> At page 1 of the external review application, the applicant contested the Department's reliance on this ground—however, neither the original decision nor the internal review decision by the Department indicated any such reliance.

<sup>27</sup> Section 72(1)(b) of the IP Act.

<sup>28</sup> Other than the information in Record 1 that is the subject of the notation added in accordance with the Department's decision to permit amendment of it.

<sup>29</sup> Record 1, as it appears in the applicant's child's OneSchool profile, comprises one paragraph, rather than one unnumbered paragraph followed by nine numbered paragraphs. Given that the applicant divided Record 1, and the submissions regarding it, into nine segments, I have employed the same numbering in this decision for ease of reference.

5. *Principal stated that in this incident the suspension stands as disrobing a student is an assault.*
6. *Parent continued to argue the point that [child] should not be suspended and [parents] took notes, on the conversation.*
7. *The Principal asked 3 times how do we move forward on this and the parent started to badger to the point that the Principal said we do not seem to be able to reach a conclusion but the parent continued saying [they] wanted to make other complaints.*
8. *Parent refused to acknowledge the suspension as [child] "had done nothing wrong". [Parent] also wanted an in school suspension but was advised not available.*
9. *Parent eventually left the office.*

### **The applicant's submissions about Record 1**

23. In the amendment application, the applicant stated:

*Re Record 1...*

*It is inaccurate, misleading, incomplete, and contains false information designed to discredit honest witnesses, act out of retribution for raising issues, and hide misconduct committed by the Principal and Deputy Principal of the [named] School.*

*As a background, this record was created in revenge for a notification of sexual abuse that was made against a teacher at the school. As such, it is extremely inaccurate and one sided, and fails to mention important information that was raised and resolved during the meeting it purports to describe.*

*The meeting was recorded, however, it is highly evident that neither the author nor principal realised this. They have been offered the opportunity to correct the record to align with facts, however, have refused this opportunity, falsely claiming that the record is accurate.*

*Furthermore, the representation is highly subjective and unprofessional, and fails to represent a professional fair and objective report expected to assist future education of our [child] or articulate and represent concerning issues.*

24. The applicant then addressed the nine numbered paragraphs in Record 1. On careful consideration of the submissions, it is my understanding that the applicant considers that:

- The content of 1. is misleading because it creates the impression that the applicant and the child's other parent condone responding to violence with violence; incomplete because it *'misses the obvious theme of our issue'* that the parents were proud of the child for choosing a non-violent means of self-defence; and inaccurate because there was no mention in the meeting of the incident having occurred *'in full view of the majority of the school'*, the applicant did not say the words *'proud of [child] dacking'*, and statements attributed to the applicant were in fact made by the child's other parent.
- The content of 2. is *'an outrageous lie'* because the applicant did not say that the teachers were not to issue directions to their child, rather the applicant said that they had instructed their child to respectfully walk away rather than engaging with a teacher until the child had spoken with one of their parents; and did not say that the parents would provide legal advice to the child.
- The content of 3. is *'an outrageous lie'* because there was agreement about the child calling a parent from a particular school location, and they did not refer to laws they could use.
- The content of 4. is inaccurate because it falsely indicates that the applicant responded to advice that the suspension would stand with comments about supporting their child if their child retaliated and met fight with fight.

- The content of 5. is *'repetitive and superfluous'*.
  - The content of 6. is *'grossly false'* because they had an orderly and legitimate discussion with no continuous arguing of any point; and because they didn't take notes as the conversation was being recorded.
  - The content of 7. was *'an outrageous lie'* because the Principal only asked about moving forward once; and the parents sought and received permission to raise further issues.
  - The content of 8. was incomplete because it did not note that the parents considered that defending oneself against injury and repetition of assault is not wrong, nor did it note comments of the Queensland Education Ombudsman.
  - The content of 9. is *'superfluous'*, as they had to leave the office.
25. [T]o *accurately and fairly represent the conversation and events*, the applicant suggested that Record 1 be amended to remove 3., 4., 5., 6., 7., and 9. in their entirety, and the remaining paragraphs be amended to state:
1. *As a basis for their objection to the suspension, the parents raised the issue that their [child] was acting in self-defence, and their [child], in recognition of dangers surrounding 'One Punch can Kill', chose a non-violent method of escaping further assault, which also included twice removing [themselves] from the attacker without resorting to like for like retaliation. The parents expressed pride in their [child] for not resorting to violence and strongly support this in future behaviours. The parents were explained that the school's view is that the dacking of the child, which was not contested by the parents or their [child], was considered violent, as it is considered an assault.'*
  2. *The parents raised concerns about the relationship between [the child] and certain teachers. They asked whether or not it would be in breach of school rules for [the child] to respectfully walk away if [the child] is not feeling comfortable, or feeling uneasy, by the contact. Principal advised that, if [the child] is going to walk away, [the child] would walk away to [a particular school location] to explain why [the child] has walked away. Parents agreed with this outcome.*
  8. *The parents raised a concern of procedural fairness and suspension policy being applied. They have taken their concerns to the Queensland Education Ombudsman, who advise:*  
*"... this office has previously raised concerns with the department about the lack of procedural fairness in school suspension and exclusion decisions. In response, the department has commenced a broad review of its discipline procedure framework, which will examine the procedure, policies, guidelines and training provided to departmental regional offices and Queensland state schools. I will write to the department to flag your case as an example of this issue and for consideration as part of its review".*
26. In the external review application, the applicant made further submissions. On careful consideration of the applicant's submissions, it is my understanding that the applicant's submissions regarding Record 1 are:
- Record 1 *'is out of date given the evidence of the recordings'*.
  - In light of the audio recording, *'there is no evidence to suggest that the author of this comment ever held it as a genuine belief, or accurately recorded [their] genuine belief'*.
  - Because of the audio recording *'it can be demonstrated on a number of occasions throughout the records that the assertions made are factually erroneous, in that what was claimed to have been said was either not said at all, or in fact, the opposite was said'*.
  - The Records *'are not opinions on what was supposedly said, they are recordings of what was actually said. So there has never been a request to substitute opinions'*.

- The audio recording shows that the Records *'contain erroneous statements of fact or opinions shown to be based on erroneous facts'*.
- The Records *'are inaccurate because they can be demonstrated by the audio recordings to be factually erroneous'*.

27. The applicant also:

- repeated that there was agreement, concession, and conclusion about the child calling a parent from a particular school location
- submitted that *'there was no anger during the discussion from either parent, in fact, quite the opposite – understanding, empathy, consideration and eventually agreement. Clearly there was never any mention of legality or usage of laws, particularly to prevent a child from following the instructions of a teacher at the school'*
- contended that comments made by the Principal to the Department's regional office in emails<sup>30</sup> regarding a complaint made by the parents after the meeting<sup>31</sup> demonstrated *'that the principal share[d] a belief that the discussions were helpful in finding a resolution ... in direct contrast with the overall tone of ... the record of the meeting'* and indicated *'an element of surprise in receiving the complaint, as if [the Principal] was expecting the matter to have been resolved during the meeting. It is entirely inconsistent with the response of a person that has just the day before, received a phone call from an agitated, aggressive, displeased, angry and argumentative [parent], who one would reasonably foresee there would be no reconciliation. The receipt of a subsequent complaint would most likely be received as expected as opposed to so clearly unexpected'*; and
- in terms of a subsequent email<sup>32</sup> by the Principal to the Department's regional office which noted that three staff members *'stayed in the vicinity of the Principal's office for the entire interview as they were concerned about the 'aggression' displayed by the applicant'*,<sup>33</sup> submitted that *'anyone listening to the electronic meeting must concede that there was never any aggression displayed by the applicant, yet this demonstrates the principal's propensity to make such an inaccurate claim of aggression'* and suggested that further enquiries be made with these staff members, to establish whether they were coerced or even in the vicinity at the time.

28. During the external review, the applicant made the following submission:<sup>34</sup>

*Some new information has just come to my hand (09/11/2018) demonstrating that the records are unfair, misleading, inaccurate (yes - unquestionably inaccurate), out of date and incomplete ...*

*The below is a comment in a finding of external review made on that date relating to a different request, but the same recording - and subsequently, comment on the records that are clearly inaccurate, misleading, out of date, and incomplete. It was made by the department.*

*"At certain times during the conversation, the participants disagree about the version of events giving rise to the conversation, the categorisation and significance of events, and the adequacy or otherwise of the school's response ....*

*at least at those time, the voices of the speaking participants - including what I understand to be your voice, sound frustrated, annoyed, or even offended (I do not*

<sup>30</sup> OIC was not provided with copies of these documents in this review. I have proceeded on the basis that the contents of them, as quoted by the applicant in the submissions, are accurate.

<sup>31</sup> The applicant quoted the Principal as having said *'We need to get on to this first thing tomorrow – so much for moving forward'* and *'Wow!!!!!! Will get on to it tomorrow'*.

<sup>32</sup> OIC was not provided with copies of these documents in this review. I have proceeded on the basis that the contents of them, as quoted by the applicant in the submissions, are accurate.

<sup>33</sup> As quoted by the applicant.

<sup>34</sup> On 12 November 2018.



make any findings as to whether anyone was frustrated or annoyed or offended but simply that the voices sounded as what may be usually be expected from common experience)...

Thirdly, I am unable to determine whether or not you were, in fact, 'aggressive' during the meeting."

***Is the information in Record 1<sup>35</sup> inaccurate, incomplete, out of date or misleading?***

29. I have carefully considered the information in Record 1 that the applicant seeks to have amended and the applicant's submissions, as set out above.
30. In essence, the applicant submits that Record 1 is out of date, given subsequent production of the audio recording of the meeting to the Department; and that the audio recording demonstrates that Record 1 is inaccurate and/or incomplete, and therefore misleading.
31. In some of the applicant's submissions, the applicant appears to contend that Record 1 requires amendment because it should set out what was said, instead of the Deputy Principal's perspective regarding what was said. In this regard, I note the applicant's submissions that Record 1 *'is out of date given the evidence of the recordings'*. I also note the applicant's submissions that the nine paragraphs in Record 1 *'are not opinions on what was supposedly said, they are recordings of what was actually said'*, and *'are inaccurate because they can be demonstrated by the audio recordings to be factually erroneous'*.
32. Record 1 comprises the Deputy Principal's one paragraph record, about 400 words in length, of the matters discussed during the meeting involving the Deputy Principal, Principal, applicant and other parent of the child. The audio recording of the meeting indicates that it was about 45 minutes in length. Record 1 is a brief summary of the matters discussed, as recalled by the Deputy Principal after the meeting. As such, it is necessarily reliant on the Deputy Principal's recollection of the discussion, understanding of matters discussed by the parents, opinions regarding which aspects of the discussion required or warranted recording, and manner of expression, in terms of summarising these aspects. It cannot, in my opinion, be divorced from the perspective of its author. It follows that I do not accept that Record 1 is factually erroneous by virtue of it setting out the Deputy Principal's perspective regarding what was said, instead of recording what was actually said.
33. In the rest of the applicant's submissions, the applicant appears to accept that Record 1 consists of the Deputy Principal's recollections and opinions regarding the meeting, but contends that the Deputy Principal did not actually hold nor accurately record their understanding of the meeting in Record 1.<sup>36</sup> In this regard, the applicant submits that, in light of the audio recording, *'there is no evidence to suggest that [the Deputy Principal] ever held [the information in Record 1] as a genuine belief, or accurately recorded [their] genuine belief'*. Instead, the applicant considers that the audio recording demonstrates that Record 1 *'contain[s] erroneous statements of fact or opinions shown to be based on erroneous facts'*. It is my understanding that the applicant contends that the audio recording constitutes objective evidence, the Deputy Principal's recollections and opinions in Record 1 are inconsistent with the audio recording, Record 1 therefore comprises or is based on facts shown to be erroneous and, accordingly, Record 1 is inaccurate.

<sup>35</sup> Other than the information in Record 1 that is the subject of the notation added in accordance with the Department's decision to permit amendment of it.

<sup>36</sup> Referring to the requirement noted in A4STL6K at [27].

34. I accept that the audio recording constitutes objective evidence of the discussion at the meeting. I have considered the discussion of approximately 45 minutes, as captured by the audio recording, in the order it occurred, in its entirety. Having done so, I am satisfied that the nine paragraphs of Record 1, as recorded by the Deputy Principal, are based on the Deputy Principal's recollection and understanding of a relatively lengthy discussion, whereas the applicant's specific concerns regarding the nine paragraphs of Record 1 (noted at paragraphs 24 to 28 above) are based on the applicant's comparatively detailed recollection of the discussion (assisted by the audio recording) in combination with their interpretation of Record 1.
35. I have carefully considered the applicant's concerns regarding what they perceive to be inaccuracies in Record 1. Generally, these concerns stem largely from the applicant's expectation that Record 1 should capture the same words, level of detail and order in which issues were discussed; however, given the length and nature of a record such as Record 1, only a summary is possible. Consequently the applicant's concerns about the nine paragraphs are based on a relatively literal, detailed examination of the audio recording. For example, in terms of the applicant's concern that certain phrases were not used or used only once, I am satisfied that the Deputy Principal used these phrases to summarise their understanding of comments. Further, in terms of the applicant's concern that certain matters were not discussed in conjunction with one another in portions of the conversation quoted by the applicant, and contention that Record 1's connection of them is erroneous, I consider that the Deputy Principal's understanding was based on the entirety of the 45 minute conversation, which was wide ranging and at times circled back to further discuss particular issues.
36. Given the length of the discussion relative to the length of Record 1, it is unsurprising that the Deputy Principal summarised the parties' comments and set them out in a way which best reflected the Deputy Principal's understanding of their points of view. Further, given the at times circular nature of the discussion, and the at times unclear or imprecise manner in which parties expressed their views, I do not consider the parties' comments, as understood and recorded by the Deputy Principal, the manner in which the Deputy Principal attributed certain comments to one or another of the parents, or the manner in which the Deputy Principal understood that certain comments were related to other comments, were an unreasonable interpretation of the discussion. Accordingly, I am satisfied that Record 1 sets out the Deputy Principal's recollections and opinions of the actual discussion, and is not inconsistent with the audio recording of that discussion. In other words, on the material before me, I am satisfied that the Deputy Principal actually held and accurately recorded their understanding of the meeting in Record 1.
37. Whilst I acknowledge that Record 1 does not contain the wording, expression, level of detail, focus or emphasis desired by the applicant, and that the applicant has a different understanding about the matters discussed during the meeting, I do not consider that the Deputy Principal's recollections and opinions comprise or are based on erroneous facts, simply by virtue of the fact that they diverge from the applicant's understanding of the discussion and interpretation of Record 1. This alone is not enough to render Record 1 inaccurate, incomplete, out of date or misleading, and is therefore not sufficient to enliven the right to amend a document under the IP Act.
38. Given the nature of the information the applicant seeks to amend, the applicant would need to establish that the Deputy Principal did not actually hold the views set out in Record 1.<sup>37</sup> The applicant has not established that this is the case.

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<sup>37</sup> Even if the Deputy Principal was mistaken in their views, and I note here that there is nothing before me to suggest that this is the case, this alone would not justify amendment.

39. For these reasons, I find that:

- the information the applicant seeks to amend in Record 1 is not inaccurate, incomplete, out of date or misleading; and
- the amendments sought to Record 1 may be refused under section 72(1)(a) of the IP Act.

## Record 2

40. Record 2 sets out the Principal's recollection and opinions about a telephone call with the applicant the day before the meeting as follows:

*I was helping answer phones in the office and took a phone call from [the applicant]. [The applicant] appeared very agitated and expressed [the applicant's] displeasure that [applicant] had been advised that [child] was suspended. [The applicant] outlined that [child] had been assaulted and that [child] was suspended for dacking a student. I said that suspension was a standard consequence for dacking as this could be construed as assault. [The applicant] appeared to become angry at this and started arguing this, I repeated the comment. I asked the grade of the child and then explained that I was not aware of the circumstances and that I would ask [the Deputy Principal] to call [the applicant]. [The applicant] continued to be what I felt was aggressive and then said something like we won't get anywhere like this and end the call. As I had just answered the phone 'Good afternoon, [School], [name] speaking. How can I help you?' [the applicant] had no idea I was the Principal and stated this later to [the Deputy Principal] when [the applicant] was informed.*

## The applicant's submissions about Record 2

41. In the amendment application, the applicant stated:

*Re Record 2...*

*This is a record entered by the Principal on ..., some 4 days after the reported conversation. Of note, the record was made after a complaint of sexual misconduct had been made. It is extremely inaccurate and contains blatant lies. It appears to be a record made for retribution, as opposed to accurately record the substance of the conversation.*

*The conversation itself went for about 34 seconds. During the conversation, there were no raised voices, nor arguments.*

*...*

*At the time, I did not realise that I was speaking with the Principal.*

42. The applicant set out their recollection<sup>38</sup> of the telephone conversation with the Principal. '[T]o accurately and fairly represent the conversation', they suggested that Record 2 be amended to state:

*Received telephone call from [the applicant] at ... on ... wishing to speak with Deputy Principal ... about [child's] suspension. Advised that [Deputy Principal's name] was not available and made arrangements for [the Deputy Principal] to call back on [applicant's] preferred number ...*

43. In the external review application, the applicant made further submissions. It is my understanding that the applicant's submissions regarding Record 2 are:

<sup>38</sup> My comments at paragraph 10 above set out why I am proceeding on the basis that the text regarding the telephone call set out in the amendment application is the applicant's recollection rather than a transcript.

- *'It was neither intended, nor was it a fact, that the [the applicant] entered into any argument, or displayed any emotion, as the receiver was not the intended recipient of the call. There exists clear disparity between [the Principal's] claims and the transcript of the conversation, as provided for consideration in the initial application.'*
- *'this information was entered on ... at ..., over three days after the conversation. It was later adjusted on ... at ... The delay in initial reporting casts an immediate question over accurate recollection.'*
- *'Whereas the principal reports agitation, aggressiveness, displeasure, anger and argument in [the] later record, no other report contains such accusations or descriptions. This makes the principal's report unique amongst others recorded in relation to contact occurring within the same 60 minutes, but reported closer to the time of the ending of the conversations.'*
- *'the principal ... received knowledge of three known concerning issues between the phone call, and the time [the Principal] entered [their] contentious record at ... on ... This would explain the disparity between alleged and actual comment, and it would also explain a possible motive as to why [the Principal] would need to include inaccurate description about demeanour during the phone call.'*
- In Record 2, the Principal *'makes no clarification on any basis for the supposed emotion, or does [the Principal] make any attempt to describe any actions to support the basis for [their] comment.'*
- *'Further indications that there has been no genuine belief that there has been any aggression, anger, etc. is that during correspondence, the department has specifically encouraged us to contact the principal direct in correspondence received on ... and ...'*
- Subsequent interactions between the applicant and Principal about 3 months later, as outlined by the applicant, demonstrate that *'the principal has a propensity to make personally disparaging accusations in response to fair challenge, and does not hold genuine belief in those accusations'*.

44. Further, the submissions set out at the third and fourth dot points of paragraph 27 above relate to Record 2, as well as Record 1.
45. The applicant advised OIC that they could not provide a copy of the audio recording relating to Record 2 in a reasonable amount of time, and was therefore willing to proceed in its absence. Otherwise, the applicant has not addressed Record 2 specifically during the external review.

***Is the information in Record 2 inaccurate, incomplete, out of date or misleading?***

46. I have carefully considered the information in Record 2 that the applicant seeks to have amended and the applicant's submissions, as set out above.
47. The applicant contends that Record 2 is out of date, given the "transcript"<sup>39</sup> of their telephone conversation with the Principal set out in the amendment application. Further, the applicant submits that this "transcript" demonstrates that the content of Record 2 is inaccurate and/or incomplete, and therefore misleading.
48. In particular, the applicant contends that because Record 2 was entered *'over three days after the conversation'* and *'later adjusted'*, this *'delay in initial reporting casts an immediate question over accurate recollection.'* It is my understanding that these submissions are directed at suggesting that the aspects of Record 2 regarding the

<sup>39</sup> My comments at paragraph 10 above set out why I am proceeding on the basis that the text in the amendment application regarding the telephone call is the applicant's recollection rather than a transcript, and further address this matter at paragraph 50.

applicant's emotions and conduct during the conversation—that is, [the applicant] *appeared very agitated and expressed [the applicant's] displeasure ... appeared to become angry at this and started arguing ... continued to be what I felt was aggressive*—were concocted by the Principal after the event, rather than being views actually held and accurately recorded by the Principal.<sup>40</sup> In this regard, the applicant contends that, as no other records of conversations within the same 60 minute period ‘*contain ... such accusations or descriptions*’, and ‘*the department has specifically encouraged us to contact the principal direct*’, this indicates ‘*that there has been no genuine belief that there has been any aggression, anger, etc*’.

49. Record 2 is a summary of a brief telephone conversation between the Principal and the applicant, as recalled by the Principal following the conversation. As for Record 1, Record 2 is necessarily reliant on its author's recollection and understanding of the matters discussed with the applicant, opinions regarding which aspects of the conversation should be recorded, and manner of expression.
50. As noted at paragraph 10 above, there is insufficient material before me to establish that the “transcript” set out in the applicant's amendment application is an actual transcript, and I must therefore proceed on the basis that it represents the applicant's understanding of the conversation. On comparing the contents of the “transcript” with Record 2, I am satisfied that Record 2 is based on the Principal's recollection of and opinions regarding the telephone conversation, whereas the applicant's “transcript” and concerns regarding Record 2 are based on their recollection of the telephone discussion.
51. I acknowledge the applicant's view that the telephone call was relatively perfunctory and involved little more than leaving a message for the Deputy Principal. It is my understanding that the applicant refers to other material which, in their view, supports this position and demonstrates that they were not agitated, displeased, angry, argumentative or aggressive during the conversation—namely, records recording other interactions with the applicant around the same time which do not contain references to the applicant being aggressive (based on the applicant's reasoning that if they were being aggressive, the authors of these records would also have noted this), and subsequent departmental correspondence which suggested that they liaise with the Principal regarding certain matters (based on the applicant's reasoning that if they had been aggressive, the Department would not suggest this).<sup>41</sup>
52. I do not accept that the applicant's “transcript” and submissions demonstrate that the Principal's recollections or opinions, as set out in Record 2, comprise or were based on erroneous facts. In terms of the records of conversations and the subsequent departmental correspondence raised by the applicant, I do not consider that this material constitutes evidence regarding the applicant's emotions and conduct during the telephone conversation in question, nor do I consider it pertinent to the Principal's perception and understanding of such emotions or conduct. Accordingly, whilst I acknowledge the applicant's recollection and understanding of the conversation as set out in the “transcript” and submissions, I am satisfied that the Principal actually held and accurately recorded their understanding of the telephone conversation in Record 2.
53. Given the nature of the information the applicant seeks to amend, in order to demonstrate that the statements contained in Record 2 are inaccurate, incomplete, out of date or misleading and enliven the right to have the requested amendments considered, the applicant would need to establish that the Principal did not actually hold the views set

<sup>40</sup> Referring to the requirement noted in *A4STL6K* at [27].

<sup>41</sup> OIC was not provided with copies of these documents in this review. I have proceeded on the basis that the contents of them, as quoted by the applicant in the submissions, are accurate.

out in Record 2<sup>42</sup>. The applicant's differing recollection alone is not enough to amount to Record 2 being inaccurate, incomplete, out of date or misleading, and is therefore not sufficient to satisfy the requirements to amend a document under the IP Act.

54. For these reasons:

- the information the applicant seeks to amend in Record 2 is not inaccurate, incomplete, out of date or misleading; and
- the amendments sought to Record 2 may be refused under section 72(1)(a) of the IP Act.

### Record 3

55. Record 3, which is in two parts, sets out the Deputy Principal's recollection and opinions about telephone calls with the applicant the day before the meeting as follows:

Part 1 regarding first call:

*Contacted [other parent] advised of the suspension for pulling down the pants of a student. [Applicant] contacted school and didn't want [child] suspended or if the suspension stands [applicant] wanted an in school suspension. Advised parent we do not have funds for a suspension at school due to staffing. Parent pressed the point that it is the responsibility of the school to have student checked by an ambulance and many other things. Parent went on to contact Principal and other staff.*

Part 2 regarding second call:

*[The applicant] contacted school after student was suspended for 3 days. Advised parent student was suspended for pulling the pants down of another student during lunch break. Parent asked whether the school had called for an ambulance to check whether [child] had injuries. I advised that we had not called for an ambulance. Parent went on to say that [child] should not receive a suspension particularly as [child] was not wanting to go to school. Discussed with parent that [child] had been copying another student's dance moves and making fun of [student's] voice during lunch. The student had become angry at [child] as [student] asked [child] to stop and [child] didn't. The other student then went to grab [child] and grabbed [child's] thumb. The other student then went to hit [child] and said that [student] hit [child]. [Child] followed up by running up to the student and pulling down [student's] school pants. The other student then started chasing [child] and a teacher intervened and sent both students to the "[particular school location]". While at the [particular school location] the students wrote reports on the incident. Parent wanted to know about first aid, where in the school behaviour management plan it says a student can be suspended for pulling down another student's pants. Also stated that the other student should get 6 days suspension as double what [child] received would be appropriate. Parent went on to ask for the Principal, said [child] was not to speak to any teacher at the school before [child] went home, asked that [child] go to the office of the [named location] as [child's other parent] works there. I said the school finishes in 12 minutes and [child] was in the [particular school location]. [The applicant] then asked was I stopping [child] from going to the [named location]. I said no but I couldn't talk to [child] and call the [particular school location] at the same time. Parent started asking to speak to region, the Principal, and anyone else [they] could to solve [their] problem. Parent talked on the phone for a very long time and concluded I could not assist [them].*

### The applicant's submissions about Record 3

56. In the amendment application, the applicant stated:

<sup>42</sup> Even if the Principal was mistaken in their views, and I note here that there is nothing before me to suggest that this is the case, this alone would not justify amendment.

Re Record 3...

*This is a record entered apparently by [the Deputy Principal], who [the Principal] claims was made on...*

*For clarity, there were two separate phone calls made. The first, brief particulars were obtained about the incident relating to the suspension. It was during this conversation that it was ascertained that [child] had been punched. When asked whether or not [child] was injured, [the Deputy Principal] stated that [they] did not know, and would find out whether or not [child] had sustained any injuries, then call me back. The second conversation occurred after [the Deputy Principal] telephoned me back.*

*It was during the second phone call that discussions surrounding injury management were had. During that conversation, as there was evidence of suspected concussion, it was simply discussed whether or not an ambulance should be called to make that assessment. The agreed treatment was that [child] would go to an independent person outside the school to conduct an assessment.*

...

*In relation to the claimed date of the longer report, the report contains the following statement:*

*"Discussed with parent that [child] had been copying another student's dance moves and making fun of [student's] voice during lunch. The student had become angry at [child] as [student] asked [child] to stop and [child] didn't. The other student then went to grab [child] and grabbed [child's] thumb."*

*This conversation never took place at any stage during the phone call. The accusation that [child] was harassing the other student was not made until [10 days after the meeting].*

...

*At no stage was the suspension of the assailant ever discussed. This statement is a total contrast to what actually stated.*

57. The applicant suggests that [a]s there are two records for the same event, the accuracy and fairness could be addressed by removing the longer of the two records [that is, Part 2].
58. Having carefully considered the applicant's submissions in the external review application, it is my understanding that the applicant's submissions regarding Record 3 are:
  - *'it is particularly disheartening to permit the comment alleged to have been made by the deputy principal in Record 3, 'Also, parent stated that the other student should get 6 days suspension as double what [child] received would be appropriate.' What was actually stated, and available in the audio recording [of the meeting] as demonstrable proof, was 'If you could pass onto the parents that we'll, we hope that [their], their [student], pulls through this as well because we don't, we don't wish, we wish [student] to come to school as well, and um, if you could pass that on for us please that would be, we'd be very happy, and that's right isn't it?'*
  - *'the record is significantly misleading and inaccurate, as it contains details of conversations that were never had, and statements that could not have been made.'*
  - Submissions similar in content to the second paragraph under the heading 'Re Record 3' set out in paragraph 56 above.
  - *'a reasonable question would be to ask if [child] had sustained any injuries, what first aid needed to be provided, and whether or not consideration should be given to call an ambulance, particularly as neither parent were able to immediately attend at the school. This is the discussion that actually transpired. There was no request to speak with the principal, or the region, and there was no statement that the child should not speak to any teacher before [child] went home. There was no question as to whether*

*or not the deputy was stopping any action, and no request to solve any problem. So that it is understandable that the conversation was predominantly around care. The report times the call at around 30 minutes, and highlights comments that were not made or discussed, yet fails to mention that time was taken in making two calls, and also talking with the injured child, and making appropriate arrangements for [child's] care. Given the evidence, first Aid was definitely discussed, as was whether or not it would be appropriate to call an ambulance, or indeed conveying the child to the [named] Hospital instead of engaging QAS. A conversation also took place between the child and [child's parent], to further gauge [sic] injury, and to develop a care plan. The report is incomplete, and therefore inaccurate and misleading as it fails to report the injury concern, and the details of the plan resolved to have the child assessed or injury, and instead concentrates on supposition of the author.'*

59. The applicant's submissions during the external review did not address Record 3 specifically.

***Is the information in Record 3 inaccurate, incomplete, out of date or misleading?***

60. I have carefully considered the information in Record 3 that the applicant seeks to have amended and the applicant's submissions, as set out above.
61. In essence, the applicant submits that Record 3 is inaccurate and misleading as it contains details of matters that were not discussed during the two calls detailed in Record 3 (about the length of suspension the other student should receive) and incomplete, and therefore inaccurate and misleading, as it does not include details of matters that were discussed (the applicant's concerns about any injuries sustained by the applicant's child and a plan to have the applicant's child assessed).
62. Record 3 comprises two parts authored by the Deputy Principal, Part 1 being about 80 words in length and Part 2 being about 350 words in length. Part 1 and 2 record matters discussed during the Deputy Principal's telephone conversations with the applicant and the child's other parent.
63. The applicant submits that *'brief particulars were obtained about the incident'* during the first discussion with the Deputy Principal detailed in Part 1 of Record 3 and the telephone conversation detailed in Part 2 of Record 3 was about 30 minutes in length. Record 3 is a brief summary of the matters discussed, as recalled by the Deputy Principal after the telephone conversations. Again, it is necessarily reliant on the Deputy Principal's recollection and understanding of the conversations, opinions regarding which aspects of the discussion should be recorded, and manner of expression. As such, I do not accept that Record 3 is factually erroneous by virtue of it recording the Deputy Principal's recollections and opinions of what was said, instead of recording what was actually said.
64. Having no information before me which comprises objective evidence of the matters discussed during the telephone conversations, I am satisfied that Part 1 and 2 in Record 3 are based on the Deputy Principal's recollection and understanding of the conversations that occurred during the telephone calls, whereas the applicant's specific concerns regarding Part 1 and 2 are based on their recollection of the conversations, in combination with their interpretation of Record 3.
65. I have carefully considered the applicant's submission that the *'conversation [about [child] had been copying another student's dance moves and making fun of [student's] voice] never took place at any stage during the phone call. The accusation that [child] was harassing the other student was not made until [10 days after the meeting/11 days*



after the telephone conversations that are the subject of Record 3<sup>43</sup>'. In the transcript of the meeting that is the subject of Record 1, the Principal is recorded as noting that the child was mimicking, pointing at and laughing at the other student. As this meeting occurred at 7am the day after telephone calls in question (as evidenced by the statement '[m]eeting with parents 7am' in Record 1), and as the telephone calls were made towards the end of the school day (as evidenced by the statement '*school finishes in 12 minutes*' in Part 2 of Record 3), I consider it reasonable to conclude that the Deputy Principal had to hand information about the applicant's child's alleged actions (that is, mimicking, pointing and laughing), mentioned them to the applicant during one of the telephone conversations, and recorded doing so in Part 2 of Record 3 as '[d]iscussed with parent that [child] had been copying another student's dance moves and making fun of [student's] voice during lunch'.

66. I also note the applicant's reference to comments they made in the meeting that is the subject of Record 1 (which occurred the day after the telephone conversations that are the subject of Record 3), in which the applicant asked that their wish that the other student '*pulls through this as well*' be passed on to the student's parents. It is my understanding that the applicant considers that these comments support the submission that they did not state that '*the other student should get 6 days suspension as double what [child] received*', as recorded in Part 2 of Record 3. While I accept that the applicant made comments about the other student pulling through during the meeting, I do not consider that such comments are material to a telephone conversation that occurred the day before the meeting. Accordingly, the comments raised by the applicant are insufficient to persuade me that the Deputy Principal was not of the understanding that the applicant made the abovementioned statement.
67. I further note the applicant's submission that the longer telephone conversation '*was predominantly around care*' and concern that Record 3 was incomplete as it did not record more details regarding '*the injury concern, and the details of the plan resolved to have the child assessed or injury*'. Whilst I acknowledge that Record 3 does not contain the wording, expression, focus, emphasis or level of detail desired by the applicant, I do not consider that either paragraph is inconsistent with the applicant's submissions in relation to what was discussed during the telephone conversations detailed in Record 3.
68. Taking these considerations into account, while I acknowledge that the applicant has a different understanding of the conversations to the Deputy Principal, I do not consider that this difference establishes that the Deputy Principal's recollections of the conversations comprise or are based on erroneous facts. Rather, on the material before me, I am satisfied that the Deputy Principal actually held and accurately recorded their understanding of the meeting in Record 3.
69. For these reasons, I find that:
  - the information the applicant seeks to amend in Record 3 is not inaccurate, incomplete, out of date or misleading; and
  - the amendments sought to Record 3 may be refused under section 72(1)(a) of the IP Act.

**If the Records are inaccurate, incomplete, out of date or misleading, should the discretion to refuse to amend them be exercised in any event?**

70. Given my findings at paragraphs 39, 54 and 69 above, the discretion to consider whether to refuse to amend the Records is not enlivened, and I am not required to consider the

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<sup>43</sup> And Record 2.

applicant's amendment requests further. Notwithstanding this, for completeness, I will now address this issue below.

71. As stated at paragraph 17 above, even where there is objective evidence to support an applicant's contention that information is inaccurate, incomplete, out of date or misleading, this would merely enliven my discretion to consider the requested amendment. There are a number of considerations a decision-maker may appropriately take into account in determining whether or not to exercise the discretion to amend a record of information.
72. In *3DT2GH*, the Assistant Information Commissioner noted that the Information Commissioner had previously recognised the relevance of the following criteria when considering whether the discretion should be exercised:<sup>44</sup>
  - (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.*
73. Further, previous decisions of the OIC and other Australian jurisdictions<sup>45</sup> establish that in considering whether to exercise the discretion to refuse to amend information, a decision-maker may take into account that it is not the purpose of the amendment provisions to:<sup>46</sup>
  - *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;*
  - *correct any perceived deficiencies in the work undertaken by agencies or re-investigating matters.*
74. I am satisfied that amending the Records in accordance with the applicant's request would not be appropriate. Not only would it destroy the integrity of public records, which form part of the applicant's child's OneSchool profile, it would also artificially substitute the applicant's views for the recollection and opinions of the authors, that is, the Principal and Deputy Principal. It is clear from the applicant's requests and submissions that the applicant remains aggrieved about matters that were discussed during the meeting and telephone conversations. However, as previously noted, the focus of the amendment provisions of the IP Act is 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. The very nature of Records 1, 2 and 3—that is, file notes of the Principal and Deputy Principal recording their recollections and opinions about

<sup>44</sup> As noted in, for example, *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008), 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 502-503.

<sup>45</sup> Applying substantially similar legislative provisions.

<sup>46</sup> *3DT2GH* at [18]. Footnotes omitted.

telephone conversations and a meeting—are such that they are not types of records to which the IP Act's scheme for amendment is intended to apply. The amendment provisions of the IP Act cannot be used to alter the recollections and opinions of the Principal and Deputy Principal when those opinions and recollections were held by them and the Records merely reflect this. Permitting amendment of the Records would, in my view, distort the overall record of what in fact transpired during the process, and as already noted, it is not the purpose of the amendment provisions of the IP Act to permit a re-writing of history.

75. In *3DT2GH*, 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:<sup>47</sup>

*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.*

76. These comments are also pertinent in this matter. I consider that amending the Records in accordance with the amendment application would amount to re-writing them in the applicant's words, rather than the Principal and Deputy Principal's words, in an effort to override the stated recollections and opinions of the Principal and Deputy Principal, in a circumstance where disputed issues can be addressed via other processes.
77. I do not consider the content of the Records to be inaccurate, incomplete, out of date or misleading, and in any event, I consider that, in the circumstances of this case, the applicant's amendment requests can be refused.

## DECISION

78. I affirm the Department's decision to refuse the applicant's requested amendments.
79. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**A Rickard**  
**Assistant Information Commissioner**

**Date: 20 February 2019**

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<sup>47</sup> At [51].

## APPENDIX

### Significant procedural steps

Date	Event
17 April 2018	OIC received the application for external review of the internal review decision of the Department dated 29 March 2018.
22 May 2018	OIC notified the applicant and the Department that it had accepted the external review application. OIC requested that the Department provide a copy of an audio recording the applicant gave it in support of the request to amend Record 1.
1 June 2018	OIC received the requested audio recording from the Department.
27 August 2018	OIC asked the applicant to consider the content of notations that they would accept, as a means of informally resolving the review.
29 August 2018	The applicant advised OIC of their proposal regarding certain notations to the Records.
31 August 2018	OIC asked the Department whether it would make certain notations to the Records, as proposed by the applicant, as a means of informally resolving the review; and requested that the Department provide a copy of an audio recording the applicant gave it in support of the request to amend Record 2.
4 September 2018	The Department advised OIC that it did not consider the proposed notations to be acceptable; and it was not in possession of the requested audio recording.
5 September 2018	OIC requested that the applicant provide a copy of the audio recording they had given the Department in support of the request to amend Record 2.
6 September 2018	OIC asked the applicant whether they would accept certain notations (including attachment of transcripts of relevant audio recordings), as agreed to by the Department, as a means of informally resolving the review; and repeated its request to the applicant regarding the audio recording relating to Record 2.
7 September 2018	The applicant advised OIC that they did not agree to the proposed notations; and queried whether the Department had provided OIC with a transcript of the audio recording relating to Record 2.
12 September 2018	OIC requested that the applicant provide a copy of the audio recording relating to Record 2; and confirm that there was no audio recording relating to Record 3.  The applicant advised OIC that they could not access a copy of the audio recording relating to Record 2 in a reasonable amount of time; and confirmed that there was no audio recording relating to Record 3.
31 October 2018	OIC conveyed a preliminary view to the applicant.
1 November 2018	OIC received the applicant's submission.
12 November 2018	OIC received the applicant's further submission.
31 January 2019	In response to an update from OIC, the applicant provided a further submission.