



Decision and Reasons for Decision

Citation:	<i>L39 and Department of Housing and Public Works [2020] QICmr 4 (7 February 2020)</i>
Application Number:	314473
Applicant:	L39
Respondent:	Department of Housing and Public Works
Decision Date:	7 February 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - information appearing in a ministerial correspondence briefing note recording complaints made by the applicant - whether information is inaccurate, incomplete, out of date or misleading - whether agency entitled to exercise discretion to refuse amendment - section 72 of the <i>Information Privacy Act 2009 (Qld)</i>.

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Housing and Public Works (**Department**) for amendment of a ministerial briefing note (**Briefing Note**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**).² Specifically, the applicant sought amendment of the statement that the Department was addressing the applicant's concerns with his 'continued support'.
2. The Department decided to refuse the requested amendment on the basis that the information sought to be amended was not inaccurate, incomplete, out of date or misleading.³ The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁴
3. I affirm the Department's decision to refuse to amend the Briefing Note for the reasons set out below.

Background

4. Significant procedural steps taken by OIC in conducting this external review are set out in the Appendix to these reasons.

¹ Amendment application dated 19 December 2018.

² Briefing Note dated 10 July 2017.

³ Decision dated 29 January 2019.

⁴ External review application dated 25 February 2019.

Reviewable decision

5. The decision under review is the Department's decision dated 29 January 2019.

Issue for determination

6. The issue for determination is whether the Department is entitled to refuse the requested amendment under section 72 of the IP Act.
7. In its decision,⁵ the Department offered to add a notation to its records as contemplated by section 76 of the IP Act. OIC attempted to settle the review on the basis of such a notation,⁶ however, the applicant and Department were unable to reach an agreement as to the form of this notation. This decision considers the separate issue of whether the Department was entitled to refuse to amend the Briefing Note.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including in footnotes and Appendix). I have also had regard to the *Human Rights Act 2019* (Qld),⁷ particularly the right to seek, receive and impart information.⁸ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁰
9. The applicant provided several detailed submissions to OIC.¹¹ I have considered these submissions to the extent they are relevant to the issue for determination.
10. The applicant's submissions detail his concerns about the conduct of Departmental officers in responding to his complaints. The applicant also requests further particular action by the Department in response to his concerns and alleges that the Department has produced misleading and inaccurate documents. In this decision, I have made findings in relation to whether the applicant's request for amendment can be refused. It is not within my jurisdiction to investigate concerns raised in relation to the conduct of the Department and its officers.

Relevant law

11. The IP Act confers on an individual the right to amend documents of an agency containing the individual's personal information, where the personal information is inaccurate, incomplete, out of date or misleading.¹²

⁵ Dated 29 January 2019.

⁶ OIC is required by section 103 of the IP Act to promote settlement of the external review.

⁷ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

¹⁰ I also note the observations made by Bell J in *XYZ* at [573] on the interaction the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) that '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'

¹¹ Applicant's submissions received 28 February 2019, 3 April 2019, 9 August 2019, and 14 and 23 December 2019, telephone conversations on 1 July 2019 and 5 September 2019 and proposed notation received on 19 September 2019 and 23 December 2019.

¹² Section 41 of the IP Act.

12. A decision maker may refuse to amend a document if not satisfied that the personal information is inaccurate, incomplete, out of date or misleading.¹³ These words are not defined in the IP Act, and therefore, should be given their ordinary meaning.
13. For information to be considered '*inaccurate*', the Information Commissioner has previously found that an applicant must establish not only that the information inaccurately represents the underlying events or issues, but that the authoring individual had not actually held and accurately entered into the official record their particular understanding of those events.¹⁴
14. The term '*misleading*' is not defined in the IP Act. The ordinary dictionary definition¹⁵ of '*mislead*', as set out below, is therefore relevant:
1. to lead or guide wrongly; lead astray.
 2. to lead into error of conduct, thought or judgement.
15. In considering whether information is misleading, the Information Commissioner has previously observed¹⁶ 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.*
16. The wording of section 72 of the IP Act provides that the decision maker is not limited to the specific grounds for refusing amendment set out in that section. Consequently, the decision maker retains a discretion to refuse to amend a relevant document.¹⁷ A decision maker may also take into account the fact that it is not the purpose of the amendment provisions to:
- re-write history,¹⁸ as this destroys the integrity¹⁹ 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 record²⁰
 - re-write a document in words other than the author's²¹
 - review the merits or validity of official action;²² or
 - correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.²³

Findings

17. Having considered the Briefing Note, I am satisfied that it comprises the applicant's personal information as it identifies the applicant and details his complaint about the fire alarm system in a nearby residential building.

¹³ Section 72(1)(a)(i) of the IP Act.

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

¹⁵ Online Macquarie Dictionary: www.macquariedictionary.com.au (accessed 14 May 2019).

¹⁶ *In 3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (**3DT2GH**) at [15] citing *Buhagiar and Victoria Police* (1989) 2 VAR 530, per Jones J.

¹⁷ **3DT2GH** at [11].

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

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

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

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

²² *Crewdson* at [24].

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

18. The applicant seeks amendment of the statement in the Briefing Note that his concerns are being addressed with his '*continued support*'.²⁴ The applicant submits he withdrew his support due to '*misleading material*'²⁵ and further states:

*My support... was based on (identification of) the failing within the departmental systems and also with these fire assets and tenants... I do not support any person or organisation that needs to continually produce such misleading / inaccurate documents.*²⁶

19. On external review, OIC has received evidence in the form of a handwritten note by the applicant²⁷ that he withdrew his support on 2 August 2017 and therefore the Briefing Note dated 10 July 2017 is now inaccurate, incomplete, out of date or misleading.
20. On its face, the Briefing Note is a 'point in time' document, the purpose of which is stated to be providing '*the Minister's office with additional background information and context to support the information contained in the proposed response*'²⁸ to the applicant. The Briefing Note was endorsed by the General Manager, Service Delivery, Housing and Homelessness Services on 7 July 2017 and approved by the Minister for Housing and Public Works and Minister for Sport's Office on 10 July 2017.²⁹
21. As stated at paragraph 19, the applicant acknowledges he withdraw his support *after* the creation of the Briefing Note. On that basis, I consider the statement that the issues were being addressed with the applicant's '*continued support*' is correct as at the relevant time, that is, when the Briefing Note was signed and approved. Therefore, I am satisfied that the Briefing Note accurately records the relevant facts *at the time of its creation*, and is not inaccurate, incomplete, out of date or misleading.
22. Even if my findings above are incorrect—and the relevant part of the Briefing Note may properly be regarded as inaccurate, incomplete, out of date or misleading—I am satisfied that the Department would nevertheless be justified in exercising its discretion to refuse to amend the Briefing Note.
23. It is not the purpose of the amendment provisions to re-write history³⁰ or correct perceived deficiencies in agency conduct.³¹ I acknowledge the Briefing Note does not reflect the applicant's *current* point of view, however, the amendment the applicant seeks goes to the integrity of the Briefing Note created by a Departmental officer, at a point in time. Permitting the requested amendment would violate the integrity of a public record and would amount to a re-writing of the facts as they were at the time the record was made.
24. Accordingly, I consider the Department was entitled to refuse the requested amendment.

²⁴ The Department advised OIC that scope of the amendment application was clarified in a meeting with the applicant on 7 January 2019 and provided to OIC a handwritten note from this meeting. OIC confirmed with the applicant that this was the sole issue for determination in a letter dated 29 July 2019 and email dated 30 January 2020.

²⁵ Applicant's submissions received 9 August 2019.

²⁶ Applicant's undated proposed notation received by OIC on 20 September 2019 and 23 December 2019.

²⁷ Handwritten note of applicant's meeting with the Department dated 7 January 2019.

²⁸ The Briefing Note, at page 1.

²⁹ This is apparent on the face of the Briefing Note and also noted in the Department's decision dated 29 January 2019.

³⁰ *3DT2GH* at [50] and [51]. The Assistant Information Commissioner also comprehensively canvassed principles and considerations relevant to the exercise of the discretion to refuse to amend at [16]-[18]. I have relied on the same principles here. See also *DenHollander* at [96].

³¹ *Shaw* at [57].

DECISION

25. I affirm the Department's decision to refuse to amend the Briefing Note under section 72(1)(a)(i) of the IP Act.
26. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 7 February 2020

APPENDIX**Significant procedural steps**

Date	Event
25 February 2019	OIC received the application for external review.
26 February 2019	OIC notified the applicant and the Department that the external review had been received and requested relevant procedural documents.
28 February 2019	OIC received submissions from the applicant.
21 March 2019	OIC received the requested procedural documents from the Department.
2 April 2019	OIC notified the applicant and the Department that the external review had been accepted.
3 April 2019	OIC received submissions from the applicant.
4 June 2019	OIC spoke to the Department and received submissions by telephone.
1 July 2019	OIC spoke to the applicant and received submissions by telephone.
29 July 2019	OIC conveyed a preliminary view to the applicant.
9 August 2019	OIC received submissions from the applicant.
5 September 2019	OIC spoke to the applicant and received submissions by telephone.
19 September 2019	OIC received the proposed notation from the applicant.
20 September 2019	OIC conveyed the applicant's notation to the Department and proposed settlement of the review.
14 December 2019	OIC received submissions from the applicant.
17 December 2019	The Department advised OIC that it did not agree to settle review on the basis of the applicant's proposed notation.
18 December 2019	OIC conveyed the Department's position to the applicant and his final requested submissions.
23 December 2019	OIC received submissions from the applicant.