



## Decision and Reasons for Decision

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<b>Citation:</b>	<i>DJ6G7Y and Queensland Police Service</i> [2019] QICmr 19 (5 June 2019)
<b>Application Number:</b>	314188
<b>Applicant:</b>	DJ6G7Y
<b>Respondent:</b>	Queensland Police Service
<b>Decision Date:</b>	5 June 2019
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - appearing in a police report - information recording that certain views and beliefs attributed to the applicant - information recording that a phone call to police station was attributed to the applicant - whether information is inaccurate, incomplete, out of date or misleading – no objective evidence suggesting information does not accurately reflect author’s opinions - whether agency entitled to exercise discretion to refuse amendment - section 72 of the <i>Information Privacy Act 2009</i> (Qld).</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Police Service (**QPS**) for amendment of information contained in a street check summary report (**Report**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)<sup>2</sup> Specifically, the applicant sought removal of two pieces of information (**relevant information**) and inclusion of a further reason for QPS actions.
2. QPS decide to refuse the requested amendments on the basis that the information sought to be amended was not inaccurate, incomplete, out of date or misleading.<sup>3</sup> The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS’s decision as it related to the application to amend the relevant information.<sup>4</sup>
3. I affirm QPS’s decision to refuse amendment of the relevant information for the following reasons.

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<sup>1</sup> By way of letter dated 22 August 2018, received on 23 August 2018.

<sup>2</sup> The applicant’s application was headed ‘application for internal review’. However, QPS advised OIC in a telephone call on 24 October 2018 that due to the nature of the request, the application was treated as an original application for amendment.

<sup>3</sup> Decision dated 26 September 2018.

<sup>4</sup> External review application dated 30 September 2018.

## Background

4. The applicant has previously had partial access to the Report<sup>5</sup> and QPS added a notation to the Report following a previous application for amendment.<sup>6</sup>
5. The applicant then applied again to access the Report, including the notation. QPS decided to release the entire Report and notation, which included information that was not previously released to the applicant, including the relevant information.
6. On external review, the applicant asserts that the earlier release of the Report contains less information than the most recent release, and therefore QPS must have added information to the Report, other than the agreed notation. There is no evidence that QPS added information to the Report after it was partially released to the applicant during a previous external review, apart from the agreed notation. OIC has explained this to the applicant.<sup>7</sup>
7. Significant procedural steps taken by OIC in conducting this external review are set out in the Appendix to these reasons.

## Reviewable decision

8. The decision under review is QPS's decision dated 26 September 2018.

## Evidence considered

9. The applicant provided detailed written submissions to OIC.<sup>8</sup> I have carefully considered them to the extent they are relevant to the issues for determination in this review.
10. Some of the applicant's submissions detail significant concerns that the applicant holds about the conduct of QPS officers. The applicant also seeks access to further information. As explained to the applicant during the external review, I reiterate that in this decision I have made findings in relation to whether the applicant's request for amendments can be refused. It is not within my jurisdiction to investigate concerns raised in relation to QPS officers or to consider whether the applicant is entitled to access additional documents.
11. The evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).

## Issue/s for determination

12. The applicant's external review request relates to two items set out in the original application for amendment.<sup>9</sup> Therefore, the issue for determination is whether these requested amendments may be refused under section 72 of the IP Act.

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<sup>5</sup> The applicant received a partially redacted copy of the first page of the report in the informal resolution of a previous external review.

<sup>6</sup> The external review dealing with amendment of the Report was informally resolved when QPS agreed to add a notation in terms accepted by the applicant.

<sup>7</sup> In letters dated 14 November 2018 and 24 January 2019.

<sup>8</sup> Received on 30 September 2018, 22 November 2018 and 14 February 2019.

<sup>9</sup> OIC confirmed the external review was limited to these two items by correspondence dated 15 May 2019.

## Relevant law

13. The cumulative effect of sections 41 and 44(1) of the IP Act confer on an individual the right to apply for amendment of documents of an agency, or Minister, containing the individual's personal information, where the following requirements are satisfied:
- i) the applicant has previously **obtained access** to the documents said to contain the applicant's personal information
  - ii) the information which the applicant seeks to amend is the **applicant's personal information**; and
  - iii) the personal information is **inaccurate, incomplete, out of date or misleading**.
14. In respect of element (ii), '*personal information*' is defined in section 12 of the IP Act as:
- ...information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*
15. The requirements of section 44 of the IP Act<sup>10</sup> are such that in an external review of a decision refusing amendment, a practical onus shifts to an applicant<sup>11</sup> to provide evidence to support their case in favour of amendment.<sup>12</sup>
16. 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.<sup>13</sup>
17. The term '*misleading*' is not defined in the IP Act. The ordinary dictionary definition<sup>14</sup> 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.*
18. In considering whether information is misleading, the Information Commissioner has previously observed<sup>15</sup> 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...*
19. Satisfaction of the preceding requirements does not itself entitle an applicant to amendment. Due to the opening words of section 72(1) of the IP Act—'*[w]ithout limiting the grounds on which the agency or Minister may refuse to amend the document*', a decision-maker may still refuse to amend a relevant document—this provision confers

<sup>10</sup> Section 44(4) of the IP Act requires an applicant to, among other things, state both the way in which the applicant claims the information is inaccurate, incomplete, out of date or misleading and the amendments the applicant claims are necessary for the information to be accurate or not misleading and the amendments the applicant claims are necessary for the information to be accurate or not misleading.

<sup>11</sup> Generally, on external review, the agency bears the onus to justify its decision (section 100(1) of the IP Act).

<sup>12</sup> *Doelle and Legal Aid Office* (Qld) (1993) 1 QAR 207 at [18] in the context of equivalent provisions of the repealed *Freedom of Information Act 1992* (Qld).

<sup>13</sup> *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) at [27].

<sup>14</sup> Online Macquarie Dictionary: [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au) (accessed 14 May 2019).

<sup>15</sup> 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.

on a decision-maker discretion whether to grant or refuse an amendment application. While the section sets out specific grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds. Consequently, even where an applicant has satisfied each of the requirements noted above, discretion is retained to refuse to amend a relevant document.<sup>16</sup> In *3DT2GH*,<sup>17</sup> the Information Commissioner explained the operation of the discretion as follows:

*To replace words actually used by the authoring officer with the text sought by the applicant would result in a contrived document containing invented contents, essentially putting words into the mouth of the author in a manner that would distort the official historical record. This alone would, in my view, justify an exercise of the discretion to refuse to amend the [document] in terms as requested by the applicant.*

20. A decision maker may also take into account the fact that it is not the purpose of the amendment provisions to:
- re-write history,<sup>18</sup> as this destroys the integrity<sup>19</sup> 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<sup>20</sup>
  - re-write a document in words other than the author's<sup>21</sup>
  - review the merits or validity of official action;<sup>22</sup> or
  - correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.<sup>23</sup>

## Findings

### ***Has the applicant previously obtained access to the personal information?***

21. Yes, the applicant previously obtained access to the Report which she seeks to amend.<sup>24</sup> The Report identifies the applicant and is about her. I am therefore satisfied that the Report comprises her personal information.

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

22. The applicant firstly seeks removal of a sentence recording that she appeared 'anti-police' and viewed QPS and other government agencies as corrupt. The applicant submits that the records are a '*deliberate falsification... for the purpose of causing harm*' and the named officer '*deliberately distorts the truth.*'
23. The applicant also explains that she did not make an anonymous telephone call that was attributed to her and therefore this information should also be removed from the Report.<sup>25</sup> In support of this submission, the applicant provides details of her personal circumstances and living arrangements that are incongruent with those described in the anonymous phone call. For example, the Report records that the anonymous caller

<sup>16</sup> *3DT2GH* at [11].

<sup>17</sup> At [51].

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

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

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

<sup>21</sup> *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.

<sup>22</sup> *Crewdson* at [24].

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

<sup>24</sup> The applicant previously applied for and received a copy of the Report from QPS under the IP Act.

<sup>25</sup> In the application for external review and submissions received on 22 November 2018 and 14 February 2019.

described someone ‘*walking around her yard and trying to get into her house*’ whereas the applicant lives in a third floor apartment. The anonymous caller is also recorded as telling the police officer, ‘*I pay your wage*’, however the applicant states she has not paid taxes since being diagnosed with cancer.

24. The applicant also made the following submissions:<sup>26</sup>
- ‘*it is not possible to “violate the integrity” of a report which... has no integrity*’
  - the Report ‘*is not the original record but a significantly altered record... with malicious intent and is a clear case of defamation*’
  - ‘*the “opinion” was not “actually held or accurately entered into the official record,” but deliberately and maliciously invented*’; and
  - ‘*OIC seems to make its decisions based solely on assumptions that any record authored by a member of the QPS is accurate and any amendment proposed by a victim of police corruption is “invented contents”.*’
25. I have considered the relevant information and the applicant’s submissions in support of her contentions that this information is inaccurate or misleading. The relevant information records that the authoring officer believed that the applicant was the anonymous caller and held specific views. I note that the officer described that the applicant ‘*appeared*’ to hold these views, and the reporting officer was ‘*of the belief*’ that the applicant was the anonymous caller.
26. The relevant information comprises the opinions and beliefs of a QPS officer and is recorded as such. I acknowledge that the applicant has a different perspective on the subject events. However, opinions of a ‘provisional nature’ are not incorrect or misleading if they were actually held and correctly recorded in a way that reflects this tentative nature.<sup>27</sup>
27. The Report comprises the opinions, perspectives and recollections of the authoring officer. In determining whether the information in the Report is *inaccurate* or *misleading*, I must consider whether the Report accurately records the opinions of its author regardless of whether the applicant agrees with these views. There is no objective evidence before me, apart from the applicant’s assertion, indicating the authoring officer did not actually hold and accurately enter those views and beliefs into the Report at the time of its creation. On that basis, I am not satisfied that these parts of the Report are inaccurate or misleading.

### **Was QPS entitled to refuse to amend the Report?**

28. However, even if my above findings are incorrect—and the relevant parts of the Report may properly be regarded as inaccurate, incomplete, out of date or misleading—QPS would nevertheless be justified in refusing to amend the Report given the specific wording of section 72 of the IP Act, which does not limit the grounds on which an agency can refuse to amend a document.
29. It is not the purpose of the amendment provisions to permit the ‘re-writing of history’,<sup>28</sup> particularly where to do so would violate the integrity of the original record. Yet this is precisely what would occur were the amendments requested by the applicant to be made. I acknowledge that the Report may not reflect the applicant’s point of view,

<sup>26</sup> 22 November 2018 and attached to submissions dated 14 February 2019.

<sup>27</sup> *Crewdson* at [20] and [34].

<sup>28</sup> *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].

however, the amendments the applicant is seeks go to the integrity of the Report created by a QPS officer in the performance of their routine duties. Permitting the requested amendments by the removal of information in the Report would, in my view, destroy the integrity of public records and would amount to a re-writing of history.

30. As previously noted, the amendment provisions in the IP Act are limited in scope and effect and are not intended to be used to determine disputed questions of opinion when the record merely reflect the opinion of the author, as is the case here. For this reason, I consider that QPS was entitled to refuse the requested amendments.

## **DECISION**

31. I affirm QPS's decision to refuse to amend the Report under section 72(1)(a) of the IP Act.
32. 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.

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**S Martin**  
**Assistant Information Commissioner**

**Date: 5 June 2019**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
30 September 2018	OIC received the external review application.
3 October 2018	OIC notified QPS and the applicant that the review application had been received and requested procedural documents from QPS.
22 October 2018	OIC received the requested documents from QPS.
14 November 2018	OIC notified QPS and the applicant that the external review had been accepted and conveyed a preliminary view to the applicant.
22 November 2018	OIC received written submissions from the applicant.
24 January 2019	OIC conveyed a second preliminary view to the applicant.
14 February 2019	OIC received submissions from the applicant.
4 March 2019	OIC wrote to the applicant confirming the issues under consideration in this external review would be finalised by formal decision.
5 March 2019	OIC provided QPS with an update.
15 May 2019	OIC wrote to the applicant confirming the external review scope.