



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Y86 and Sunshine Coast Hospital and Health Service [2019] QICmr 45 (25 October 2019)</i></b>
<b>Application Number:</b>	<b>314666</b>
<b>Applicant:</b>	<b>Y86</b>
<b>Respondent:</b>	<b>Sunshine Coast Hospital and Health Service</b>
<b>Decision Date:</b>	<b>25 October 2019</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - application to amend information contained in medical records - whether the information sought to be amended is inaccurate, incomplete, out of date or misleading - section 72(1)(a) of the 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 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Sunshine Coast Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for amendment of his medical records (**Records**) to remove a particular medical diagnosis (**diagnosis**).<sup>2</sup>
2. The Health Service decided<sup>3</sup> to refuse the requested amendment, on the basis that the diagnosis was not inaccurate, incomplete, out of date or misleading.
3. The applicant then applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for an external review.
4. For the reasons set out below, I affirm the Health Service's decision to refuse the requested amendment.

#### Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and the Appendix).

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<sup>1</sup> On 3 May 2019.

<sup>2</sup> The applicant previously obtained access to the Records and upon the applicant's request, the Health Service had added a notation to the Records recording the applicant's disagreement with the diagnosis.

<sup>3</sup> On 29 May 2019.

<sup>4</sup> On 17 June 2019.

## Reviewable decision

7. The decision under review is the Health Service's decision dated 29 May 2019.

## Relevant law

8. In this external review, the Health Service has the onus of establishing that its decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>5</sup>

9. Sections 41 and 44 of the IP Act confer a right for an individual to apply for amendment of a document of an agency, or Minister, containing the individual's personal information,<sup>6</sup> where the following requirements are satisfied:

- (a) the applicant has previously obtained access to the document said to contain the applicant's personal information
- (b) the information which the applicant seeks to amend is the applicant's personal information; and
- (c) the personal information is inaccurate, incomplete, out of date or misleading.

10. While the IP Act is to be administered with a pro-amendment bias,<sup>7</sup> 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 in paragraph 9(b) and (c) above are *not* satisfied,<sup>8</sup> or if the document in question does *not* form part of a functional record.<sup>9</sup> However, section 72(1) confers on a decision-maker discretion whether to grant or refuse an amendment application.<sup>10</sup> Consequently, even where an applicant has satisfied each of the requirements noted in paragraph 9 above, the decision-maker retains discretion to refuse to amend a relevant document.<sup>11</sup>

11. 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>12</sup> as this destroys the integrity<sup>13</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>14</sup>
- re-write a document in words other than the author's<sup>15</sup>
- review the merits or validity of official action;<sup>16</sup> or
- correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.<sup>17</sup>

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<sup>5</sup> Under section 100(1) of the IP Act.

<sup>6</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>7</sup> Section 58(4) of the IP Act.

<sup>8</sup> Section 72(1)(a) of the IP Act.

<sup>9</sup> Section 72(1)(b) of the IP Act.

<sup>10</sup> *DJ6G7Y and Queensland Police Service* [2019] QICmr 19 (5 June 2019) at [19].

<sup>11</sup> *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) (**3DT2GH**) at [10]-[12].

<sup>12</sup> *DenHollander and Department of Defence* [2002] AATA 866 (30 September 2002) (**DenHollander**) at [96].

<sup>13</sup> To ensure that the document, as a public record, is preserved without any alteration.

<sup>14</sup> *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 (**Crewdson**) at [34].

<sup>15</sup> *Re Traynor and Melbourne and Metropolitan Board of Works* (1987) 2 VAR 186 (**Traynor**) at 190, cited in *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>16</sup> *Crewdson* at [24].

<sup>17</sup> *Shaw and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 3 July 2008) at [57].

## Issue for determination

12. It is not in dispute that:
  - the applicant has previously obtained access to the Records
  - the Records contain the applicant's personal information; or
  - the Records comprise functional records.
13. The applicant's submissions explain that he holds concerns about the manner in which his medical assessment, which led to the diagnosis, was conducted and the circumstances that led to that assessment.<sup>18</sup> He also raises concerns that the Health Service has not, despite his request, addressed his complaints about his treatment<sup>19</sup> nor identified to him the '*defining indicators*' for the diagnosis.<sup>20</sup> As explained to the applicant during the external review, it is not within my jurisdiction to investigate or address the concerns he has raised about his medical treatment or to consider whether he is entitled to access further information about the diagnosis.
14. I understand that upon the applicant's request, the Health Service has added a notation to the Records recording the applicant's disagreement with the diagnosis.
15. The issue for determination is whether the applicant's requested amendment may be refused under section 72(1) of the IP Act.

## Findings

### ***Is the diagnosis information in the Records inaccurate, incomplete, out of date or misleading?***

16. The applicant submits<sup>21</sup> that the diagnosis is incorrect because:
  - it was based upon an '*inaccurate profile of [his] life*',<sup>22</sup> '*misinformation*',<sup>23</sup> '*bad information*',<sup>24</sup> '*defamatory information*'<sup>25</sup> and events which did not occur<sup>26</sup>
  - it was made without consideration, or understanding, of his health and situation;<sup>27</sup> and
  - he was misdiagnosed and mistreated by the Health Service.<sup>28</sup>
17. He is also concerned that the diagnosis misrepresents his health status and this will influence his future treatment and leave him '*significantly vulnerable to mistreatment*'.<sup>29</sup>
18. The diagnosis is a record of the medical opinion of the applicant's assessing doctor at a point in time.
19. In determining whether this record of the applicant's diagnosis is *inaccurate, incomplete, out of date or misleading*, I must consider whether the diagnosis accurately records the

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<sup>18</sup> The applicant indicated that his concerns are being investigated by '*legal and government departments*'.

<sup>19</sup> External review application.

<sup>20</sup> Submissions dated 4 August 2019. Further, in his submissions dated 26 September 2019, the applicant submits that the onus of on the Health Service to present and prove the reason for the diagnosis '*or they are in breach of the ACT*'.

<sup>21</sup> I have considered all of the applicant's submissions, which included extracts of the Records.

<sup>22</sup> Submissions dated 4 August 2019.

<sup>23</sup> Submissions dated 4 August 2019.

<sup>24</sup> Submissions dated 4 August 2019.

<sup>25</sup> Submissions dated 4 August 2019.

<sup>26</sup> Submissions dated 26 September 2019.

<sup>27</sup> Submissions dated 4 August 2019.

<sup>28</sup> Submissions dated 4 August 2019.

<sup>29</sup> Submissions dated 4 August 2019.

medical opinion of its author at the time it was made, regardless of whether the applicant agrees with that opinion. I acknowledge that the applicant disagrees with the diagnosis and considers it was not formed correctly. However, there is no objective evidence before me indicating that the assessing doctor did not actually hold and accurately enter that medical opinion into the Records at the time of their creation. I also recognise that an individual's health diagnosis may change between treating practitioners, or over the course of time,<sup>30</sup> and this in itself does not render conflicting records inaccurate.

20. On this basis, I am not satisfied that the Records of the applicant's diagnosis by the medical practitioner treating him at a particular point in time is inaccurate, incomplete, out of date or misleading.

### ***Was the Health Service entitled to refuse to amend the Report?***

21. Even if my above findings are incorrect—and the diagnosis in the Records may properly be regarded as inaccurate, incomplete, out of date or misleading—the Health Service would nevertheless be justified in refusing to amend the Records 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.
22. As noted in paragraph 11 above, it is not the purpose of the amendment provisions to permit the 're-writing of history',<sup>31</sup> particularly where to do so would violate the integrity of the original record.
23. The applicant may well disagree with the diagnosis, however, in seeking to delete the diagnosis from the Records, the applicant is attempting to rewrite the history of his interactions with the Health Service. In my view, deleting the diagnosis would result in the Records being an incomplete representation of the opinions of the medical officers who treated the applicant, thereby detracting from the accuracy and integrity of the Records.
24. For these reasons, I consider that the Health Service was entitled to refuse the requested amendment.

### **DECISION**

25. I affirm the Health Service's decision to refuse to amend the Records under section 72(1)(a) of the IP Act.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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

**Date: 25 October 2019**

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<sup>30</sup> Re George Resch and Department of Veterans' Affairs [1986] AATA 94 (11 April 1986) at [37].

<sup>31</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] in *3DT2GH*. I have relied on the same principles here. See also *DenHollander* at [96].

## Appendix

### Significant procedural steps

Date	Event
17 June 2019	OIC received the external review application.
10 July 2019	OIC notified the applicant and the Health Service that the external review had been accepted.
4 August 2019	OIC received submissions from the applicant.
8 August 2019	OIC received further submissions from the applicant
26 September 2019	OIC conveyed a preliminary view to the applicant. OIC received further submissions from the applicant.
9 October 2019	OIC confirmed its preliminary view to the applicant.