



## Decision and Reasons for Decision

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Citation:	<i>J64 and Metro North Hospital and Health Service</i> [2020] QICmr 16 (20 March 2020)
Application Number:	314794
Applicant:	J64
Respondent:	Metro North Hospital and Health Service
Decision Date:	20 March 2020
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - AMENDMENT OF PERSONAL INFORMATION - information appearing in a discharge summary in the applicant's medical records - whether information is inaccurate, incomplete, out of date or misleading - whether agency entitled to exercise discretion to refuse amendment - section 72 of the 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</i> (Qld).</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to Metro North Hospital and Health Service (**Health Service**), under the *Information Privacy Act 2009* (Qld) (**IP Act**), for amendment of a discharge summary appearing in his medical records.<sup>2</sup>
2. The Health Service decided to refuse the requested amendments on the basis that the information was not incorrect, out of date or misleading.<sup>3</sup>
3. The applicant applied for external review of the Health Service's decision.<sup>4</sup>
4. I affirm the Health Service's decision and find that it was entitled to refuse the requested amendments under section 72 of the IP Act.

### Reviewable decision

5. The reviewable decision is the Health Service's decision dated 30 July 2019.

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<sup>1</sup> Application dated 28 June 2019.

<sup>2</sup> Version 3 of a discharge summary dated 20 May 2014.

<sup>3</sup> Decision dated 30 July 2019.

<sup>4</sup> External review application received 26 August 2019.

## Background

6. The applicant made previous applications for amendment of the discharge summary<sup>5</sup> and the Health Service granted certain requested amendments. In this external review, I am considering the applicant's application for amendment of version 3 of the discharge summary (**Discharge Summary**).

## Evidence considered

7. 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),<sup>6</sup> particularly the right to seek, receive and impart information.<sup>7</sup> 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.<sup>8</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>9</sup>

## Issue/s for determination

8. The issue for determination is whether the Health Service is entitled to refuse the requested amendments under section 72 of the IP Act.
9. The applicant provided several detailed submissions to OIC.<sup>10</sup> I have carefully considered these submissions and taken these into account to the extent they are relevant to the issue for determination. The applicant has been advised that this review will not include providing answers to his questions, particularly those he asks about different versions of the discharge summary and the contents of those versions.<sup>11</sup>

## Relevant law

10. 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.<sup>12</sup>
11. A decision maker may refuse to amend a document if they are not satisfied that the personal information is inaccurate, incomplete, out of date or misleading.<sup>13</sup> These words are not defined in the IP Act, and therefore, should be given their ordinary meaning.
12. 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>14</sup>

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<sup>5</sup> Dated 20 May 2014.

<sup>6</sup> Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

<sup>7</sup> Section 21 of the HR Act.

<sup>8</sup> *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].

<sup>9</sup> 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.*'

<sup>10</sup> Applicant's submissions in person on 14 and 21 October 2019 and telephone submissions on 4 December 2021 and 5, 6, 13, 19 and 27 February 2020.

<sup>11</sup> In my letter to the applicant dated 23 January 2020.

<sup>12</sup> Section 41 of the IP Act.

<sup>13</sup> Section 72(1)(a)(i) of the IP Act.

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

13. The term 'misleading' is not defined in the IP Act. The ordinary dictionary definition 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.<sup>15</sup>

14. In considering whether information is misleading, the Information Commissioner has previously observed 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.*

15. 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.<sup>16</sup>

16. 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>17</sup> 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<sup>18</sup>
- re-write a document in words other than the author's<sup>19</sup>
- review the merits or validity of official action;<sup>20</sup> or
- correct any perceived deficiencies in the work undertaken by agencies or re-investigate matters.<sup>21</sup>

## Applicant submissions

17. On external review, the applicant provided extensive written and oral submissions explaining the reasons he believes the Discharge Summary is incomplete, out of date, incorrect or misleading.<sup>22</sup> I have summarised these as follows:

- the telephone number recorded as the applicant's contact number in two places should be removed as it was not his telephone number at the date of the Discharge Summary
- the author of the three versions of the Discharge Summary should be recorded on the current version in order to make them accountable for what they have written
- the note recording the applicant's history of particular issues under active problems should be moved to previous medical history
- certain notes to be removed entirely
- no medications on admission should be listed as the applicant's admission records including property list do not record that he had any medications on his person at admission

<sup>15</sup> Macquarie Dictionary (7<sup>th</sup> ed, 2017) 'mislead' (def 1 and 2).

<sup>16</sup> 3DT2GH and Department of Housing and Public Works (Unreported, Queensland Information Commissioner, 26 November 2012) (3DT2GH) at [11].

<sup>17</sup> DenHollander and Department of Defence [2002] AATA 866 at [96].

<sup>18</sup> Crewdson v Central Sydney Area Health Service [2002] NSWCA 345 (Crewdson) at [34].

<sup>19</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>20</sup> Crewdson at [24].

<sup>21</sup> Shaw and Medical Board of Queensland (Unreported, Queensland Information Commissioner, 3 July 2008) (Shaw) at [57].

<sup>22</sup> Applicant's submissions in person on 14 and 21 October 2019, documents delivered to OIC on 14 February 2020 and telephone submissions on 4 December 2019 and 5, 6, 13, 19 and 27 February 2020.

- the medication at discharge notation should be removed as it was not on the original discharge summary
  - the reasons certain medications were started, stopped or unchanged should be recorded
  - an entry in the clinical history of a pancreas report should record 'past history' rather than 'history'
  - the referring doctor's details have been deleted, but should be re-instated
  - a complete record of the applicant's wounds should be included
  - the cause of the injuries to his feet requires clarifying; and
  - certain information should be removed or replaced in the clinical history recorded in the MR head report.
18. The applicant also explained that this Discharge Summary was provided to another health facility upon his transfer and he requires these amendments in order to amend the records of that other health facility. The applicant submits that the injuries he sustained were not the result of misadventure, as has been recorded throughout his medical records, rather he was the victim of a crime which has been covered up by the Health Service and the police have failed to properly investigate.

## Findings

19. I acknowledge the applicant's submissions that the Discharge Summary contains information that is incorrect, incomplete, out of date and misleading and I also note the extensive documentary evidence he has provided to support his contention. Weighing against this, I note that the Health Service's decision indicates that the information included in the Discharge Summary was obtained from the applicant's treating health professionals and reflects the information gathered during the applicant's admission. In the case of the applicant's telephone number and current treating doctor, the Health Service explained that the system generating the Discharge Summary automatically fills certain fields based on the current information available.
20. I note that the applicant has made previous applications for amendment of the Discharge Summary and the Discharge Summary is no longer the record that was initially created at the time of the applicant's discharge.<sup>23</sup> In some instances, the applicant is dissatisfied with the way the document was amended. I also accept that the applicant has highlighted certain instances where the Discharge Summary is inconsistent with records he has obtained from other agencies relating to the same timeframe and events.<sup>24</sup>
21. The applicant is concerned that a crime against him has been covered up and he believes that amending these records will assist him to have that matter reviewed and enable him to amend documents held by another health facility. I consider that to do so would amount to an attempt to re-write the Discharge Summary in the applicant's preferred words, determine questions of medical opinion disputed by the applicant, or to correct what the applicant perceives to be deficiencies in his treatment by a number of agencies and individuals, including the Health Service.
22. I am satisfied that this is not the proper purpose or intent of the amendment provisions. Having carefully considered the Discharge Summary, the applicant's submissions and supporting evidence and the Health Service's decision, I am satisfied that the Health Service was entitled to refuse to amend the discharge summary.

<sup>23</sup> In a telephone discussion with the Health Service on 7 February 2020, we were advised that Version 3 is the only version of the Discharge Summary available in their records.

<sup>24</sup> For example, the applicant notes that the Discharge Summary records that he was found on the 'floor' whereas a report from another agency records 'thick grass in park'.

23. As noted previously, it is not the purpose of the amendment provisions to enable an applicant to re-write a document in words other than the author's,<sup>25</sup> review the merits or validity of official action,<sup>26</sup> or correct any perceived deficiencies in the work undertaken by agencies.<sup>27</sup> In this case, the applicant is seeking to rewrite a hospital Discharge Summary according to his recollection of events some years after the relevant document was written and communicated to another Health Service. I am satisfied that in these circumstances, the Health Service was entitled to refuse the amendments requested by the applicant.

## **DECISION**

24. I affirm the Health Service's decision to refuse the requested amendments of the Discharge Summary under section 72 of the IP Act.
25. 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: 20 March 2020**

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<sup>25</sup> *Traynor* at 190.

<sup>26</sup> *Crewdson* at [24].

<sup>27</sup> *Shaw* at [57].

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

<b>Date</b>	<b>Event</b>
26 August 2019	OIC received the application for external review.
28 August 2019	OIC requested procedural documents from the Health Service.
29 August 2019	OIC received the requested procedural documents from the Health Service.
24 September 2019	OIC advised the applicant and the Health Service that the external review had been accepted.
14 and 21 October 2019	The applicant provided submissions and evidence in support of his application in person.
4 December 2019	The applicant provided submissions by telephone.
23 January 2020	OIC conveyed a preliminary view to the applicant.
5 and 6 February 2020	The applicant provided submissions by telephone.
7 February 2020	The Health Service advised OIC that only the most recent version of the discharge summary is retained.
13 February 2020	The applicant provided submissions by telephone.
14 February 2020	The applicant provided documents in support of his submissions.
19 and 27 February 2020	The applicant provided submissions by telephone.