



Decision and Reasons for Decision

Citation:	<i>T85 and Wide Bay Hospital and Health Service</i> [2022] QICmr 38 (9 August 2022)
Application Number:	316446
Applicant:	T85
Respondent:	Wide Bay Hospital and Health Service
Decision Date:	9 August 2022
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY - AMENDMENT OF PERSONAL INFORMATION - information contained in the applicant's health records - whether information is inaccurate, incomplete, out of date or misleading - whether agency entitled to exercise discretion to refuse amendment - whether amendment by deletion or notation appropriate - section 72 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Wide Bay Hospital and Health Service (**Health Service**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to amend certain personal information contained within his health records.¹ The information the applicant sought to amend falls into two categories.
2. The Health Service decided to refuse to amend the health records, as it was not satisfied that the information was inaccurate, incomplete, out of date or misleading.² The applicant sought internal review of that decision³ and the Health Service affirmed its original decision on internal review.⁴
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Health Service's internal review decision.⁵
4. On external review, the applicant provided evidence to support his contention that the first category of information was incorrect. The Health Service agreed to add a notation to the applicant's health records to reflect this. While the applicant agreed to the proposed notation, he also requested that this category of information be removed

¹ The application is dated 3 August 2021 and was received by the Health Service on 10 August 2021.

² Decision dated 9 September 2021.

³ By email dated 7 October 2021.

⁴ Decision dated 3 November 2021.

⁵ External review application dated 24 November 2021.

from his health records.⁶ Further, the applicant maintained that the second category of information is inaccurate and misleading.

5. For the reasons set out below, I vary the Health Service's decision and find that:

- the first category of information within the applicant's health records can be amended by notation; and
- the applicant's request to amend the second category of information within his health record may be refused.

Reviewable decision and evidence considered

6. The reviewable decision is the Health Service's internal review decision dated 3 November 2021.
7. Significant procedural steps taken in this review are set out in the Appendix. 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).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to freedom of expression and reputation.⁷ I consider a decision-maker will be '*respecting and acting compatibly with*' those rights and others prescribed in the HR Act, when applying the law prescribed in the IP Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

Issue for determination

9. There is no dispute that the applicant has had access to his health records and that these records comprise his '*personal information*'.¹⁰
10. The information which the applicant seeks to have amended within his health records (**Information in Issue**) comprises references to:
- the existence of a domestic and family violence order; and
 - a history of aggression and domestic and family violence.
11. The issue for determination is whether the Health Service was entitled to refuse to amend the applicant's health records.

Relevant law

12. Under the IP Act, an individual who has had access to a document of an agency may apply to the agency for amendment of any part of the individual's personal

⁶ Additionally, the applicant requested that OIC issue a formal decision in respect of the first category of information.

⁷ Sections 21 and 25(b) of the HR Act.

⁸ *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 [111].

⁹ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*... 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*'.

¹⁰ As there is also no dispute that the health records comprise a functional record, it is unnecessary to consider section 72(1)(b) of the IP Act in this decision.

information¹¹ contained in the document that the individual claims is inaccurate, incomplete, out of date or misleading.¹²

13. Without limiting the grounds on which the agency may refuse to amend the document, the agency may refuse to amend the document because the agency is not satisfied that the personal information is inaccurate, incomplete, out of date or misleading.¹³ However, even if it is shown that the information an applicant seeks to amend is inaccurate, incomplete, out of date or misleading, the IP Act confers a discretion on the decision-maker to refuse amendment.¹⁴
14. While an agency has the onus on external review of establishing that its decision was justified,¹⁵ *'the practical or evidentiary onus shifts to the party challenging the decision to provide evidence in support of the contention that the party is entitled to amendment on the basis that the documents in question contain information which is inaccurate, incomplete, out of date or misleading'*.¹⁶
15. If the agency decides to amend the document which is the subject of the amendment application, the agency may make the amendment by either altering the personal information or adding an appropriate notation to the personal information.¹⁷ If a notation is added, it must state how the information is inaccurate, incomplete, out of date or misleading and, if the information is claimed to be incomplete or out of date, set out the information required to complete the information or bring it up to date.¹⁸

Findings

References to the existence of a domestic and family violence order

16. The applicant provided OIC with a range of evidence supporting his position that he is not the subject of a domestic violence order and that references to such an order in his health records are therefore inaccurate or misleading.¹⁹ On external review, the Health Service accepted that the references were inaccurate or misleading and agreed to the applicant's health records being amended to reflect this.
17. I have noted above that, while section 41 of the IP Act provides the applicant with a right to amend his personal information where it is inaccurate or misleading, sections 72 and 74 of the IP Act confer a discretion upon the decision maker as to whether an amendment should be made and whether this should be by way of alteration or notation. For this reason, as both the applicant and the Health Service agreed that

¹¹ '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.'

¹² Section 41 of the IP Act. Section 44 of the IP Act sets out the requirements for making an amendment application.

¹³ Section 72(1)(a) of the IP Act.

¹⁴ In *Purrer v Office of the Information Commissioner & Anor* [2021] QCATA 92 (**Purrer**), Daubney J made the following observation about section 72(1) of the IP Act at [28]: *'the prefatory words of the section clearly operate to retain in the relevant agency or Minister a general discretion to refuse to amend'*.

¹⁵ Section 100(1) of the IP Act.

¹⁶ *Purrer* at [32]. Refer also to section 44(4) of the IP Act, which requires an applicant to state both the way in which the information is inaccurate, incomplete, out of date or misleading and the amendments necessary for the information to be accurate or not misleading.

¹⁷ Section 74 of the IP Act. Under section 118(b) of the IP Act, the Information Commissioner has the power on external review to decide any matter in relation to an application that could have been decided by the agency under the IP Act.

¹⁸ Section 75 of the IP Act.

¹⁹ This relevant evidence includes (i) a certified copy of a letter he received from the local Magistrates Court dated 22 October 2020, which confirms that no records about the applicant or his wife relating to domestic violence orders can be found on the court database (which records details of all domestic violence orders made in Queensland Courts since late 2000), and (ii) his Queensland Court Outcomes sheet which shows his finalised criminal offences and which does not record any information about a domestic violence order. The applicant provided a number of additional documents to support his contention on this issue, but those documents did not provide any information on the existence or otherwise of a domestic violence order and are not relevant for me to address in this decision.

references to the existence of a domestic violence order were inaccurate and misleading, and that an amendment can be made, I have proceeded to consider the form of amendment that is appropriate in the circumstances.²⁰

18. The Health Service proposed to amend the applicant's health records by adding a notation where the relevant references appeared in his health records, stating: '*This record is inaccurate, misleading or deceptive because there is no current evidence of a DVO being taken out*'. I communicated this proposed notation to the applicant.²¹
19. The applicant's response seemed to accept the proposed notation being added to his records, however, he also requested that '*all the false references [be] removed or redacted*' and '*purged*'.²² On this basis, the applicant proposed that his health records be amended by both deleting all references to the existence of a domestic and family violence order and adding the notation proposed by the Health Service.
20. I consider that *deleting* the references to a domestic and family violence order from the applicant's health records would destroy the integrity of the Health Service's record keeping process.²³ This information accurately records what the Health Service staff wrote at the time, although it has since been proven to be factually incorrect.
21. On the other hand, the notation proposed by the Health Service:
 - makes it clear that the references to a domestic and family violence order in the applicant's health records are incorrect and misleading; and
 - explains why, without altering the integrity of its original record.²⁴
22. For these reasons, I consider that references to a domestic and family violence order within the applicant's health records should be amended by notation and the Health Service's proposed notation is appropriate in the circumstances.
23. Finally, I note that the applicant provided OIC with a letter from the Minister for Health and Ambulance Services to the Member for Burnett dated 1 October 2021, which relates to the '*procedures for mental health service clinicians verifying court orders in medico-legal reports*'. The last paragraph of this letter states: '*Should the psychiatrist become aware that information contained within a report is not valid, they can amend the report to ensure all information remains current and accurate.*' The applicant submitted that this letter outlines the steps the doctors '*should have taken to confirm an actual court order had been issued*'²⁵ and that it supports his request for the information to be '*purged*'.²⁶ While I have considered the applicant's submissions on this issue, the provided letter refers to the way in which clinicians can access and amend information as part of their duties with the Health Service, which is not directly relevant to the amendment provisions of the IP Act.

References to a history of aggression and domestic and family violence

24. I have carefully considered the applicant's health records (as provided by the Health Service) and the relevant sections which refer to aggression and domestic and family

²⁰ Section 74 of the IP Act.

²¹ By email dated 25 March 2022.

²² Email from the applicant to OIC on 8 April 2022.

²³ *DenHollander and Department of Defence* [2002] AATA 866 (*DenHollander*) at [96].

²⁴ In accordance with section 75(a) of the IP Act.

²⁵ External review application.

²⁶ Applicant's submissions dated 8 April 2022.

violence, noting that the specific wording used in the health records varies—my words in this decision are simply a summary of that category of information.

25. The applicant has provided extensive submissions (and supporting evidence) on external review in support of his case that this category of information is incorrect and misleading.²⁷ He asserts that there is no evidence to support these references to aggression and domestic and family violence, and he has had to ‘*prove [our] innocence*’.²⁸ He provided a detailed background about his health, marriage, family and employment, together with certified copies of statutory declarations signed by himself, his wife and son in relation to the events in January 2017 when police and ambulance staff attended his residence in relation to the emergency examination authority. He relies on the contents of these declarations to show that he was not aggressive or violent on that date. I have carefully considered these submissions and acknowledge that the applicant strongly disagrees with the information recorded within his health records.
26. However, for information to be considered ‘*inaccurate*’, an applicant must establish not only that the information inaccurately represents the underlying events or issues, but also, that the author had not actually held and accurately entered their particular understanding of those events into the official record.²⁹ The term ‘*misleading*’ is not defined in the IP Act or the *Acts Interpretation Act 1954* (Qld). This term is therefore used in its ordinary sense and the ordinary dictionary definition of ‘*mislead*’ (ie ‘*to lead or guide wrongly; lead astray*’ or ‘*to lead into error of conduct, thought or judgement*’³⁰) is relevant.
27. The amendment provisions under the IP Act are limited in their scope and effect, and 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 particular document. Relevantly, the provisions are not intended to:
 - rewrite history,³¹ as this destroys the integrity of the record keeping process;³² or
 - determine disputed questions of opinion (including expert opinion), when that opinion was actually held and accurately entered in the official record.³³
28. In this context, I am not required to investigate whether the applicant does in fact have a history of aggression or domestic and family violence. Rather, the scope of my inquiry in this case is limited to deciding whether the information which has been conveyed to, and recorded by, the clinicians was recorded correctly in the applicant’s health records.
29. The Health Service relevantly explained that:³⁴

The information in question is various notations by clinicians involved in the assessment and treatment of the applicant as part of referral to the Mental Health, Alcohol & Other Drugs Service (MHAODS).

²⁷ I have carefully considered all the information provided by the applicant. To the extent it is relevant to the issues for determination, I have addressed it in my reasons for decision above. As explained in paragraph 21, the letter from the Minister for Health and Ambulance Services to the Member for Burnett on 1 October 2021 is not directly relevant to the amendment provisions of the IP Act, and so I have not considered it here.

²⁸ Email submissions dated 8 April 2022.

²⁹ *A4STL6K and Queensland Health* (Unreported, Queensland Information Commissioner, 6 September 2013) at [27].

³⁰ *Macquarie Dictionary* (7th ed, 2017) ‘mislead’ (def 1 and 2).

³¹ *DenHollander* at [96].

³² To ensure that, in a record keeping context, the document is preserved without any alteration as a public record.

³³ *Crowdson v Central Sydney AHS* [2002] NSWCA 345 at [34].

³⁴ In its internal review decision dated 7 October 2021.

These notes are copies of progress notes that have either been completed contemporaneously or type written into the Consumer Integrated Mental Health & Addiction application (CIMHA) as soon as practicable after the assessment/interview has taken place.

30. Based on my assessment of the applicant's health records, I note that some of the information records direct observations of the applicant which were made by clinicians and other professionals. Other information is collateral information, provided by third parties, and in my view this information has been recorded contemporaneously in the progress notes, clinical reports and other documents relevant to the *Mental Health Act 2016* (Qld). Despite the applicant's submissions, there is nothing to suggest that these direct observations and collateral information were inaccurately recorded in the applicant's health records or that they are misleading.
31. Accordingly, I am not satisfied that this category of information is inaccurate, incomplete, out of date or misleading and the amendments requested by the applicant for this category of information may be refused under section 72(1)(a)(i) of the IP Act.
32. I am also satisfied that, even if the applicant had demonstrated that this category of information was inaccurate or misleading, the discretion to refuse amendment could be exercised.³⁵ As noted above, this information records both direct observations and information received by clinicians and other professionals during the applicant's health assessment and treatment. While the applicant considers these references should be 'purged', I consider their deletion from the health records could damage the integrity of those records. This is not, in my view, an outcome which the amendment provisions in the IP Act were intended to permit.

DECISION

33. For the reasons set out above, I vary³⁶ the Health Service's decision and I find that the first category of information in the applicant's health records can be amended by notation and the applicant's request to amend the second category of information in his health records may be refused.

T Lake
Acting Assistant Information Commissioner

Date: 9 August 2022

³⁵ See footnote 14 above.

³⁶ As a delegate of the Information Commissioner, under section 139 of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
26 November 2021	OIC received the application for external review (including supporting information).
16 December 2021	OIC notified the applicant and the Health Service that the external review application had been accepted and requested information from the Health Service.
7 January 2022	OIC received the requested information from the Health Service.
4 March 2022	OIC conveyed a preliminary view to the Health Service and invited the Health Service to propose wording for a notation.
25 March 2022	<p>The Health Service notified OIC that it accepted OIC's preliminary view and proposed the notation it would agree to add to the applicant's health records.</p> <p>OIC notified the applicant of the notation proposed by the Health Service and conveyed a preliminary view to the applicant concerning the balance of his amendment request. The applicant was invited to provide submissions supporting his case if he did not accept the preliminary view.</p>
8 April 2022	OIC received the applicant's submissions (and supporting information).
14 April 2022	OIC notified the Health Service that the applicant had not accepted the preliminary view and that the external review would be finalised by a formal decision.