



Decision and Reasons for Decision

Application Number: 311438

Applicant: A4STL6K

Respondent: Queensland Health

Decision Date: 6 September 2013

Catchwords: **ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – application to amend information in a letter from the agency to the applicant’s professional registration body – grounds on which amendment may be refused – whether information is inaccurate, incomplete, out of date or misleading – whether agency entitled to exercise discretion to refuse to amend information – section 72 of the *Information Privacy Act 2009 (Qld)***

REASONS FOR DECISION

Summary

1. The applicant applied¹ under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to amend part of a letter from Queensland Health (**QH**) to the Queensland Nursing Council² summarising the contents of an investigation report.
2. QH refused to amend the letter under section 72 of the IP Act as it was not satisfied the information was inaccurate, incomplete, out of date or misleading. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to not amend the relevant information.
3. The part of the letter the applicant seeks to amend is generally consistent with relevant content in the investigation report, and there is no objective evidence to suggest it does not accurately reflect the author’s interpretation of that latter document. Accordingly, the information is not inaccurate, incomplete, out of date or misleading. QH was therefore entitled to refuse to amend the letter.
4. In any event, even if the information was inaccurate, incomplete, out of date or misleading, QH was nevertheless entitled to exercise the discretion to refuse to amend the information. Amending official correspondence actually sent and received would violate the integrity of the official record.

¹ By application dated 4 February 2013.

² Now, as I understand, the Queensland Board of the Nursing and Midwifery Board of Australia, itself a board of the Australian Health Practitioner Regulation Agency. For ease of reference, I have simply referred to the ‘Queensland Nursing Council’.

Background

5. The applicant raised various issues and allegations with QH, which ultimately resulted in QH conducting a formal investigation and preparing a report concerning same (**Investigation Report**).³
6. Following completion of this process, QH then wrote to, among others, the Queensland Nursing Council,⁴ noting the contents of the Investigation Report (**Letter**).⁵ The Letter included a brief passage⁶ summarising observations in the Investigation Report reflecting on the applicant (**Information in issue**).
7. The applicant contends the Information in Issue in the Letter misrepresents the Investigation Report, so as to render the former inaccurate, incomplete, out of date or misleading within the meaning of sections 41 and 44 of the IP Act.
8. Significant procedural steps relating to the application and external review process are set out in the appendix to this decision.

Reviewable decision

9. The decision under review is QH's decision dated 25 March 2013 refusing to amend the Information in Issue as it appears in the Letter.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Relevant law

11. The cumulative effect of sections 41 and 44(1) of the IP Act is to confer on an individual a right to apply for amendment of documents of an agency containing the individual's personal information,⁷ 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.
12. QH carries the ultimate legal onus to justify its decision.⁸ However, the requirements of section 44 of the IP Act⁹ are such that in an external review of a decision to refuse to amend information: "[a] *practical or evidentiary onus shifts to [an applicant] to provide*

³ The applicant has previously sought access under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Investigation Report. QH refused access under section 47(3)(a) of the RTI Act, on the basis the Investigation Report comprised exempt information under section 48 and schedule 3, section 10(4) of the RTI Act. QH's decision was subsequently affirmed by the Right to Information Commissioner on external review. As it may tend to identify the applicant, I have not included the citation of that latter decision in these reasons.

⁴ The applicant's professional registration body.

⁵ Specifically, letter dated 20 May 2010, from the Manager Human Resources of the Health Services District in which the applicant was employed to the Queensland Nursing Council.

⁶ Appearing against the third bullet point on the second page of the Letter, the text of which is extracted at paragraph 17 of these reasons.

⁷ '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.

⁸ Section 100(1) of the IP Act.

⁹ 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 to be necessary for the information to be accurate or not misleading.

*evidence to support ... [their] entitlement to relief under [the IP Act] on the basis that the documents in issue contain information that is inaccurate, incomplete, out-of-date or misleading”.*¹⁰

13. Importantly, an agency may still refuse to amend a relevant document even where an applicant satisfies the requirements outlined in paragraph 11. This is due to the opening words of section 72(1) of the IP Act, which provide:

72 Grounds on which amendment may be refused

(1) *Without limiting the grounds on which the agency or Minister may refuse to amend the document, the agency or Minister may refuse to amend the document because—*

(a) *the agency or Minister is not satisfied—*

(i) *the personal information is inaccurate, incomplete, out of date or misleading; ...*

[my emphasis]

14. Section 72 of the IP Act thus confers a discretion on a decision-maker whether to grant or refuse an amendment application. While the provision specifies grounds on which amendment may be refused, the decision-maker is not limited solely to those grounds.

Findings

15. I am satisfied the first two requirements specified in paragraph 11 have been met. The applicant has previously had access to the Letter and it contains his personal information.
16. The issues for determination are therefore whether:
- the applicant has demonstrated that the Information in Issue is inaccurate, incomplete, out of date or misleading, and, if so,
 - QH was nevertheless entitled to refuse to amend that information, under the discretion conferred by section 72 of the IP Act.

17. The applicant relevantly contends the Information in Issue is inaccurate, incomplete or misleading. As alluded to above, this text purports to summarise commentary in the Investigation Report mentioning the applicant, as follows:

Investigation report

The Ethical Standards Unit made a number of observations and recommendations in the investigation report including:

...

- *the complainant failed to meet his own obligations to report suspected official misconduct in a timely manner.*

18. The applicant, in essence, submits that the Information in Issue misrepresents the Investigation Report. The applicant contends that the Investigation Report contains no information of the kind stated in the Information in Issue, and that the Letter's author has therefore fabricated an unfounded allegation that damages the applicant's good name and personal and professional reputation.¹¹

¹⁰ *Doelle and Legal Aid Office (Qld)* (1993) 1 QAR 207 at paragraph 18, considering the amendment provisions of the repealed *Freedom of Information Act 1992* (Qld), the terms of which were materially indistinct from those of the IP Act.

¹¹ See the applicant's amendment application dated 4 February 2013.

19. The applicant in his amendment application requested various actions in redress, most of which raise matters irrelevant to the issues to be determined in this review.¹² The applicant did, however, request the Information in Issue be removed from the Letter.
20. As noted above, the applicant has not¹³ actually had access to the Investigation Report. In making the submissions summarised in paragraph 18, he instead relies on various secondary sources,¹⁴ some of which refer to the outcomes of the relevant investigation. As I understand his submissions, the applicant argues these secondary materials support his contention that the Investigation Report contains no content of the kind the Information in Issue purports to summarise.
21. I am not persuaded that these secondary sources permit the conclusions the applicant seeks to draw – i.e. that they suggest any inconsistency between the contents of the Investigation Report and the Information in Issue.
22. In any event, the proper construction of these documents is irrelevant, and not a matter on which it is necessary to dwell. This is because the key issue in this review is not whether there exists a material inconsistency between the Information in Issue and other secondary sources containing commentary on the Investigation Report,¹⁵ but the Information in Issue and the Investigation Report itself. I am not satisfied that there is.
23. Unlike the applicant, I have had the advantage of reviewing the Investigation Report, and of comparing it with the Information in Issue. The Investigation Report does indeed contain observations referring to the applicant. While not a word for word recitation of same, the Information in Issue is generally consistent with those observations.¹⁶
24. On this basis alone, I am not satisfied that the applicant has demonstrated the Information in Issue is inaccurate, incomplete, out of date or misleading.
25. Additionally, however, it is worth bearing in mind the nature of the Information in Issue – i.e. it essentially reflects not just the content of the Investigation Report, but the author's interpretation or understanding of that content. Accordingly, even if it were the case that the Information in Issue could be said to misrepresent or inaccurately recount relevant parts of the Investigation Report, that would not, on my understanding of applicable principles, of itself enliven the right to have the request for amendment considered.
26. As Deputy President Todd of the Administrative Appeals Tribunal has observed,¹⁷ what is amended under amendment rights of the kind embodied in section 41 of the IP Act is not:

...information, but a record of information. Thus incorrect information can be recorded correctly. The record ought not be amended simply because, qua record, the information that it correctly records is incorrect information...it ...[is] not for an agency or the Tribunal to cure what was considered to have been an incorrectly formed opinion.

¹² The applicant requested that QH acknowledge that the Information in Issue is unfounded and fabricated, that the Queensland Nursing Council be informed of same, and that responsible employees be held accountable for their actions. In this regard, I should also note that the applicant's submissions in the course of this review include submissions raising issues, asking questions or seeking outcomes that are outside my jurisdiction or similarly irrelevant to the issues I am required to determine.

¹³ To my knowledge.

¹⁴ Relevant documents were referred to in and/or variously attached to the applicant's amendment application, external review application and submissions on external review. They include several pieces of correspondence, a transcript of proceedings in a matter initiated by the applicant in the Queensland Civil and Administrative Tribunal, and a file note summarising a grievance.

¹⁵ Such that the Information in Issue in the Letter could therefore be said to be inaccurate, incomplete or misleading.

¹⁶ As I advised the applicant by way of letter dated 15 August 2013.

¹⁷ *Cox and Department of Defence* (1990) 20 ALD 499, at 502.

27. In other words, where, as here, disputed information comprises a specific individual's interpretation of events or issues – i.e. the author of the Letter's understanding of relevant parts of the Investigation Report – an amendment applicant must establish not only that that information inaccurately, incorrectly or misleadingly represents the underlying events or issues, but that the authoring individual had not actually held and accurately entered into the official record¹⁸ their particular understanding of said events.
28. There is in this case nothing—other than the applicant's unsubstantiated assertions to the contrary—before me to suggest that the Information in Issue does anything other than accurately reflect what the author wrote. Accordingly, I am not satisfied the Information in Issue is inaccurate, incomplete, out of date or misleading.
29. For these reasons, I find that:
- the Information in Issue is not inaccurate, incomplete, out of date or misleading; and
 - QH was therefore entitled to refuse to amend the Letter.
30. In view of the above, it is not strictly necessary for me to consider whether QH would have been entitled to exercise the discretion to refuse to amend the Information in Issue under section 72 of the IP Act. For the sake of completeness, however, I note that even if my findings as recorded in the preceding paragraph are incorrect—and the Information in Issue is properly regarded as inaccurate, incomplete, out of date or misleading—QH would nevertheless be justified in refusing to amend the Letter. This is because to do so would essentially 're-write history' and destroy the integrity of a public record.
31. As Assistant Information Commissioner Jefferies noted in a substantially similar case:¹⁹
50. *... it is not the purpose of the amendment provisions to permit the 're-writing of history', 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.*
51. *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 Letter in terms as requested by the applicant.*
32. The above comments are pertinent in this case. Amending a piece of official correspondence in the manner the applicant requests—i.e. by removing or altering text—would violate the integrity of the original record, creating an artificial document divorced from the original as actually sent and received, thereby 'removing the historical trail'.²⁰ This is not, in my view, an outcome the right of amendment is intended to permit,²¹ and to allow such a result would be inappropriate.

¹⁸ Paraphrasing the relevant principle as stated in *Crewdson v Central Sydney AHS* [2002] NSWCA 345 at paragraph 34.

¹⁹ *3DT2GH and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 26 November 2012) at paragraphs 50 and 51, the Assistant Information Commissioner having comprehensively canvassed principles and considerations relevant to the exercise of the discretion to refuse to amend at paragraphs 16-18, including the specific considerations discussed in the paragraphs excerpted in these reasons. See also *DenHollander and Department of Defence* [2002] AATA 866 at paragraph 96.

²⁰ *DenHollander*, at paragraph 96.

²¹ A view reinforced by the existence of section 76 of the IP Act, which entitles an applicant to require an agency refusing to amend a document to add to the document a notation stating: the way an applicant claims the information to be inaccurate, incomplete, out of date or misleading, and the amendments the applicant claims are necessary for the information to be accurate or not misleading. This is a mechanism that allows an applicant to put on record their 'side of the story', whilst ensuring the 'historical trail' is not obscured and the integrity of the original document preserved. The notation provision was twice brought to the applicant's attention during the course of this external review (by letters dated 5 July 2013 and 15 August 2013) but the applicant elected to have the matter determined formally.

33. I do not consider the Information in Issue to be inaccurate, incomplete, out of date or misleading, and, in any event, I consider QH would nevertheless be justified in refusing the requested amendment in the particular circumstances of this case.

DECISION

34. For the reasons set out above, I affirm QH's decision to refuse to amend the Letter under section 72(1)(a)(i) of the IP Act, on the basis that the Information in Issue is not inaccurate, incomplete, out of date or misleading.
35. I have made this decision as a delegate of the Acting Information Commissioner, under section 139 of the IP Act.

Jim Forbes
Acting Assistant Information Commissioner

Date: 6 September 2013

APPENDIX**Significant procedural steps**

Date	Event
14 February 2013	QH received the amendment application under the IP Act.
25 March 2013	QH issued its decision to the applicant.
26 March 2013	OIC received the external review application. OIC asked QH to provide a number of procedural documents by 2 April 2013.
5 April 2013	OIC received the requested procedural documents from QH.
29 April 2013	OIC notified the applicant and QH that it had accepted the external review application.
5 July 2013	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions supporting his case by 19 July 2013 if he did not accept the preliminary view.
8 July 2013	The applicant notified OIC that he did not accept the preliminary view and provided submissions supporting his case.
15 August 2013	OIC reiterated the preliminary view to the applicant and invited the applicant to provide any further and final submissions by 29 August 2013.
27 August 2013	The applicant provided further submissions supporting his case.