

Notice of Decision and Reasons for Decision

Applicant:	'EF6'
Agency:	Victoria Police
Decision date:	27 June 2022
Provision considered:	Section 39
Citation:	'EF6' and Victoria Police (Freedom of Information) [2022] VICmr 79 (27 June 2022)

FREEDOM OF INFORMATION – police records – traffic incident report – amendment request – incorrect information

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse to amend a document in accordance with the Applicant's request.

My decision on the Applicant's request is the same as the Agency's decision.

I am not satisfied the information in the document is inaccurate, incomplete, out of date or would give a misleading impression. Therefore, I have determined to refuse to grant the Applicant's amendment request.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
27 June 2022

Reasons for Decision

Background to review

1. On [date], the Applicant made a request to the Agency under section 39 to amend a document relating to a motor vehicle accident.
2. The following summarises the requested amendments to a Traffic Incident System Report (the **Document**) sought by the Applicant:

No.	Document	Page	Information in document	Why is an amendment sought?	What should the amendment state
1	Police report [number]	Page 1	Under headline 'Vehicle Damage' the 'Initial Point of Impact' is listed as 'Undercarriage'	This information is inaccurate and misleading	Correct initial point of impact should be "front wheels"
2	Police report [number]	Page 1	Under headline 'Vehicle Damage' the 'Level of Damage' is listed as 'Nil Damage'	This information is incorrect, incomplete and misleading	Level of Damage should record "the front number plate came off that day, reasonably presumed weakened by incident" and "significant damage to front undercarriage"

3. By letter dated [date], the Agency refused the Applicant's amendment request, stating:

I have reviewed the information provided by you and I am of the view that the information you have provided are merely your version of events and no proof as to their veracity has been provided.

This report was made after the incident and there was no police attendance, collision or known damage to the car in question. Additionally, there is nil persons that can verify the interaction with the named member who is no longer a member of Victoria Police.

This office was not provided with any proof of your request, ie documents showing conversation or incident. Therefore, you have not satisfied s39 of the Act in that you have not satisfied subsection (c).

Review application

4. By email dated [date], the Applicant sought review by the Information Commissioner under section 49A(2) of the Agency's decision to refuse to amend the document.
5. I have examined a copy of the document sought to be amended.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.

Application of section 39

8. Section 39 provides:

39 Person may request amendment of record

Where a document containing information relating to the personal affairs of a person (including a deceased person) is released to the person who is the subject of that information (or in the case of a deceased person, that person's next-of-kin) that person shall be entitled to request the correction or amendment of any part of that information where it is inaccurate, incomplete, out of date, or where it would give a misleading impression.

9. Section 40 sets out the requirements for making an amendment request:

A request under section 39—

- (a) shall be in writing;
- (b) shall specify an address to which a notice under section 43 may be sent to the person making the request; and
- (c) shall give particulars of the matters in respect of which the claimant believes the record of information kept by the agency or Minister is incomplete, incorrect, out of date or misleading and shall specify the amendments that the claimant wishes to be made.

10. Section 39 places onus on an applicant to establish the case for an amendment to their personal affairs information in a document of the agency on grounds the information is inaccurate, incomplete, out of date, or where it would give a misleading impression. That is, an applicant must point to evidence to substantiate their claim a document subject to their request should be corrected or amended.

Does the information relate to the personal affairs of a person?

11. The Document is a Traffic Incident System Incident Report that summarises a motor vehicle incident involving the Applicant.
12. Accordingly, I am satisfied the information sought to be amended relates to the personal affairs of the Applicant.

Has the information been released to the person who is the subject of that information?

13. The Document was released to the Applicant on [date] as part of litigation against the Traffic Accident Commission (TAC).
14. Accordingly, I am satisfied the information was released to the Applicant, who is the subject of the information.

Is the information inaccurate, incomplete, out of date or would it give a misleading impression?

15. The purpose of section 39 is to ensure personal affairs information concerning an applicant in the possession of an agency and read by third parties does not unfairly harm or misrepresent personal facts about the applicant.¹
16. Notably, section 39 is concerned with the accuracy of official records, not with the merits or legality of the official action recorded in them.²

¹ *G v Health Commission of Victoria* (unreported, Vic County Ct, Rendit J, 13 September 1984) at 10.

² *Smeaton v Accident Compensation Conciliation Service* [2010] VCAT 1236 at [22], referring to *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 at [24].

17. In *Setterfield v Chisolm Institute of Technology (No 2)*,³ the following comments were made on the scope of section 39:

Section 39 is about words... Incorrect words either resulting from malice, false assumptions, a misunderstanding of the facts or sheer clerical bungling...

18. In *G v Health Commission of Victoria*,⁴ the following observations were also made in relation to section 39:

A misleading statement or impression is one which is untrue or is likely to lead to an erroneous conclusion... Whether there would be misleading impressions is... objective. What, on the reading of the material, is fairly and reasonably open as an interpretation, not what would some person failing to apply reason or who was biased or who failed to act fairly and reasonably in interpreting the material get, as an impression.

[T]here is a difference between a misleading impression and an inaccuracy, although each will overlap the other to a large extent. One can readily envisage circumstances where the recorded facts are inaccurate, and also give a misleading impression, either because of incompleteness or because the language used in recording the facts, whilst accurate, yet would convey a misleading impression.

19. The Agency submits there is insufficient evidence to demonstrate the document is inaccurate, incomplete, out of date or would give a misleading impression.
20. As stated above, the Applicant bears the onus of demonstrating the information is inaccurate, incomplete, out of date or would give a misleading impression.
21. The Applicant was invited to provide evidence to support their view the document is inaccurate, incomplete, out of date or would give a misleading impression. In response, they provided a written statement which refutes the version of events recorded by the police officer in the document.
22. In doing so, the Applicant submits the vehicle manufacturer disclosed a list of vehicle inspections as part of the Applicant's litigation against the TAC that included reference to the vehicle which is the subject of the incident report (**fleet list**). The Applicant submits an extract of legal advice provided to them purportedly quotes the fleet list as noting the vehicle sustained damage to the front bumper cover and was missing the front licence plate.
23. The Applicant also notes they were seeking [certain documents] of the incident that they did not have access to as at the date of their application.
24. This presents a conflict of fact and, in the absence of any independent evidence from the Applicant, I am unable to determine which version of events is accurate.
25. I also note during the review, the Applicant raised a further request for an amendment to the document. As these requests do not form part of the amendment request made to the Agency, I am unable to consider the further amendment request as part of this review.
26. Accordingly, on the information before me, I am not satisfied the information in the document is inaccurate, incomplete, out of date or would it give a misleading impression.
27. However, despite my decision it remains open to the Applicant to make a further amendment request under section 39 if more evidence becomes available to support their future amendment request.

³ (1986) 1 VAR 202 at [208]-[209].

⁴ (unreported, Vic County Ct, Rendit J, 13 September 1984) at pp 9-11.

Conclusion

28. I am not satisfied the information in the document is inaccurate, incomplete, out of date or would give a misleading impression. Therefore, I have determined to refuse to grant the Applicant's amendment request.

Review rights

29. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁵
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
32. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
33. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁸

⁵ Under section 50(3B) for the Applicant and section 50(3D) for the Agency.

⁶ Section 52(4).

⁷ Section 52(9).

⁸ Section 50(3F).