# Overview: Processing a request for amendment of personal records under Part V of the *Freedom of Information Act 1982* (Vic)

This document provides an overview of the process for receiving and processing an amendment request under section 39. It should be read in conjunction with sections 39 to 49 of the [Freedom of Information Guidelines](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/). The guidance is intended for agencies and Ministers subject to the Act.

All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

## Step 1 – Consider whether you can make the amendment outside of the Act

Can the amendment be made outside of the Act? For example:

* Is the information clearly wrong or not contentious (for example, the claimant’s date of birth has been recorded incorrectly in their personnel file) and could be amended outside of the Act?
* If the information is more complex, or in dispute, can a notation be included in the record to note the disputed information and why it is in dispute?

If yes, contact the claimant and let them know what can be corrected, amended or notated outside of the Act and seek their agreement to do so. Explain that the claimant will lose their right to review, but they may make another amendment request if they wish.

If no, consider whether the request is valid.

## Step 2 – Is the request valid?

* + Is the request in writing?
	+ Does the request specify an address to which the agency or Minister can send the decision?
	+ Does the request sufficiently identify the information to be corrected or amended?
	+ Does the request identify the amendment that the claimant would like the agency or Minister to make?

You should also consider whether the claimant has provided sufficient information or evidence to support the amendment request.

If the answer to any of these questions is no, contact the claimant as soon as practicable and let them know how they can make a valid request and/or provide additional information or evidence to help you to assess their request.

There is no fee required to be paid for a request made under section 39.

If the request is valid, consider the terms of the request.

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| For more information, see:* [section 40 – Form of request for amendment of record](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-40/); and
* [section 43 – Time within which agency or Minister must notify claimant](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-43/).
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## Step 3 – Consider the request

Consider the terms of the request as well as the information and evidence available to consider whether to amend the record:

* + Does the information the claimant would like amended relate to their personal affairs?
	+ Was the document, which contains the information released to the claimant?
	+ Is the information inaccurate, incomplete, out of date, or would it give a misleading impression?
	+ If the request is likely to be refused, can a notation with the claimant’s view of the information be included in the record, or a letter added to a file, so it is apparent that the information is disputed and to ensure both views are presented?
		- If yes, let the claimant know and seek their consent to add the notation and close the request. Explain to the claimant that they will no longer have the right to review but they may make another amendment request.
		- If no, make a decision and provide it to the claimant.

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| For more information, see [section 39 – Person may request amendment of records](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-39/). |

### Are you considering deleting information or expunging a record?

Before you decide to delete information or expunge a record, you **must** receive the Keeper of Public Records’ authorisation:

* + email agencyqueries@prov.vic.gov.au and provide details of the request (including the information and/or records involved);
	+ outline whether the agency or Minister supports the request, and if so, why;
	+ describe the harms that the incorrect or misleading information is causing; and
	+ detail the retention requirements for the records (including the relevant Retention & Disposal Authority and Class and minimum mandatory retention period if known).

If you do not receive the Keeper of Public Records’ authorisation, you cannot delete information or expunge a record. However, you may correct the information or record in other ways, such as by altering the record or adding a notation.

## Step 4 – Make a decision on the request and notify the claimant

Once you have considered the terms of the request, decide whether to amend the record and tell the claimant in writing:

* + Provide a decision to the claimant no later than 30 days after the valid request was received.[[1]](#footnote-1)
		- The decision must be made by an authorised person.[[2]](#footnote-2)
	+ If the request for amendment is refused in part, or in full, the decision must contain:
		- the reasons for the decision, how the decision was reached, and the facts on which the decision was based;[[3]](#footnote-3)
		- if the decision was made by an agency, the name and designation of the person who made the decision;[[4]](#footnote-4) and
		- that the claimant has the right to apply for a review of the decision, to which authority the applicant may make their review application, and the time in which an application for review must be made.[[5]](#footnote-5)
	+ If the decision is to amend the record, outline how the amendment will be made.

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| For more information on:* how to make an amendment request under the Act, see Part V of the [FOI Guidelines](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/);
* record keeping, visit PROV’s website, including:
	+ ‘Privacy and Recordkeeping Obligations’ Topic Page: <https://prov.vic.gov.au/recordkeeping-government/a-z-topics/privacy-and-recordkeeping-obligations>; and
	+ Retention and Disposal Authorities (RDAs), available here: <https://prov.vic.gov.au/recordkeeping-government/how-long-should-records-be-kept/retention-and-disposal-authorities-rdas>.
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1. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 43. [↑](#footnote-ref-1)
2. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 44 and section 26. [↑](#footnote-ref-2)
3. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 45 and 27(1)(a). [↑](#footnote-ref-3)
4. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 45 and 27(1)(b). [↑](#footnote-ref-4)
5. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 27(1)(d). [↑](#footnote-ref-5)