

Notice of Decision and Reasons for Decision

Applicant: 'ED1'
Agency: Victorian WorkCover Authority
Decision date: 11 May 2022
Provision considered: Section 39
Citation: 'ED1' and Victorian WorkCover Authority (Freedom of Information)
[2022] VICmr 54 (11 May 2022)

FREEDOM OF INFORMATION – addition of [Court name] decision – findings for court costs – demonstrates files are inaccurate – limited information provided by applicant

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 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 Applicant has met the necessary requirements of section 39. Therefore, I have determined to refuse to grant the Applicant's amendment request.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

11 May 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency to amend a document of the Agency under section 39:

My application is to "ADD", the [named] Court of Victoria, "findings for costs" dated [date] to any files (known to the Applicant, [Applicant name / Business information], under the Victorian Freedom of Information Act section 39. Copy of the findings for Costs are included. The findings of the [named] Court demonstrates the files on [Applicant's name]: i) give a misleading impression, are incorrect, are inaccurate and out of date.

2. The Agency refused the Applicant's amendment request. The decision letter sets out the reasons for decision.

Review

3. By letter dated 23 April 2022, the Applicant sought review by the Information Commissioner under section 49A(2) of the Agency's decision to refuse to amend the document.
4. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review. Neither the Agency or the Applicant provided a submission in response to the review.
5. I have otherwise considered all communications received from the parties.

Application of section 39

6. Section 39 provides in relation to a person seeking an amendment to their personal affairs information in an agency document:

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.

7. 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.

8. Section 39 places the onus on an applicant to establish the case for making 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.

9. In its decision letter, the Agency states:

As you have not specified how the information is inaccurate, incomplete, out of date or misleading, or specified any amendments you are seeking, I do not consider your request to be valid. I am refusing your request under section 39 of the FOI Act accordingly.

10. Having considered the Applicant's amendment request, I do not consider they have provided sufficient information as to the 'particulars of the matters' to which they believe are inaccurate or misleading in any document held by the Agency. Nor has the Applicant provided any information to establish information in any such document is inaccurate, incomplete, out of date, or would give a misleading impression as required by section 39.

Conclusion

11. Accordingly, I am not satisfied the Applicant has met the necessary requirements of section 39. Therefore, I have determined to refuse to grant the Applicant's amendment request.

Review rights

12. If the Applicant is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.¹
13. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²
14. 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.
15. The Agency is required to notify the Information Commissioner in writing as soon as practicable if an application to VCAT is made for a review of my decision.³
16. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹ Section 50(1)(ea).

² Section 52(5).

³ Sections 50(3F) and 50(3FA).