

Australian Capital Territory

Freedom of Information (Volume 5 - Amending personal information) Guidelines 2020

Notifiable instrument NI2020-372

made under the

Freedom of Information Act 2016, s66 (Guidelines for Act)

1 Name of instrument

This instrument is the *Freedom of Information (Volume 5 - Amending personal information) Guidelines 2020*.

2 Commencement

This instrument commences on the day after notification.

3 Guidance material

I make the guidelines for the *Freedom of Information Act 2016* as set out in schedule 1 to this instrument.

Michael Manthorpe PSM
ACT Ombudsman
26 June 2020



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

Freedom of Information Guidelines

AMENDING PERSONAL INFORMATION

MAY 2020

Guideline Number. **5 of 6**

Disclaimer

Under s 66 of the *Freedom of Information Act 2016* (FOI Act), the ACT Ombudsman has the function of issuing guidelines about freedom of information ('FOI').

The information in this guideline is not legal advice and additional factors may be relevant in your specific circumstances. Any views expressed in this guideline are general in nature and the ACT Ombudsman remains open to all arguments and evidence on a case by case basis. For detailed guidance, legal advice should be sought.

The FOI Act is amended from time to time and you should always read the relevant provisions of the Act to check the current wording. All ACT legislation, including the FOI Act, is freely available online at: <https://www.legislation.act.gov.au>.

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1. Purpose

This guideline explains:

- the obligations of agencies and Ministers under the [Freedom of Information Act 2016 \(FOI Act\)](#) to ensure that an individual's personal information is correct and up-to-date
- what obligations arise when the need to amend, correct or alter that information has been identified
- the procedure for amending the information.

2. Introduction

Governments need to retain information about their citizens to effectively govern by delivering programs in areas such as health, transport, community safety, education and national security.

This requirement needs to be balanced with:

- the right to know how the personal information is being controlled, collected, used and disclosed
- the rights a person **has to have their personal information amended** when it is incomplete, incorrect, out-of-date, or misleading.¹

As a result, one of the objects of the FOI Act is to ensure that personal information held by the ACT Government is accurate, complete, up-to-date and not misleading.² This is reflected in Part 6 of the FOI Act which provides any person with a right to request an agency or Minister, holding government information containing personal information about them, to amend the information.³

Where possible, agencies and Ministers are encouraged to deal with requests to amend personal information informally—see [Guideline Volume 2 of 6 – Informal Requests](#).

Nevertheless, this guideline provides practical guidance on how ACT Government agencies and Ministers can manage formal requests to amend personal information where required, including:

- what is personal information—see [section 4 What is personal information?](#)
- who can make a request for personal information to be amended—see [section 5 Who can make an amendment request](#)
- how amendment requests are decided—see [section 8 Deciding an amendment request](#)

All section numbers are references to sections of the FOI Act unless indicated otherwise. References to legislation are to ACT legislation unless indicated otherwise.

Note:

- These amendment provisions are designed to allow community members to correct or amend their information. They are not designed to obtain a change to the outcome of other agency processes—that is, they are not review provisions.
- In the ACT, individuals can also request that personal information about them be corrected under the *Information Privacy Act 2014 (IP Act)*,⁴ which similarly provides every person with a right to seek access to personal information and have it amended.

¹ *Freedom of Information Act 2016 (ACT)* (FOI Act) s [59\(1\)](#).

² *Ibid* s [6\(g\)](#).

³ *Ibid* s [59](#).

⁴ IP Act [TPP12 – access to personal information](#) and [TPP 13 – correction of personal information](#).

3. Guiding principles

When dealing with requests to amend personal information, agencies and Ministers should also be guided by the following principles of the FOI Act:

- Personal information held by an agency or Minister should be accurate, complete, up-to-date and not misleading (s 6(g)).
- A person has the right to request an agency or Minister amend their personal information if it is incomplete, incorrect, out-of-date or misleading (s 59(1) and (2)).
- The agency or Minister must amend the information if it is incomplete, incorrect, out-of-date or misleading (s 61(2)).
- The agency or Minister must keep a record of amendments of government information made (s 61(4)).

4. What is personal information?

Personal information is information held by government, which can identify a person, or can be used to reasonably ascertain a person's identity. Specifically, the FOI Act defines 'personal information' as:

information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.⁵

Note:

- Where an individual is, or has been, an officer of an agency or staff member of a Minister, 'personal information' does **not** include information about their position or functions as an officer or staff member, or things done by the individual in exercising functions as an officer or staff member.⁶

5. Who can make an amendment request?

Any person can request an agency or Minister to amend **their own** personal information under s 59(2).

Note:

- 'Person' in this instance includes an individual or an agent acting on behalf of another individual.
- There are no charges for making a personal information amendment request.

6. What information can a person apply to amend?

Where a person has access to government information held by an agency or Minister, which contains *personal information about themselves*, they may apply to amend this information on the grounds that it is incomplete, incorrect, out-of-date or misleading.⁷

The information must be currently used, have been used or be available for use by the agency or the Minister.⁸

⁵ FOI Act [Dictionary](#) - 'personal information'.

⁶ Ibid.

⁷ Ibid s [59\(1\)](#).

⁸ Ibid s [59\(1\)\(c\)](#).

Government information is defined in s 14 as information ‘held’ by an agency or Minister, excluding information related to a Minister’s personal or political activities, or created or received by a Minister in the Minister’s capacity as a member of the Legislative Assembly.⁹

This includes information contained in a ‘record’ that is held by the agency or Minister, or the agency or Minister is entitled to access.¹⁰

Record is defined broadly to mean any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means. It can also include a reference to a copy of a record. Consequently, the FOI Act covers not just written documents, but a wide range of materials, including emails, electronic recordings, photographs, videos and post-it notes.¹¹

Note:

- The FOI Act cannot be used to request corrections of documents that do **not** contain personal information about the applicant.
- Where a request is received, relevant **information** held by the agency must be amended (that is, not just the particular document in which the error was identified), so that any future decisions and/or communications take into account the correct information

7. Processing an amendment request

7.1 Who can process an amendment request?

All staff in an agency, subject to any internal arrangements in place, may assist in the processing of an amendment request, as long as it is recognised that only an information officer can finally deal with the request—that is, make a decision on the request—see [section 8.1 Who can decide an amendment request](#) below.

A request made to a Minister may be dealt with by the person the Minister directs.¹²

7.2 Requirements of a valid amendment request

The requirements of a valid request are set out in [s 59](#). These are summarised below.

A valid request to amend personal information **must:**

- **be** in writing
- **provide** enough detail to enable the agency or Minister to identify the information to be amended
- **state** how the information is *incomplete, incorrect, out-of-date or misleading*—see further explanation below
- **state** the amendments the person considers necessary for the information to be complete, correct, up-to-date or no longer misleading*
- **provide** an email or postal address for correspondence.

⁹ Ibid s 14.

¹⁰ Ibid.

¹¹ Ibid [Dictionary](#).

¹² Ibid s [60\(2\)](#).

*The explanatory statement provides the following example in this regard:

For example, where a record said that a person had a particular qualification or that they had been the recipient of particular government assistance, but in fact the person had a different qualification or they were the recipient of a different type of government assistance, they must state the correct qualification or assistance type that they would like the government information to reflect in their application for the change.¹³

Note:

- Agencies may wish to encourage applicants to provide any supporting evidence, together with requests for amendment, to facilitate efficient management of their request.
- The request may relate to a specific document or several pieces of information. As noted above, agencies must consider all relevant personal information about the applicant held by the agency.

The words *incomplete*, *incorrect*, *out-of-date* or *misleading* are not defined in the FOI Act and should be given their ordinary meaning:¹⁴

- *Incomplete* means missing some information or not finished.
 - For example, the composition of the person's family unit has been recorded, but one of the person's dependants has not been included.
- *Incorrect* means not in accordance with fact, or wrong.
 - For example, a person's name has been spelt incorrectly, or the wrong date of birth for the person has been recorded.
- *Out of date* means no longer valid or relevant.
 - For example, a person's record does not include recent developments in terms of their qualifications or work experience.
- *Misleading* means giving the wrong idea or impression.
 - For example, a specialist opinion is recorded on a file that does not contain information about all relevant circumstances. As a result, when read out of context, even if factually correct, the information could lead a person reading it into error (see further discussion of 'opinions' below at [section 8.2.1 Decisions to amend information as requested](#)).

Note:

- As the Queensland Information Commissioner has recognised, information is not 'out of date' just because it is old—it can only be out of date where newer information makes it obsolete'.¹⁵ Statements may still be accurate where they reflect the state of play at a particular time.
- Under the IP Act, an individual can also request that personal information be corrected. An agency must then take reasonable steps to correct the information, to ensure it is accurate, up to date, complete, **relevant** and not misleading.¹⁶ As a result, requests for amendment on the grounds that personal information is **irrelevant** should be managed under the IP Act, as such requests will not fall within the scope of the FOI Act.

¹³ [Explanatory Statement](#), *Freedom of Information Bill 2016* (ACT) 35.

¹⁴ The Macquarie Online Dictionary, Macquarie Dictionary Publishers, 2019.

¹⁵ 'Amendment applications' ([Web page](#), 13 December 2019).

¹⁶ IP Act [TPP 13 – correction of personal information](#).

7.3 Processing timeframes

Working Day	Action
0	Day valid request is received ¹⁷
20	Day decision on request is due ¹⁸

The above timeframes apply when deciding requests to amend personal information **unless** the processing period is **extended for a specified period under the FOI Act**—that is, the ‘clock stops’ while the respondent is waiting for further information from the applicant – see [section 7.4 Circumstances in which the processing period will be extended](#).

7.4 Circumstances in which the processing period will be extended

[Section 62\(2\)](#) provides the processing period will be extended by a certain number of **working days** in the following circumstances:

Action that has occurred	Processing period is extended by
Request for additional information sent to the applicant	Number of working days the applicant takes to respond ¹⁹

8. Deciding an amendment request

8.1 Who can decide an amendment request?

The principal officer of each agency is required to appoint an information officer and this appointment is a notifiable instrument.²⁰

Under the FOI Act, information officers are required to deal with amendment requests made to their agency.²¹

Amendment requests made to a Minister may be dealt with by the person the Minister directs.²²

8.2 How amendment requests are decided

[Section 61](#) outlines the possible decisions that can be made on amendment requests:

- to amend the information – s 61(1)(a)
 - see [section 8.2.1 Decisions to amend the information as requested](#).
- to refuse to amend the information – s 61(1)(b)
 - see [section 8.2.3 Decisions to refuse to amend the information as requested](#).

8.2.1 Decisions to amend the information as requested

There is no discretion for an agency or Minister to refuse to amend personal information that is incomplete, incorrect, out-of-date or misleading.

¹⁷ FOI Act s [62\(1\)](#).

¹⁸ Ibid.

¹⁹ Ibid s [62\(2\)](#).

²⁰ Ibid s [18\(1\)](#).

²¹ Ibid s [60\(1\)](#).

²² Ibid s [60\(2\)](#).

As a result, if a decision-maker is satisfied the information is incomplete, incorrect, out-of-date or misleading, they **must** amend the information.²³ This decision should be based on evidence provided by the applicant and/or other evidence obtained from agency records.

The extent of evidence required will depend on the nature of the amendment and the impact of changing the information. A full formal investigation is not generally required. The decision-maker should have sufficient evidence before them to be satisfied the amendment is justified.

Relevant factors for consideration may include:

- the circumstances in which the original information was collected
- the authenticity of any new documentation provided to support the amendment, for example:
 - is it an original document?
 - who issued the document?
 - is it a reliably certified document?
 - is it translated by an accredited translator?
 - is the new information self-reported by the applicant?
 - is there any evidence of document tampering?
 - is there evidence of conflicting evidence being provided by the same individual?
- the significance of the amendment requested

Note:

- As the Queensland Information Commissioner has recognised, factual errors will need to be amended where identified. In situations where the applicant is claiming an opinion is incorrect (for example, a specialist or expert opinion), for the information to be amended, the decision-maker will, however, need to be satisfied that the information is incomplete, incorrect, out-of-date or misleading at the time of writing—that is, not just that another expert might have taken a different view, or that the applicant disagrees with the opinion.²⁴
- Where the amendment appears to be crucial and there are concerns about the authenticity of the document, the advice of specialist fraud teams in the agency should be sought where possible.

8.2.2 Amending the record in practice

The agency or Minister must keep a record of amendments of information made under s 61. The FOI Act does not specify how this must be done or how the actual records should be amended.

Where amendment is appropriate, agencies should consider whether it is appropriate to alter the information or insert a notation. Regardless, the date of the amendment should be recorded, and the correct information included or cross-referenced.

A notation may be more appropriate where it is important to preserve the record.

Where the information cannot be altered, cross references should be provided to where the correct information is held. Cross-references can also be useful to link to more recent reports or specialist opinions that are now available.

²³ Ibid s 61(2).

²⁴ See <https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/decision-making/amendment-applications> for further discussion about these issues in the Queensland context.

Where a notation is used, it should explain why the amendment has been made under the FOI Act (that is, how the information is incomplete, incorrect, out of date or misleading) and provide any additional or up to date information.

Note:

- Agencies should make sure that all relevant files/documents are updated with the correct information. For example, if the applicant's date of birth has been identified as incorrect, all records must be amended with the correct date of birth.
- Public records containing incomplete, incorrect, out of date or misleading information should **not** be removed or destroyed, unless authorised under relevant disposal authorities.

8.2.1 Decisions to refuse to amend the information as requested

An agency or Minister may refuse to amend information as requested only where they are **not** satisfied the information is incomplete, incorrect, out of date or misleading.

Prior to refusing a request to amend personal information, the agency or Minister must:

- tell the person of the intention to refuse to amend the information,²⁵ and
- give the person a reasonable opportunity to respond and provide any additional information relevant to the request.²⁶

It is preferable this be done in writing as:

- it is considered a more 'reasonable opportunity to respond', rather than a phone call, and
- where the person is given the opportunity to provide further information, the processing clock will stop under s 62(2).

Note:

- What constitutes a 'reasonable opportunity to respond' will, however, depend on the circumstances of the case. For example, it may be appropriate to give the applicant more time if they need to request documents from overseas to support their amendment request.
- Agencies should also ensure they give the applicant enough information to assist them in clarifying or amending their request, including providing reasons as to why the agency or Minister considers the information is not incomplete, incorrect, out-of-date or misleading.

Templates for this purpose are available at [Appendix A](#).

9. Decision notices

Regardless of the outcome, a decision notice must be prepared and sent.²⁷

A decision notice template is available at [Appendix A](#).

²⁵ Ibid s [61\(3\)\(a\)](#).

²⁶ Ibid s [61\(3\)\(b\)](#).

²⁷ Ibid s [63](#).

9.1 Requirements where decision is to amend information

Where a decision to amend the information has been made, the decision notice must:

- advise of the agency's or Minister's decision
- include a copy of the amended personal information.²⁸

9.2 Requirements where decision is to refuse to amend information

Where a decision to refuse to amend the information has been made, the decision notice must advise of the agency's or Minister's decision and include a statement of reasons for the decision.²⁹

As per the template at [Appendix A](#), the notice should also include advice about review rights.

10. Review rights

An applicant who has requested that personal information be amended can apply to the ACT Ombudsman for a review if this request is refused under s 73 of the FOI Act.

An application for review should be made in writing within **20 working days** of receipt of the decision notice. Extensions may, however, be granted in certain circumstances.

²⁸ Ibid ss [63\(a\) and \(b\)](#).

²⁹ Ibid ss [63\(a\) and \(c\)](#).

Appendix A—Templates

1. Notice of intention to refuse to amend personal information

[Date]

Our reference: [agency reference]

[Name]

[Address]

Via email only: [Email address]

Dear [Name]

AMENDMENT REQUEST—NOTICE OF INTENTION TO REFUSE TO AMEND PERSONAL INFORMATION

On [date received], the [name of agency] received a request to amend personal information made under the *Freedom of Information Act 2016* (FOI Act).

The request relates to [insert brief description of the amendment request].

I am an information officer appointed by the Director-General of the [agency name] to make decisions about requests to amend personal information, in accordance with s 18 of the FOI Act.

As required under s 61 of the FOI Act, I am writing to notify you that I intend to refuse to amend the personal information as requested. This is because:

- [insert summary of preliminary reasons – either information is not held by the agency or decision-maker is not satisfied the personal information is incomplete, incorrect, out-of-date or misleading –and include reasons why]].

If you wish to proceed with your request to amend your personal information, and you have additional information in support of your request, please provide it to me by [date] so that I may consider your request further.

Please be aware that under s 62(2) of the FOI Act, processing of your request will not proceed until you provide a response to this notice. If you do not respond by [insert date], I may proceed to refuse your request.

If you have any questions in relation to your amendment request, please contact me on [insert telephone number] or email [insert positional email address].

Yours sincerely

[INSERT SIGNATURE BLOCK]

2. Notice of decision to amend personal information

[Date]

Our reference: [agency reference]

[Name]

[Address]

Via email only: [Email address]

Dear [Name]

AMENDMENT REQUEST—NOTICE OF DECISION TO AMEND PERSONAL INFORMATION

On [date received], the [name of agency] received a request to amend personal information made under the *Freedom of Information Act 2016* (FOI Act).

The request relates to [insert brief description of the amendment request].

I am an information officer appointed by the Director-General of the [agency name] to make decisions about requests to amend personal information, in accordance with s 18 of the FOI Act.

I have decided to amend the personal information as requested under s 61(1)(a) of the FOI Act.

Enclosed is a copy of the amended information.

If you have any questions in relation to your amendment request, please contact me on [insert telephone number] or email [insert positional email address].

Yours sincerely

[INSERT SIGNATURE BLOCK]

3. Notice of decision to refuse to amend personal information

[Date]

Our reference: [agency reference]

[Name]

[Address]

Via email only: [Email address]

Dear [Name]

AMENDMENT REQUEST—NOTICE OF DECISION TO REFUSE TO AMEND PERSONAL INFORMATION

On [date received], the [name of agency] received a request to amend personal information made under the *Freedom of Information Act 2016* (FOI Act).

The request relates to [insert brief description of the amendment request].

I am an information officer appointed by the Director-General of the [agency name] to make decisions about requests to amend personal information, in accordance with s 18 of the FOI Act.

I have decided to refuse to amend the personal information as you have requested under s 61(1)(b) of the Act.

Reasons for decision

In reaching my decision, I took into account:

- your amendment request dated [date of amendment request]
- correspondence between you and the agency dated [date of relevant correspondence, such as response to notification of intention to refuse the request]
- the FOI Act
- the draft ACT Ombudsman FOI Guidelines
- [anything else relevant]

I have concluded the agency does not hold the personal information you have requested to be amended **OR** I am not satisfied the personal information is incomplete, incorrect, out-of-date or misleading because [provide evidence of why this is the case].

Review rights

You may apply to the ACT Ombudsman to review my decision under s 73 of the FOI Act.

An application for review must be made in writing within **20 working days** of receipt of this decision notice.

You may submit a request for review of my decision to the ACT Ombudsman by writing in one of the following ways:

Email (preferred): actfoi@ombudsman.gov.au
Post: The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

More information about ACT Ombudsman review is available on the ACT Ombudsman website at: <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

Yours sincerely

[INSERT SIGNATURE BLOCK]