

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2015371
Decision Ref: D0202017**

Participants:

Paul John Appleton
Complainant

- and -

Department of Education
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – application for amendment of personal information under Part 3 of the *Freedom of Information Act 1992* (WA) – whether the decision of the agency not to amend information in accordance with the application is justified

Freedom of Information Act 1992 (WA): sections 3, 4, 10, 20, 45, 46, 48, 49, 50, 65, 76 and 102

Information Privacy Act 2009 (Qld)

State Records Act 2000 (WA)

3DT2GH and Department of Housing and Public Works (Unreported, Queensland Information Commissioner, 26 November 2012)

A4STL6K and Queensland Health [2013] QICmr 26

Cox and Department of Defence (1990) 20 ALD 499

Crowdson v Central Sydney Area Health Service [2002] NSWCA 345

Morris v Information Commissioner [2016] WASC 336

Re Bowden and Department of Housing and Works [2005] WAICmr 3

Re Clements and Health Department of Western Australia and Graylands Hospital [1995] WAICmr 57

Re Mallet and Edith Cowan University [2008] WAICmr 13

Re Park and SMHS - Royal Perth Hospital [2014] WAICmr 18

DECISION

The decision of the agency not to amend information in accordance with the complainant's application for amendment made under Part 3 of the *Freedom of Information Act 1992* (WA) is confirmed.

Su Lloyd
A/INFORMATION COMMISSIONER

30 November 2017

REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of Education (**the agency**) not to amend information in accordance with an application for amendment under Part 3 of the *Freedom of Information Act 1992* (WA) (**the FOI Act**) made by Mr Paul Appleton (**the complainant**).

BACKGROUND

2. The complainant was formerly employed by the agency as a teacher on numerous fixed term and casual contracts of employment between 1990 and 2009. His last fixed term contract of employment with the agency ended in December 2009. In the intervening period, there have been disputes between the parties relating to the complainant's employment including proceedings in the Western Australian Industrial Relations Commission for unfair dismissal and in relation to the agency's decision not to subsequently employ him.
3. On 16 November 2015 the complainant applied to the agency under the FOI Act to amend personal information about him contained in documents of the agency, on the ground the information is inaccurate, incomplete, out of date or misleading (**amendment application**).
4. By letter dated 23 November 2015 the Director General of the agency (**the Director General**) advised the complainant that his application had been reviewed and that the work involved in dealing with it would divert a substantial and unreasonable portion of the agency's resources away from its other operations. The Director General also advised the complainant that the agency would 'accept an application under section 50 of the FOI Act to attach his current application together with a notation that he disputes the accuracy of certain personal information in documents held by the [agency] to his personal file'.
5. By letter to the agency dated 25 November 2015 the complainant submitted that the agency had relied on section 20 of the FOI Act in its letter of 23 November 2015 and that this provision relates to access applications, not to applications for amendment as was the case here. The complainant claimed that he had not received the agency's written decision on his application for amendment.
6. By letter dated 7 December 2015 (**the agency's decision**) the Director General advised the complainant that the agency's letter of 23 November 2015 did not constitute a notice of decision but rather an 'offer to satisfy his application by indicating the [agency] would comply with a request under s.50 of the FOI Act to place a copy of his application and an appropriate notation on his personal file'.
7. The Director General further advised the complainant as follows:

As it appears that you do not wish to avail yourself of this offer I am writing pursuant to s.49 of the FOI Act to inform you of my decision to refuse to amend the information contained within the documents identified by your application in the manner sought.

My decision is based on the following considerations:

- (a) The primary focus of your application is for the [agency] to amend the record of views expressed by individuals. The documents are an accurate record of their views notwithstanding your contrary view.*
- (b) The [agency] has already offered to place your application (in full) with an accompanying statement on your personal file.*
- (c) Given paragraphs (a) and (b), the disproportionate time and resources necessary to deal with an ambit, voluminous and unreasonable request.*

The [agency] remains prepared to place your application (in full) with an accompanying statement on your personal file.

8. On 14 December 2015 the complainant applied to my office for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

9. The agency was notified of this complaint and required to produce to my office a copy of each of the 82 documents that the complainant submits contains the information that he seeks to have amended (**the disputed documents**), together with a copy of the agency's FOI file maintained in respect of the amendment application.
10. The agency subsequently produced to my office copies of most but not all of the disputed documents together with a copy of its FOI file maintained in respect of the complainant's amendment application, including a copy of the complainant's amendment application. The complainant has provided further material to my office in support of his amendment application by emails dated 8 February 2016, 10 February 2016, 10 October 2016, 11 October 2016 and by letter dated 14 October 2016.
11. During the course of this complaint the complainant has raised issues and concerns that the agency has not produced to my office a copy of all of the disputed documents. While I initially considered that it was necessary for the agency to produce the disputed documents to me to assist me to deal with this matter, I am satisfied that it is not necessary for me to examine each of the disputed documents in order to determine this matter.
12. My office has made inquiries with both the agency and the complainant in an effort to resolve this matter by conciliation. Those inquiries did not result in the resolution of this matter.
13. On 19 September 2017, after considering the information before him, the former Information Commissioner (**the former Commissioner**) provided the parties with a letter setting out his preliminary view of this matter (**preliminary view letter**). It was the former Commissioner's preliminary view, for the reasons given, that the agency's decision not to amend information in accordance with the complainant's amendment application is justified.

14. In light of his preliminary view, the former Commissioner invited the complainant to reconsider whether he wished to pursue his complaint or to provide further submissions relevant to the matter for determination. By letter to my office dated 11 October 2017, the complainant advised that he did not accept the former Commissioner’s preliminary view and provided further submissions (**further submissions**).
15. I have considered the former Commissioner’s preliminary view letter. To the extent described in these Reasons for Decision, I agree with and adopt the views expressed by the former Commissioner in his preliminary view letter.

THE FOI ACT

16. The FOI Act states in its long title, that it is ‘[a]n Act to provide for public access to documents and to enable the public to ensure that personal information in documents is accurate, complete, up to date and not misleading, and for related purposes’.
17. The objects of the FOI Act, set out in section 3(1), are to enable the public to participate more effectively in governing the State and make the persons and bodies that are responsible for State and local government more accountable to the public. Those objects are to be achieved by, among other things, providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading: section 3(2)(b).
18. Section 4 requires agencies to give effect to the FOI Act in a way that, among other things, assists the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.
19. Part 3 of the FOI Act deals with the right of a person to apply to an agency for the amendment of personal information about the person contained in a document of an agency and prescribes the procedures to be followed by an agency in dealing with an application for amendment.
20. The term ‘personal information’ is defined in the Glossary to the FOI Act to mean:

[I]nformation or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead —

 - (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
 - (b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.*
21. Section 45(1) of the FOI Act provides that ‘[a]n individual (the **person**) has a right to apply to an agency for amendment of personal information about the person contained in a document of an agency if the information is inaccurate, incomplete, out of date or misleading’ (my emphasis).
22. I observe that, in contrast, section 10(1) of the FOI Act provides that ‘[a] person has a right to be given access to the documents of an agency (other than an exempt agency)

subject to and in accordance with this Act' (my emphasis). As a result, while the FOI Act creates a qualified right to be given access to the documents of an agency, the FOI Act does not create a right to have personal information amended; it merely creates a right to apply to an agency to have personal information amended.

23. Section 46 sets out the information and details that must be included in an application for amendment. This includes details of the matters in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading and the person must also give reasons for holding that belief.
24. Section 48 sets out the ways in which an agency may amend information. Section 48(1) provides that, if an agency decides to amend personal information it may do so by alteration, striking out or deletion, inserting information or inserting a note in relation to information. If the agency inserts a note in relation to information, the note must give details of the matters in relation to which the information is inaccurate, incomplete, out of date or misleading; and if the information is incomplete or out of date, the note must also set out whatever information is required to complete the information or bring it up to date: section 48(2).
25. The obliteration or removal of information or destruction of a document by an agency is only authorised in the specific circumstances outlined in section 48(3) of the FOI Act. That section recognises the public interest in an agency retaining a complete record of information. The public interest in the preservation of the records of government agencies is also demonstrated by section 78(3) of the *State Records Act 2000* (WA), which makes it an offence for a government organisation employee to destroy a government record unless the destruction is authorised by the record keeping plan of the organisation.
26. Under section 49 an agency must give the applicant written notice of its decision on the application for amendment. If the agency decides to amend the information the notice has to give details of the amendment made. If the agency decides not to amend the information in accordance with the application the notice has to give details of the reasons for the decision and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based (my emphasis): section 49(5)(a).
27. The complainant claims in his further submissions that the agency's decision did not give the details required by section 49(5)(a). Although I consider that the agency's decision provided succinct reasons for its decision not to amend information in accordance with the complainant's amendment application, in my view, the agency's decision should have provided a more comprehensive explanation of the basis of its decision, in particular the basis of its view that the complainant's amendment application was 'an ambit, voluminous and unreasonable request' and that dealing with the request would involve disproportionate time and resources.
28. Sections 46, 48 and 49 are set out in full in the Appendix to this decision.
29. Under section 65(3) of the FOI Act a complaint may be made to the Information Commissioner against, among other things, an agency's decision not to amend

information in accordance with an application for amendment under Part 3 of the FOI Act.

30. In this matter, the complainant has made a complaint to the Information Commissioner against the agency's decision not to amend information in accordance with his amendment application. In dealing with this complaint I have, in addition to any other power, power to review the agency's decision and to decide any matter in relation to the complainant's application for amendment that could, under the FOI Act, have been decided by the agency: section 76(1).
31. Section 102(1) of the FOI Act provides that, except where subsection (2) or (3) applies, in any proceedings concerning a decision made under the FOI Act by an agency, the onus is on the agency to establish that its decision was justified or that a decision adverse to another party should be made.

The agency's submissions

32. The agency's submissions are set out in the agency's decision. The agency stated that its decision to refuse to amend information in accordance with the complainant's application was 'based on the following considerations':
 - (a) *The primary focus of your application is for the [agency] to amend the record of views expressed by individuals. The documents are an accurate record of their views notwithstanding your contrary view.*
 - (b) *The [agency] has already offered to place your application (in full) with an accompanying statement on your personal file.*
 - (c) *Given paragraphs (a) and (b), the disproportionate time and resources necessary to deal with an ambit, voluminous and unreasonable request.*
33. The agency advised that it remained prepared to place the complainant's application (in full) with an accompanying statement on his personal file which noted that the complainant disputed the accuracy of certain personal information in documents held by the agency.

The complainant's submissions

34. The complainant's submissions are set out in his letter to the agency dated 14 December 2015, which he attached to his application for external review, and in his further submissions dated 11 October 2017 in response to the former Commissioner's preliminary view letter. In his letter dated 14 December 2015, the complainant submits, in summary, as follows:
 - *[The agency's] assertion that the documents are an accurate record of opinions expressed by these individuals is unsubstantiated... Merely asserting the accuracy of the opinions identified in my application expressed by each of those persons internal to the Department, as well as those persons who are external to the Department, solely on the basis of a cursory review of my application, is highly problematic and ignores information that is not an opinion. It also*

dismisses the findings by a court of law, a court of record, the Corruption and Crime Commission of Western Australia, the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia and the Information Commissioner and information supplied by Western Australia Police Service and officers of the Department that have been provided in support of the reasons for holding the belief that information or opinions in documents in the Department is inaccurate.

- *The Department does not have the discretion to refuse to amend personal information on the basis of its accuracy, which is the main reason for its refusal to amend. Such action would appear to be inconsistent with one of the objects of the FOI Act which is to make the persons and bodies that are responsible for State and local government more accountable to the public (s.3(1)(b)) and which is to be achieved by providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading. Refusing to acknowledge the possibility that personal information in documents of the Department could be inaccurate and by association incomplete, out of date and misleading by refusing to amend such information, negates the objectives of the FOI Act.*
- As the agency is obliged under the *State Records Act 2000* to retain a copy of the complainant's application in full, the agency's offer to place his application in his personal file is not relevant.
- The agency has not substantiated its claim that it would expend a disproportionate amount of time in dealing with the complainant's application 'so that an objective assessment can be made of what is proportionate and the threshold above which consumption of time would be considered disproportionate'.
- The agency's claim that the complainant's application is voluminous is a statement of fact and relates to its claim that it would expend a disproportionate amount of time in dealing with his application. These claims seem to relate to the amount of reading that one would have to undertake to give effect to the application. Noting the information and details that is required for a valid application under section 46 of the FOI Act, the complainant claims '[a]s [the agency did] not consider that [his] application is deficient in any of these elements, that [his] application complies with these sections is not a reason for not amending [his] application in the manner sought. [The agency has] failed to substantiate [its] claim so that an objective assessment can be made of what is not voluminous and the threshold above which makes material too voluminous'.
- The agency has provided no basis for its conclusion that the complainant's application is unreasonable. The agency has not provided the findings on any material questions of fact underlying the reasons for its decision, nor has it referred to the material on which its findings are based.
- *[T]he manner in which the Department has dealt with [the complainant's] application for amendment to personal information is unorthodox and the main reason for refusing to amend documents in the Department is more likely that many documents do not exist and cannot therefore be amended ...*

35. By his letter dated 11 October 2017, the complainant provided his further submissions, consisting of 38 pages, in response to the former Commissioner's preliminary view letter. I have considered all of those further submissions and addressed them to the extent that I consider that they are relevant to the issues for my determination.

Consideration

36. Section 45 of the FOI Act is not directed at the rewriting of history; it is about whether the recorded information is inaccurate, incomplete, out of date or misleading: *Re Mallet and Edith Cowan University* [2008] WAICmr 13 at [29] (**Re Mallet**). Further, section 45 is not intended to enable decisions of agencies to be changed or appeals against decisions to be made under the guise of amending records. It is not intended as a means of reviewing the effect of the decision of the agency with which the applicant is dissatisfied: *Re Mallet* at [34].
37. I accept that factual information may be corrected under Part 3 of the FOI Act if other factual information exists to establish that there are inaccuracies in the recorded information: *Re Clements and Health Department of Western Australia and Graylands Hospital* [1995] WAICmr 57 at [12].
38. I consider that the fact that information may contain contested opinions does not mean that it is inaccurate or misleading. In his further submissions, the complainant advised that, having had the benefit of reading the former Commissioner's preliminary view letter and the authorities cited, he had reviewed his amendment application and agrees that the fact that information may contain contested opinion does not mean that it is inaccurate or misleading.
39. In *Morris v Information Commissioner* [2016] WASC 336 at [45]-[48] (**Morris**) the Supreme Court of Western Australia recognised the difficulties in characterising an opinion as inaccurate or misleading:

The characterisation of information for the purpose of s 45(1) of the FOI Act - whether it is inaccurate, incomplete, out of date or misleading - may depend on the nature of the information. Information about facts that are capable of being objectively determined may be readily described as accurate or inaccurate or complete or incomplete and so on. Further, the accuracy etc of information about objective facts can be assessed against evidence produced about those facts. An applicant for amendment can present evidence to demonstrate that information recorded about an objective fact is, for example, inaccurate and the relevant agency or the Information Commissioner may determine whether the information ought to be amended by reference to that evidence.

However, not all facts can be objectively determined. For example, a person's state of mind is a matter of fact but the existence or otherwise of a particular state of mind can only be inferred from what the person says and does and from the surrounding circumstances. It may be more difficult to characterise information about such facts as accurate or inaccurate etc for the purpose of s 45(1). In many instances, it will be more difficult for an agency or the

Information Commissioner to determine whether the information about such facts ought to be amended pursuant to an application made under s 45(1).

An application to amend information in the form of an opinion presents even greater difficulties. Opinions are obviously qualitatively different to facts. Opinions are not objectively right or wrong and the fact that experts reach different conclusions about a matter does not mean that one conclusion is accurate and the other is inaccurate or misleading.

Accordingly, the characterisation and determination of whether information should be amended will depend significantly on whether the information consists of objective facts or facts that cannot be objectively determined or is a record of opinion.

40. In *Morris*, Corboy J referred at [50] to the following comments of Handley JA (with whom Ipp AJA and Davies AJA agreed) in *Crewdson v Central Sydney Area Health Service* [2002] NSWCA 345 (**Crewdson**):

Even if the Tribunal accepted other experts who had a different opinion that would not make 'incorrect', for the purposes of s 39(c) [of the Freedom of Information Act 1989 (NSW)], an accurate statement of the opinion held by Drs Roberts and Jagger ... The Act is not a vehicle for the determination of disputed questions of expert or other opinion when the recorded opinion was actually held and accurately entered in the official records.

The position might be different if an expert whose opinion had been accurately recorded recognised later that it was incorrect at the time and withdrew it. However the proper course would be to add a notation that the opinion had been withdrawn rather than to remove the original opinion ... An amendment in the latter form would falsify the records and attempt to rewrite history ... Without the original opinion the records would not tell the whole story, and would be misleading [34] - [35].

41. In *Cox and Department of Defence* (1990) 20 ALD 499, Deputy President Todd of the Administrative Appeals Tribunal observed at 502 that what is amended under amendment provisions of the kind in Part 3 of the FOI Act is not:

[I]nformation, 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.

42. Citing the above observations of Deputy President Todd, the Queensland Acting Assistant Information Commissioner (**the Qld Assistant Commissioner**) said as follows at [27]-[28] of *A4STL6K and Queensland Health* [2013] QICmr 26 (**A4STL6K**):

In other words, where, as here, disputed information comprises a specific individual's interpretation of events or issues... 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 record [noting that this was ‘paraphrasing the relevant principle as stated in Crewdson at paragraph 34’] their particular understanding of said events.

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.

43. The Qld Assistant Commissioner went on to observe at [30]-[32]:

[E]ven if [the information could] properly be regarded as inaccurate, incomplete, out of date or misleading [the agency in that case] would nevertheless be justified in refusing to amend the [relevant document] ... because to do so would essentially ‘re-write history’ and destroy the integrity of a public record.

As Assistant Information Commissioner Jefferies noted in a substantially similar case [3DT2GH and Department of Housing and Public Works (Unreported, Queensland Information Commissioner, 26 November 2012)]:

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 [document] in terms as requested by the applicant.*

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’ This is not, in my view, an outcome the right of amendment is intended to permit ... and to allow such a result would be inappropriate.

44. In *Re Bowden and Department of Housing and Works* [2005] WAICmr 3, the complainant in that case applied to amend personal information about him contained in a memorandum. In confirming the agency’s decision not to amend the disputed information, the Commissioner concluded as follows at [35]:

In summary, it is my view that the disputed information is not inaccurate, incomplete, out of date or misleading as it is a statement of fact by the author of the memorandum based on her reading of the material that was available to her at the time she wrote the memorandum. It accurately quotes from the opinion given by a doctor in a report he wrote in November 1993. There is no evidence before me which establishes that the opinion was not the doctor's honestly-held opinion or that it was wrong. The fact that the complainant disagrees with the doctor's opinion does not, without more, establish that the opinion is inaccurate, incomplete, out of date or misleading. The author of the memorandum had documentary material available to her at the time which referred to two other medical opinions which expressed essentially similar views, albeit in slightly different terms, and there is no evidence that she had available to her material indicating contrary medical opinions.

45. In his preliminary view letter, the former Commissioner said that he agreed with the above views and observations set out at [38]-[43] above and considered that they apply in this matter. I am of the same view. The complainant has indicated in his further submissions that he agrees with most of the views expressed at [38]-[43] above.

The complainant's amendment application

46. I have examined a copy of the complainant's amendment application and considered the information he seeks to have amended.
47. The complainant's amendment application was submitted to the agency by way of a statutory declaration made by him on 16 November 2015. It consists of two schedules, labelled Schedule 1 and Schedule 2. As described in the complainant's letter to my office dated 18 December 2015, Schedule 1 'details no less than 387 pieces of information that [the complainant has] identified as being inaccurate, incomplete, out of date or misleading ... in 82 documents ...' Schedule 2 'contains an index of [those 82 documents] together with a further 174 documents to which reference is made in Schedule 1'.
48. The preliminary view letter stated that Schedule 1 consists of 443 pages and Schedule 2 consists of 16 pages and that the complainant's amendment application consists of a total of approximately 463 pages. In his further submissions the complainant disputes those figures and claims that his amendment application consists of 459 pages. On either calculation, the amendment application includes a very large number of pages.
49. Having considered all of the information that the complainant seeks to have amended as described in his amendment application, I consider that in many cases the information does not consist of personal information about the complainant, as that term is defined in the FOI Act. To the extent that the information the complainant seeks to have amended does not consist of personal information about him, that information cannot be subject to an application for amendment by the complainant under section 45(1). I note that the complainant advised in his further submissions that, after reviewing the information contained in his amendment application in light of the information contained in the former Commissioner's preliminary view letter, he 'concede[s] that a very small proportion of the disputed pieces of information cannot be regarded as personal information' and gave some specific examples.

50. I agree with the agency's claim that the primary focus of the complainant's amendment application is for the agency to amend the record of views expressed by individuals. In many cases the information that he seeks to have amended consists of the opinion or view of another person or the recollection of another person of events or issues, the statement of another person contained in letters, reports, statements or internal agency documents. In many cases the complainant disputes the words or phrasing used by that person or refutes the view, opinion or recollection of the person or considers the information is not relevant. In my view, in some cases, the complainant is seeking to rewrite whole documents.
51. Having regard to the cases cited above, I agree that the FOI Act is not a vehicle for the determination of disputed questions of opinion when the recorded opinion was actually held and accurately entered in the official records. Notably, I agree that what is amended under the amendment provisions in the FOI Act is not information, but a record of information. Therefore, incorrect information can be recorded correctly and a record should not be amended simply because the information that it correctly records is incorrect information; it is not for an agency or the Information Commissioner to cure what was considered to have been an incorrectly formed opinion.
52. In this case, there is nothing before me to suggest that the persons concerned did not hold the views or opinions recorded in the documents or that their views or opinions were not accurately entered into the official record. Accordingly, to the extent that the information the complainant seeks to have amended consists of another person's view, opinion or recollection of events or issues, I am not satisfied that information of that type is inaccurate, incomplete, out of date or misleading and requires amendment in the manner the complainant has requested or at all.
53. In my view, the amendment of official records by removing, altering or inserting text in the manner the complainant has requested would, adopting the words of the Qld Assistant Commissioner in *A4STL6K*, 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'. This is not an outcome the amendment provisions are intended to permit and to allow such a result would be inappropriate. As I have already observed, the amendment provisions are not intended to re-write history.
54. The complainant submits in his further submissions that his amendment application 'contains no less than 16 pieces of personal information each of which is an opinion' and identified those 16 pieces of information. After citing Corboy J's comments at [47] in *Morris*, the complainant also submits as follows:

Even though the opinions stated in my amendment [application] cannot be considered to be the opinions of experts, they are nevertheless opinions which are 'not objectively right or wrong'. In this regard, I now accept that 15 of the opinions in my amendment application are not an inaccurate record of the opinion expressed [which the complainant has specified]. I have no reason to doubt that the recorded opinion was actually held by the person making the opinion and was accurately entered in the documents the subject of my amendment application.

However, for reasons given in compliance with s.46(1)(d) of the FOI Act for each of the 16 pieces of personal information that contain an opinion about me in my amendment application, I believe that each opinion is capable of being misleading. I note that for each piece of information containing an opinion I have requested the agency insert a note in relation to the information. Given that an element of an opinion can be a ‘judgement or belief resting on grounds insufficient to produce certainty’ I consider that the insertion of a note in relation to the opinion is the proper course (see Crewdson at [35]) and merely provides a countervailing opinion which is neither right or wrong in itself, without being construed as a fact, but is intended to achieve greater certainty, i.e. to put my side of the story (A4SLTL6K at footnote [21]). Without the original opinion the records would not tell the whole story and would be misleading (Crewdson at [35]).

55. The complainant also claims in his further submissions ‘[a]fter all, 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 (A4STL6K at footnote [21])’.
56. In my view, these submissions are misconceived. The amendment provisions in sections 45, 46 and 48 are not a mechanism that allows an applicant to put on record their ‘side of the story’. They are provisions that provide for the amendment of personal information contained in documents of an agency, for example, by altering the information or inserting a note in relation to the information, in circumstances where an agency is satisfied that the information is either inaccurate, incomplete, out of date or misleading and requires amendment.
57. The comments at footnote [21] in A4STL6K, which the complainant has referred to in support of his view, relate to section 76 of the *Information Privacy Act 2009* (Qld), a provision which is similar to section 50 of the FOI Act. The footnote states:
- [S]ection 76 of the IP Act ... 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.*
58. The mechanism in Part 3 of the FOI Act that allows an applicant to ‘tell their side of the story’ is section 50. Section 50(1) provides that, if the agency decides not to amend the information in accordance with the application, the person may, in writing, request the agency to make a notation or attachment to the information giving details of the matters in relation to which the person claims the information is inaccurate, incomplete, out of date or misleading; and, if the person claims the information is incomplete or out of date, setting out the information that the person claims is needed to complete the information or bring it up to date. The complainant’s amendment application is not a request under section 50.

59. As previously noted, by his amendment application in this case, the complainant has requested that the agency amend 387 pieces of information in 82 documents. The complainant's amendment application consists of at least 459 pages. The details the complainant has provided in support of each of the 387 amendment requests, in accordance with section 46, consist of approximately 443 pages.
60. In my view, consideration of the complainant's amendment application in the form he has submitted would require the agency to:
- Identify and locate the 82 documents that contain the 387 pieces of information that the complainant seeks to have amended.
 - Decide the threshold issue of whether or not the information in each of the 387 instances is, in fact, personal information about him, as that term is defined in the FOI Act.
 - If the information is personal information about the complainant, decide in each case whether the information is inaccurate, incomplete, out of date or misleading as the complainant claims. This would require consideration and evaluation of the extensive details the complainant has given in each case of the matters in relation to which he believes the information is inaccurate, incomplete, out of date or misleading; the extensive reasons he has given for holding that belief; and the extensive details he has given in each case of the amendment that he wished to have made. This would also require the agency to consider and evaluate the information in each document, undertake inquiries regarding the facts relating to each document if necessary – including potentially with the authors of the documents and people whose opinions are contained in the documents – to decide whether the information is in fact inaccurate, incomplete, out of date or misleading and, therefore, requires amendment.
 - In any instances where the agency decided that the information is personal information about the complainant and that it is inaccurate, incomplete, out of date or misleading, the agency would have to then decide what form the amendment should be made; that is, should the amendment be made by altering information, striking out or deleting information, inserting information or inserting a note in relation to information, or in two or more of those ways. In any cases where the agency decided that the amendment should be made by striking out or deleting the information, the agency would have to apply to the Information Commissioner for approval to obliterate or remove the information in accordance with section 48(3). This would require the agency to make submissions to establish in each case that the prejudice or disadvantage that the continued existence of the information would cause to the complainant outweighs the public interest in maintaining a complete record of information. In this regard, I observe that of the 387 pieces of information the complainant seeks to have amended, in 235 instances the complainant seeks to have the information struck out or deleted.

61. In his further submissions the complainant submits that:

There is nothing remarkable about the performance of tasks described at the bullet points [above]; they are inherent in the workflow of an amendment application pursuant to section 48 of the FOI Act that any agency subject to the provisions of the FOI Act would reasonably have to undertake if it decided to amend information in accordance with an amendment application.

And that:

As the agency has not provided an estimate of the quantum of resources (which include time, human, financial and physical resources) that would be consumed in the performance of the tasks described in the bullet points in questions, it is difficult to reconcile whether such consumption would be “significant”.

62. However, having considered the whole of the complainant’s amendment application, I agree with the view expressed by the former Commissioner in the preliminary view letter that the performance of the tasks described at the bullet points at [60] would require the agency to expend significant time and resources.
63. In his further submissions in response to the preliminary view letter, the complainant included a table setting out his estimate of the time it would take the agency to process his amendment application. As I understand it, the complainant submits that it would take the agency 1.5 minutes per document to identify and locate each of the 82 documents he seeks to have amended; 1.5 minutes per piece of information to locate and identify each of the 387 pieces of information he seeks to have amended; 0.5 minutes per piece of information to determine whether each piece of information is personal information; 1 minute per piece of information to consider and evaluate each of the 387 pieces of personal information; and 1 minute per piece of information to amend the information. In total, as I understand it, the complainant estimates it would take up to 27 hours to complete these tasks.
64. In my view, the time estimated by the complainant to complete each activity is very conservative and misconceived and does not take into account the time required to complete all of the tasks described at the third bullet point of [60] above or the tasks described at the fourth bullet point of [60] above. I consider that it would take the agency well in excess of 27 hours to undertake all of the steps described at [60].
65. Section 20 of the FOI Act permits an agency to refuse to deal with an application for access to documents (an access application) in certain circumstances. Section 20 provides that:
- (1) *If the agency considers that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency’s resources away from its other operations, the agency has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.*
 - (2) *If after help has been given to change the access application the agency still considers that the work involved in dealing with the application would*

divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency may refuse to deal with the access application.

66. As my predecessors have said in previous decisions, section 20 is designed to ensure that the operations of government agencies are not unduly impeded by agencies having to deal with unreasonably voluminous access applications. It is one of a number of provisions aimed at striking a balance between, on the one hand, the public interest in open and accountable government and, on the other hand, the public interest in the ongoing effective operation of agencies: see, for example, *Re Park and SMHS - Royal Perth Hospital* [2014] WAICmr 18 at [31].
67. As the complainant has correctly submitted, the provisions in section 20 of the FOI Act, which permit an agency to refuse to deal with an access application, do not expressly extend to or apply to applications for amendment of personal information. However, I agree with the view expressed by the former Commissioner in his preliminary view letter that Parliament did not envisage or intend that the amendment provisions in the FOI Act would require an agency to deal with an application for amendment of the size the complainant has made involving the amendment of 387 pieces of information in 82 documents or to consider an application for amendment in the vicinity of 459 pages.
68. In his further submissions the complainant has referred to various extracts of parliamentary debates and speeches relating to the *Freedom of Information Amendment Bill 1992* and claims that '[t]here is nothing in the second or third [reading] speeches or any deliberations of the committee for the Freedom of Information Bill 1992, which supports [the above view]'. However, having considered the parliamentary debates and speeches the complainant has referred to, I am not dissuaded from my view. I also agree with the former Commissioner that it is consistent with the legislative intent of section 20 that Parliament would not have intended that the operations of government agencies would be unduly impeded by requiring an agency to deal with an unreasonably voluminous application for amendment of personal information.
69. The complainant claims in his further submissions that it is 'entirely at the discretion of the agency whether to amend a piece of information in the manner wished (or requested) by the applicant'. The complainant also 'recognise[s] that the reasons for the agency deciding not to amend personal information are not confined to the ways in which personal information may be amended as requested by the applicant'.
70. As noted at [22], the FOI Act does not give the complainant the right to have his personal information contained in documents of the agency amended; rather it gives him the right to apply to the agency to have his personal information amended. The complainant has exercised that right and given details of the matters in relation to which he believes the information is inaccurate, incomplete, out of date or misleading and his reasons for holding that belief, as required by section 46 of the FOI Act. As also already noted, section 49 provides that if the agency decides not to amend the information in accordance with the application, it must give the complainant its decision including the reasons for its decision (my emphasis). That is what the agency has done on this occasion. My role on external review is to decide whether, in all of the circumstances, the agency's decision is justified.

71. I accept that not all of the information the complainant seeks to have amended consists of another person's view or opinion. I also accept that it is possible that a small amount of the information he seeks to have amended may be inaccurate, incomplete, out of date or misleading and require amendment. However, in the circumstances of this particular case, and having regard to the objects of the FOI Act, other provisions in the FOI Act including section 20, the nature and size of the complainant's application, the work involved in the agency dealing with the totality of his amendment application which I consider is mostly without merit, I am satisfied that the agency is justified in deciding not to amend information in accordance with the complainant's amendment application (my emphasis).
72. I understand that the agency remains prepared to place the complainant's application (in full) with an accompanying statement on his personal file, as advised in the agency's decision. I strongly suggest that the complainant takes up that offer.

CONCLUSION

73. For the reasons set out in this decision, I find that the decision of the agency not to amend information in accordance with the complainant's amendment application is justified. Accordingly, the decision of the agency is confirmed.

APPENDIX

Extracts from the *Freedom of Information Act 1992 (WA)*

46. Application for amendment, form etc. of

- (1) The application for amendment has to —
 - (a) be in writing; and
 - (b) give enough details to enable the document that contains the information to be identified; and
 - (c) give details of the matters in relation to which the person believes the information is inaccurate, incomplete, out of date or misleading; and
 - (d) give the person's reasons for holding that belief; and
 - (e) give details of the amendment that the person wishes to have made; and
 - (f) give an address in Australia to which notices under this Act can be sent; and
 - (g) give any other information or details required under the regulations; and
 - (h) be lodged at an office of the agency.

- (2) For the purposes of subsection (1)(e) the application has to state whether the person wishes the amendment to be made by —
 - (a) altering information;
 - (b) striking out or deleting information;
 - (c) inserting information;
 - (d) inserting a note in relation to information,or in 2 or more of those ways.

48. Amending information, ways of

- (1) If the agency decides to amend the information it may make the amendment by —
 - (a) altering information; or
 - (b) striking out or deleting information; or
 - (c) inserting information; or
 - (d) inserting a note in relation to information,or in 2 or more of those ways.

- (2) If the agency inserts a note in relation to information the note has to —
 - (a) give details of the matters in relation to which the information is inaccurate, incomplete, out of date or misleading; and
 - (b) if the information is incomplete or out of date — set out whatever information is needed to complete the information or bring it up to date.

- (3) The agency is not to amend information under subsection (1) in a manner that —
 - (a) obliterates or removes the information; or

- (b) results in the destruction of a document containing the information, unless the Commissioner has certified in writing that it is impracticable to retain the information or that, in the opinion of the Commissioner, the prejudice or disadvantage that the continued existence of the information would cause to the person outweighs the public interest in maintaining a complete record of information.
- (4) Before information is amended under subsection (1) in a manner that —
 - (a) obliterates or removes the information; or
 - (b) results in the destruction of a document containing the information,

and that contravenes the *State Records Act 2000*, a record keeping plan made under that Act or the archives keeping plan made under that Act, the Commissioner shall provide the State Records Commission with a copy of the certificate issued by the Commissioner under subsection (3).

49. Decision on application, notice of

- (1) The agency has to give the person written notice of its decision on the application for amendment.
- (2) Section 13 applies with any necessary modifications to a notice under subsection (1) except that the references to 45 days are to be read as references to 30 days.
- (3) Section 30(a) and (b) apply to a notice under subsection (1).
- (4) If the agency decides to amend the information the notice has to give details of the amendment made.
- (5) If the agency decides not to amend the information in accordance with the application the notice has to give details of —
 - (a) the reasons for the decision and the findings on any material questions of fact underlying those reasons, referring to the material on which those findings were based; and
 - (b) the rights of review and appeal under this Act and the procedure to be followed to exercise those rights; and
 - (c) the right to request that a notation or attachment be made to the information and the procedure to be followed to exercise that right.