

FOI Amendment Applications

The purpose of this information sheet is to provide agencies with advice on processing and determining applications for amendment of records under the *Freedom of Information Act 1991* (FOI Act).

Applications for amendment

Section 30 of the FOI Act provides that a person may apply for the amendment of an agency's records if –

- » the document contains information concerning the person's personal affairs; and
- » the information is available for use by an agency in connection with its administrative functions; and
- » the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

An application made under section 30 must be in writing and addressed to the agency that holds the record to be amended. The application must give the particulars of the information contained in the document that the applicant believes is incomplete, incorrect, out-of-date or misleading, and specify the amendments that the person wishes to be made.

Section 32 of the FOI Act states that an application for amendment must be dealt with by an accredited FOI officer. Agencies have 30 (calendar) days in which to make a determination and notify an applicant accordingly, and no fees or charges are applicable. A determination under section 30 is subject to internal review, or where there is no internal review option, external review by the Ombudsman SA or a review by the South Australian Civil and Administrative Tribunal (SACAT).

If an agency fails to determine an application within 30 days it is deemed that the agency has refused to amend the record.

Amending Records

Section 34 of the FOI Act provides that an agency must determine an application for amendment by either amending its records in accordance with the application or refusing to amend its records.

An agency that determines to amend a document by inserting or deleting content in accordance with the application does not attract a penalty under the *State Records Act 1997* as it is considered that the agency has the proper authority to do so under the FOI Act.

The FOI Act does not specify how a record should be amended. However it is clear from section 34 that any amendment should be made in accordance with the application. The obligation lies with the agency to ensure that the record is correct, up-to-date and not misleading which means that the agency may amend parts of a record

or negotiate with applicants around which amendments will be made. In making partial amendments, the agency should make clear in its written determination, which amendments were made and provide reasons for those changes not made, as required under section 36 of the FOI Act.

Refusal to Amend

Section 35 of the FOI Act provides that an agency may refuse to amend its records if:

- » the agency is satisfied that its records are not incomplete, incorrect, out-of-date or misleading in a material respect; or
- » the agency is satisfied that the application contains matter that is incorrect or misleading in a material respect; or
- » the procedures for amending its records are prescribed under another Act, whether or not the amendment is subject to a fee or charge.

If an agency refuses to amend its records it must give written notice to the applicant of its determination.

Adding a Notation

Section 37 of the FOI Act provides that where an agency refuses to amend its records, the applicant may, in writing, require the agency to add to the records a notation specifying why the applicant claims the records are incomplete, incorrect, out-of-date or misleading, and any further information necessary to complete or update the records.

An agency must comply with a written notice from the applicant to add a notation. When the agency discloses the record to others in the future, it must ensure a statement is given stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading and include the particulars of the notation.

Agency does not hold the Records

If the application is to amend a record that is not held by the agency, the agency must provide written notice to the applicant advising of this fact.

Need further assistance?

Contact

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