

FOI Guidelines - Amendment and annotation of records

Contents

- Purpose
- Overview
- Amendment
 - Overview
 - Authorised decision making
 - Requirements of an application for amendment
 - Applications by Authorised Third Persons
 - Information which may be amended
 - Time limits
 - Incomplete, incorrect, out of date or misleading
 - Fees and charges
 - Transfer of amendment or annotation applications
 - Making decisions on a request
 - The nature of the information to be amended or annotated
 - The evidence on which a decision should be based
 - Assessing the evidence
 - Justifying the decision made
 - Implementing a decision to amend the record
 - Making amendments to paper records
 - Making amendments to databases
 - Getting started
- Annotation
 - Overview
 - Requirements of an application for annotation
- Review of decisions
 - Overview
 - Internal review and AAT review
 - Making a complaint to the Ombudsman
 - Making a complaint to the Privacy Commissioner
- Quick Checklist
- Sample Documents
 - Form /Advice to applicants seeking an amendment or annotation
 - Sample letters

FOI Guidelines - Amendment and annotation of records

Purpose

This Guide sets out the provisions relating to the amendment and annotation of records containing personal information under the *Freedom of Information Act 1982* (the FOI Act).

Overview

Records which are incomplete, incorrect, out of date or misleading **may be amended** to ensure that the information is correct, up-to-date, not misleading and complete. Where an application for amendment is refused, the applicant may apply to have the record **annotated** so that the record includes a statement outlining that objection.

These FOI Act procedures complement the access and correction rights under the Privacy Act 1988.

Applicants may seek a review of a decision which refuses to amend or annotate the document.

There is no application fee payable in respect of a request for amendment or annotation, however there is a fee of \$40 payable for requests for review.

Amendment

Overview

An individual may request for an amendment where:

- he or she claims that a document of an agency, or an official document of a Minister, contains personal information about him or her that is incomplete, incorrect, out of date or misleading;
- the document has been used, is being used, or is available for use, by the Department or the Minister, for an administrative purpose; and
- the person has had lawful access to the document under the FOI Act or any other Act.

An amendment involves making changes to the agency's records to make the information complete, correct, up-to-date or not misleading. Where possible, the changes are to be made so that the original (incorrect) information remains apparent.

It is irrelevant for the purpose of amendment why an agency holds the information or where it is held within the agency.

The amendment of a record under the FOI Act applies only to *personal information* contained in agency records, and *not* to other types of information.

Authorised decision making

Like access decisions, all decisions on the amendment of records must be made by persons authorised under section 23 of the FOI Act to make those decisions.

Requirements of an application for amendment

To be valid, an application for amendment must:

- be in writing;
- provide a valid Australian address to which a notice can be sent; and
- be sent to the agency's or Minister's office address, or be received by an officer in the agency or in the Minister's office.

The request should:

- as far as practicable, specify the documents requiring amendment;
- specify whether the relevant personal information is claimed to be incomplete, incorrect, out of date or misleading and which of these categories it falls into;
- specify the applicant's reasons for claiming the document is incomplete, incorrect, out of date or misleading; and
- specify the amendments being requested.

Applications by Authorised Third Persons

Applicants for amendment may authorise another person to make the request for amendment or annotation on their behalf. Agencies should satisfy themselves that representatives are, in fact, authorised to act on behalf applicant, although third parties such as solicitors, who write on behalf of a client, may safely be presumed to be authorised without further enquiry.

Information which may be amended

While an application for amendment is limited to the *information* for which an amendment request has been made, the request is not limited to a particular *document*. The request extends to any record of that information, as held by the agency or Minister, which is being used. For example, if the request is for amendment of an incorrect age of the person, then the right to have that information corrected extends

to *all* records kept by the agency for administrative purposes which contain a reference to the age of the person.

Personal information may have been used only once for administrative purposes by the agency and it is irrelevant where or why the information is currently retained by the agency. For example, the agency may have used the personal information in a record for administrative purpose only once and then stored or archived that record. Any request for that record to be amended will have to be considered. Similarly any information collected by an agency for future use may be the subject of a request for amendment.

Time limits

A decision on requests for the amendment or annotation of documents must be made as soon as practicable *but not later* than 30 days of receipt of the request.

All references to 'days' in the FOI Act are to calendar days, not working days. The time period starts from the day after a request is received by the agency. For requests received by post, this will depend on the date stamp on the envelope. For a request received over the counter of an agency, the date of receipt will indicate the starting date.

In practice, the processing of requests for amendment can take a long time due to the complexity of the material and the need to check the authenticity of claims made and evidence provided. If the processing of the request looks like it may exceed the 30 day limit, it is important to advise the applicant of the expected delay and to negotiate an acceptable time extension in which to process the request.

Incomplete, incorrect, out of date or misleading

An applicant may only request amendment where the personal information about that applicant in the record is incomplete, incorrect, out of date or misleading. The request may relate to several different pieces of information in one or more documents held by the agency or it may relate to only a single piece of information. A different reason may be claimed for each amendment. For example, a person may claim that part of the information is incorrect, another part out of date and therefore the record itself is misleading.

The words '*incomplete*', '*incorrect*' or '*out of date*' are to be construed according to their ordinary meaning.

The word '*misleading*' has been subject to judicial examination in other areas of law. Two points are worth noting here.

First, information can be said to be misleading if it is such that it can lead a person reading it into error or could, although in itself true, convey to a reader another meaning which is untrue.

Second, information will be misleading if it misleads (or is likely to mislead) person who might be expected to read the information. This includes both the unwary reader who may be misled as well as the wary reader who may not be. The information may still be misleading even if the specialist reader, familiar with the subject matter, is not misled.

Fees and charges

Applications for amendment or annotation of personal records do not attract an application fee or any additional charges. However, a \$40 application fee is required to apply for an internal review of the original decision to refuse to amend a document.

Transfer of amendment or annotation applications

There is an obligation to transfer amendment or annotation applications to other agencies when the documents are held by another agency or contain subject matter more closely related to the functions of another agency.

Documents which originate from the bodies or agencies listed in Schedule 2 to the FOI Act, such as the intelligence agencies, and are more closely connected with the functions of that body or agency, must be transferred to the responsible agency which would be:

- a body or person listed in Part I of Schedule 2 of the FOI Act (s 51C(2)); or
- an agency specified in Part II of Schedule 2 (s 51C(3)).

An example is a document originating from the Family Law Council, which would need to be transferred to the Attorney-General's Department.

Making decisions on a request

Applicants must be advised *in writing* of a decision refusing a request to amend a record. The decision should set out what evidence (for and against the request) was examined, the weightings given to that evidence by the decision-maker and the decision-maker's reasons for refusal. The applicant's review rights and right to complain to the Commonwealth Ombudsman must also be included in the notice.

When deciding whether the information in the document is as alleged by the applicant to be incomplete, incorrect, out of date or misleading, the following elements should be borne in mind:

1. the nature of the information the applicant seeks to amend;
2. the evidence on which the decision is to be based; and
3. the burden of justifying that the decision made is the correct decision.

The nature of the information to be amended or annotated

The personal information alleged to be incorrect, incomplete, out of date or misleading may be:

- factual information (such as date of birth, death or marriage); or
- information in the nature of advice or recommendation (such as medical opinion).

Incorrect

Factual information, such as a date of birth, may be incorrect or incomplete. For example, the department's records may indicate a person was born on 1/2/1997 when the correct date is 2/1/1997.

Incomplete

A record may be true but misleading because it is incomplete. For example, a personnel file recording that an applicant had three different jobs in the last 12 months may be misleading because it fails to record that the first job was temporary, the second job terminated when the employer went into liquidation and the third ended due to injury.

Misleading

An applicant may allege that a record of opinion or advice is misleading because it does not contain information about the circumstances in which that opinion or recommendation was received. In that situation, the applicant may seek to have incorporated in the document a statement setting out the relevant circumstances qualifying that opinion or recommendation.

Out of Date

The applicant may allege an opinion is out of date and request that a correct or more recent opinion be inserted into the record. For example, an opinion, given years before, that an applicant was unfit for certain types of work may no longer be applicable and, as such, be wrong or out of date. In that instance, the record should be amended by incorporating new information about fitness for work into the record, taking care not to destroy the earlier opinion, and cross-referencing the documents on file. Destruction of original documents may create gaps in the information and leave other documents on the file unexplained, in light of the more recent information.

Where the request relates to a document containing advice, recommendations or opinions of a third party (including a group), the record should only be amended if the accuracy or completeness of that record is in dispute. It is not sufficient to change a record based on the fact that a person does not agree with that opinion. Consultation with the person who provided the advice, opinion or recommendation may be necessary.

The evidence on which a decision should be based

The onus, in the first instance, is on the applicant to give particulars of the amendments being requested and the reasons for the request.

A decision to amend the record must be supported by a positive finding that the record is incorrect, incomplete, out of date or misleading. Where an applicant fails to provide evidence in support of his or her claim, the agency would be justified in refusing to amend the record. However, before refusing the request, applicants should be given an opportunity to provide further evidence to substantiate their claims. For example, if the claim is that the information is out of date, evidence of the current position should be sought from the applicant.

An agency should not make a decision unless all the material it has, including the evidence produced by the applicant and the material on file, satisfies the agency, *on the balance of probabilities*, that the information is incorrect, incomplete, out of date or misleading. That is, the evidence provided means that *it is more likely than not* that the information on the record is incorrect, incomplete, out of date or misleading and requires amending

Agencies, depending on the nature of functions, may impose different evidentiary requirements on the applicant or on its own sources, in relation to requests for amendment or annotation. If an applicant can produce a document satisfying the request for amendment they should do so. Alternatively, an agency may have information on its files or may be able to obtain the evidence from elsewhere, which will satisfy the requirements.

It is not necessary to conduct a full investigation into the matters alleged to be incorrect or misleading. The agency or Minister needs only be satisfied on the balance of probabilities that the applicant's allegations are correct or incorrect, justified or not justified.

Applicants should be provided with all reasonable assistance if it is felt that they have not pursued all likely avenues for obtaining evidence. This may mean the agency notifies the applicant of the evidence it requires and if necessary, advises the applicant where this information may be obtained. Furthermore, applicants should be given every opportunity to comment on any adverse inferences drawn during the assessment of the authenticity or relevance of the evidentiary documents as submitted.

Assessing the evidence

In assessing what weight to give to evidentiary documents, it is necessary to explore the circumstances under which incorrect information was provided in the first instance. This is a key consideration where the applicant has no documents to support his or her application for amendments other than a statutory declaration stating his or her case.

Example

Incorrect information may have been placed on file because the applicant or others (say, parents or relatives) misunderstood the questions asked of them at the time, or

they may have made a genuine error in supplying the information. Alternatively, the collector of the information may have made a mistake. There may have been an error in translation, a miscalculation of a date of birth from a calendar or a simple clerical error, such as transposition of dates or misspelling of a name.

In other situations, the applicant, or others acting on behalf of the applicant, may have knowingly provided false information under extenuating circumstances. The reasons for doing so will be important in determining whether the declared information on file is, on the balance of probability, incorrect and that the claimed information is correct.

Wherever practicable, a third party who allegedly provided false information about the applicant should be consulted and invited to comment on the reasons for supplying that information. For example, a parent who provides details about a child (the applicant in this case) and the applicant then claims that those details are incorrect. In this case, the agency could ask the parent to provide a statement or statutory declaration about the claims (this should be done with the knowledge and/or consent of the applicant to avoid a breach of the Privacy Act). Alternatively, the agency could ask the applicant to obtain the statement from the parents.

It is often difficult to establish the authenticity of some documents provided in support of an application for an amendment. To insist upon presentation of originals may be unrealistic, as originals are often unobtainable. In some cases, there may be difficulty in establishing whether originals are fraudulent or have been fraudulently obtained. Many agencies have documentation identity units or fraud units, which can assist in determining whether a document, submitted in evidence of claim, is authentic.

It should be noted that, in some instances, an amendment to a record might have other legal effects. For example, in migration cases, if an applicant has previously provided incorrect information in a visa application, he or she may be liable to have that visa cancelled under the Migration Act. The applicant should also be made aware that the amended information will then be used in future dealings between the applicant and the agency. Changes in name details or details relating to family composition may, for example, affect an applicant's ability to sponsor others migrating to Australia. Holders of refugee or humanitarian visa may have the visa checked for International Protections Obligations. Agencies should take great care to avoid appearing to give such advice to intimidate or to dissuade an applicant from exercising his or her right to seek amendment of personal particulars. Agencies should ensure they take a balanced and objective approach when informing applicants about the possible repercussions of amendments to their personal details.

Justifying the decision which has been made

An agency that agrees with a request by the applicant may decide to change the record as requested. It is good business practice to note on the record why the decision was made to amend the record so that it is clear to later readers of the record why the action was taken.

Where an agency or Minister makes a decision not to amend the record, the agency or Minister must give notice, in writing, to the applicant setting out the findings on any material questions of fact, referring to the material on which those findings were based and stating the reasons for decision.

Remember, the onus of proof is on the agency to justify its decision should the matter go to the Administrative Appeals Tribunal (AAT). The FOI Act does not require that the agency prove the information in question was correct; only to establish that the AAT should affirm the decision made or hand down an adverse finding.

As with access decisions, applicants should be advised fully of their rights of review when decisions are made which are adverse to the applicant.

Implementing a decision to amend the record

Where an agency or Minister decides to amend a record in response to a request, it must amend *all* relevant records containing the information requiring amendment in whatever form the agency or Minister keeps those records.

The records may be amended by correcting or updating them or by adding new information to the record to make it complete. Care must be taken, however, to preserve the integrity of the record as a record of information originally supplied and subsequently amended. In other words, it is important not to delete the original record.

Making amendments to paper records

Information on a paper document can be corrected by ruling through the information found to be incorrect, and writing the correct information next to it, above or below it. The words '*Amended on [insert date] under s 48 of the FOI Act*', and cross-referencing it to the amendment by adding the words '*see folio [x] of file [x]*'. A useful way of making a large number of amendments would be to pre-print stickers with the appropriate wording.

Additional or updated information can be recorded in a similar way with the words: '*Additional information provided under s48 of the FOI Act on [insert date]*' or '*updated under the FOI Act on [insert date]*'. The date of amendment must always be recorded.

In some instances the record may need to be dry sealed after the amendment is made (that is, marked for quality assurance purposes)

A note that merely states the views of the applicant without making a finding on the accuracy of the information held by the agency is insufficient to constitute an amendment for the purposes of the FOI Act.

Even though the FOI Act allows records to be altered, it must be kept in mind that the information being amended still has value as an historical record, and therefore needs to be retained where possible. Where practicable, do not remove or destroy the record which existed before making an amendment. This would prejudice the integrity of the

record's status as an account of the information originally supplied and which may need to be referred to explain an action taken on the basis of the original information. This may not be possible on every type of record, and decision-makers should therefore keep a careful account of any changes made, cross-referencing to the relevant file containing the decision record where this is possible.

Where the incorrect information cannot be altered on the document or in the database, a clear reference to the file where the correct information is held should be added to the folio(s) or record(s) holding the incorrect information.

Making amendments to databases

Non-paper records (for example, computer data, microfilm) should be amended where it is possible to do so. As noted above, any amendments to personal information made under the FOI Act should be reflected on *all* records in an agency's system.

Although information is to be amended in a way that does not obliterate the text of the record, as it existed before the amendment, this may not always be possible with electronic records. Agencies should consult their systems administrators or computer areas for assistance or guidance on the amending or annotating electronic records.

Getting started

Table - Summary of Activities

Consider:

Consider the request and assemble all the material. Where it is not clear what the applicant wants, consult with the applicant to clarify.

- what files or documents does the agency have which can prove or disprove a claim
- what evidence has the applicant produced to support their claims. Is it new evidence?
- do you need to get documents supplied by the applicant verified for authenticity - if so, arrange to have information authenticated

When assessing the evidence it is sometimes useful to make a table with two columns - one containing evidence in favour of the amendment, and the other, evidence that does not support change to the document.

Consider:

- what original documentation was provided
- what new documentation has been provided
- the age of the document - for example, if the information was correct at the time it was supplied it may be more appropriately addressed by annotation rather than amendment.
- Where information was correct at the time it was supplied and where subsequent

A decision maker can then assign weightings to each piece of evidence.

Such a table will help formulate reasons for the decision.

papers on file explain the applicant's eventual change in circumstances, the applicant should be advised that this is the case and that his or her current status with the agency is not out of date, incorrect or misleading

- how the documents or information, that the applicant is seeking to change, came to be with the agency in the first instance
- whether the authorities that issued the original documents can be consulted to check the authenticity of documents or the applicant's account of events
- that changing the person's details may be of significance in a legal context. For instance, a person's age will affect his or her entitlements to maintenance or a pension or affect their migration status

Consider the following factors:

In making a decision to amend a record of an opinion.

Once an adverse decision is made, provide full reasons as to why the amendment is being refused.

- whether the opinion was correct at the time it was supplied
- how the opinion was reached and whether it took account of all the available facts
- whether the author of the original document can be contacted (so you can discuss whether all of the facts were considered)
- what evidence the applicant has produced in support of his or her claim
- where an opinion has been formed based on the available facts, and these facts have not been discredited, then it may be difficult to find that the opinion was incorrect. In these situations, it may be more appropriate for the applicant to seek to have an annotation placed on their file/record outlining his or her concerns

Annotation

Overview

Where no amendment is made the agency must provide applicants with an opportunity to annotate the record.

Annotation is done by adding a statement or file note to the record, cross-indexed to the material claimed to be incorrect, incomplete, out of date or misleading.

Agencies are not obliged to annotate a record where the annotation is voluminous, defamatory or irrelevant.

Applicants can apply at any time for an annotation to a record. Applicants may not necessarily apply for an amendment.

Where an agency decides not to amend a record wholly or partly, the agency or Minister must take reasonable steps to enable the applicant to provide a statement specifying:

- the information claimed to be incorrect, incomplete, out of date or misleading;
- whether the information is claimed to be incorrect, incomplete, out of date or misleading;
- the reasons for the applicant's claims; and
- any other such information as would correct the record.

The day that the applicant provides the statement to the agency is the day on which the applicant is regarded as having made a request for annotation to the record.

An applicant can make requests for annotation at any time, without first having to lodge an amendment application or he or she can request an annotation after a request for amendment has been refused.

Although not required by the Act, it is recommended that the existence of the annotation be clearly displayed on the cover of all of the applicant's files. This will assist future users of the files by drawing their attention to the information supplied by the applicant.

Requirements of an application for annotation

Under s 51A of the FOI Act an application for annotation must:

- be in writing;
- specify as far as possible the document(s) which requires annotation;
- be sent by post to the agency or Minister or delivered to an officer of the agency or member of staff of the Minister;
- give an address in Australia for reply; and
- be accompanied by a statement which specifies:
 - the information that is claimed to be incomplete, incorrect, out of date or misleading;
 - whether the information is claimed to be incomplete, incorrect, out of date or misleading;
 - the applicant's reasons for so claiming; and
 - any other information that would make the information complete, correct, up to date or not misleading.

The agency or Minister must then annotate the record by adding the statement provided. However, if the statement is irrelevant, defamatory or unnecessarily voluminous, the agency or Minister is not required to annotate the document.

Review of decisions

Overview

The applicant must be provided with a statement of reasons and be advised of appeal rights where an amendment or annotation is refused.

Review rights include:

- internal review;
- AAT appeal rights; and
- complaint to the Commonwealth Ombudsman.

Internal review and AAT review

Applicants may seek internal review of a decision not to amend or annotate a record. The review request must be made within 30 days of notification of the original decision. The agency or Minister has discretion to extend this 30 day period.

An internal review is subject to an application fee of \$40.

Applicants may apply to the AAT for a review where:

- the agency refused to amend or annotate a record;
- where the agency does not notify the applicant of the decision within the 30 days period after it receives the application; and
- where the agency is deemed to have made a decision.

Under s 55(6), where the AAT has reviewed a decision refusing to amend a record, the AAT cannot compel an amendment:

- to a record of a decision made under an enactment by a court, tribunal, authority or person;
- where the amendment relates to a question that the applicant was entitled to challenge before a court or tribunal; or
- to a record of opinion unless the opinion was based on a mistake of fact or the author was biased, unqualified or acted improperly in conducting the factual enquiries leading to the formation of the opinion.

Even if the AAT affirms the decision not to amend a personal record, s51 of the FOI Act provides that the claimant may formally request the Department to annotate the record.

Making a complaint to the Ombudsman

A person dissatisfied with a refusal to amend or annotate personal records will normally apply for an internal review of the decision and, if unsuccessful, proceed to the AAT. However, that person may also lodge a complaint with the Ombudsman about undue delays or about other aspects of the manner in which an agency makes its decision. The Ombudsman's role is to examine administrative *processes* rather than the merits of the actual decision. Unlike the AAT, the Ombudsman cannot substitute his or her decision for the agency's.

Making a complaint to the Privacy Commissioner

Applicants can also complain to the Privacy Commissioner if they are dissatisfied with the outcome of their application for amendment or annotation. The Commissioner's jurisdiction in this matter derives not from the FOI Act but from the access and correction obligations imposed on agencies under Information Privacy Principles 6 and 7 of the *Privacy Act 1988*. These obligations correspond to the individual's right of access and correction under the FOI Act. The Commissioner has powers under s.35 of the Privacy Act to recommend that the Department amend a particular document, or, where this is not done, to direct the Department to add an annotation to the relevant record setting out the amendments which were sought by the applicant.

For further information on review see FOI Guide - *Reviews*

Quick Checklist - Amendment and Annotation Decisions

Initial administration

- Is it a request for amendment or annotation?
- Is the request to amend personal information about the applicant in a document which has been used or is being used for administrative purposes?

(Note - If the request is for an *amendment*, this should be processed according to checklist below. If the request is to *annotate* - i.e. add a note to a record only - then this request cannot be refused unless the requested annotation is irrelevant, defamatory or unnecessarily voluminous.

- Are you authorised to make an FOI amendment decision?
- Does the request meet the FOI Act requirements?
 - Is the request in writing?
 - Was the request posted/delivered to the agency or Minister as specified in the FOI Act?
 - Is an Australian address supplied for correspondence?

- Does the request specify as far as practical: documents requiring amendment or annotation; information claimed to be incorrect, out-of-date or misleading; applicant's reasons for seeking this amendment or annotation; and, the amendment or annotation requested?
- If the request does not comply with the formal requirements, consult further with the applicant to obtain necessary information to make the request comply.
- Note - 30 day time limit commences from date a valid request was received.

Processing the request

- Send an acknowledgment letter to applicant, requesting additional evidence be provided if necessary.
- Does the request need to be transferred to another agency or another area of the Department? If so, arrange the transfer.
- Locate and retrieve all agency documents and files that may assist you in making a decision on the request.
- Assess the evidence provided by applicant
 - send documents to appropriate area for verification, if necessary.
- Conduct consultations (where necessary) with:
 - areas in agency which may be able to assist;
 - other persons, agencies or organisations that may be able to assist in verifying the authenticity/origin of certain documents; and
 - any other persons who may be able to assist, such as parents, if the applicant is a child or the person who provided initial information now claimed to be incorrect, etc.
- Assess and compare documents submitted with original application
 - consider arguments for and against amendment. Draw up a table to help you.

Making a decision

- Make a decision to approve or refuse amendment
- If the decision is approved:
 - send a letter to applicant notifying him or her of the decision, and returning all of the original documents they supplied as evidence (keep copies on file);
 - update all the agency's systems/files to ensure they reflect up-to-date information (this is required under Information Privacy Principle 8 of the *Privacy Act 1988*) and cross-reference to decision file;
 - where the amendment changes the identity of the person known to the agency, consider who needs to be notified; and
 - amend records.
- If the decision is refused:
 - send a letter to applicant notifying him or her of the decision and review rights, and returning originals all of the documents supplied as evidence (keep copies). Invite an application for annotation; and
 - annotate the files/systems to show that the client has made claims that certain information is incorrect, out-of-date or misleading and what those claims are. Cross-reference to decision file.

Sample documents

Advice to FOI applicants seeking amendment or annotation

The following may be helpful when writing to applicants for more evidence or if an applicant wants to know how to lodge a request for amendment.

Application for amendment of personal records

The *Freedom of Information Act 1982* provides that people may apply to have Departmental records amended or annotated if those records are incomplete, incorrect, out-of-date or misleading. There is no fee for this application.

How to make a request

For a request to be valid under the FOI Act, your request must be in writing and specify:

- the document containing the record of personal information you are claiming to hold the incorrect details
- the information that you claim to be incomplete, incorrect, out of date or misleading
- whether the information is incomplete, incorrect, out of date or misleading
- the reasons why you claim this, and
- the amendment you are requesting.

You must also give an address in Australia for the Department to send correspondence to and post or deliver your application to any office of the Department in Australia.

Supporting evidence

It is up to you to demonstrate to the decision-maker that the record is incorrect, incomplete, out-of-date or misleading. Therefore, it is important to provide as much supporting evidence as possible.

Please note that original documents (not photocopies) are required. Documents in a language other than English must be accompanied by a certified English translation. Your original documents will be returned to you at the time of decision.

Form

This is a suggested Form that can be sent to applicant wishing to make amendments. Agencies should modify it to reflect their own circumstances and practices.

If there is insufficient space to answer the questions please attach separate sheets clearly marked to show to which question they refer.

Request for amendment under section 48 of the Freedom of Information Act 1982 (the FOI Act)

Your Details

Title: Mr Mrs Miss Ms Other

Family Name:

Given Name(s):

Date of Birth: (as it currently appears on departmental records):

Address:

Phone

- Home:
- Work:
- Mobile:

The following questions are about the information you are claiming to be incorrect and how you believe the information should be recorded

1. Do you claim that your personal information is:
 - Incomplete
 - Incorrect
 - Out of date
 - Misleading

(Please tick as appropriate)

2. What records do you believe are incomplete, incorrect, out-of-date or misleading? (If possible, please list any file numbers)
3. What information do you believe is incomplete, incorrect, out of date or misleading?
4. What is the amendment you are requesting? (What do you claim is the correct information?)
5. Please provide an explanation of how you believe these departmental records came to be wrong. Also provide any other information which you think will help the Department make a decision.
6. Please list the **original** documents you have attached as supporting evidence (these will be returned to you):

Signature:

Date:

Please check that you have:

- provided all ORIGINAL supporting documents; and
- where documents are in a language other than English, provided an accredited English translation.

Sample letters

Section 48 (Amendment) Request - Acknowledgment and Request for Further Information

Dear <Applicant>

Re: FOI Request

I refer to your letter of <date> in which you have asked for an amendment under the *Freedom of Information Act 1982* (the FOI Act) to departmental records relating to <subject of amendment>. Your request has been registered and allocated the reference number (<insert number>), which should be used in all future communications on this matter.

As a first step in assessing your request, I will obtain all relevant departmental files. When these have been examined, together with the evidence you have provided, a decision will be made on whether to amend your records.

Your records can only be amended where you can satisfy the Department that the record contains personal information that is and is incomplete, incorrect, out-of-date or misleading. It is therefore in your interest to provide as much evidence as possible to support your claim.

The following are examples of supporting evidence you may want to provide<insert list of documents sought>. I have marked (X) those that I would particularly like you to provide. If you have any other material not listed below which you think would help support your claim, you should also provide that material. Only original documents (not photocopies) should be lodged. Documents that are not in English should be accompanied by an accredited English translation.

There is a 30 day time limit for processing your request for amendment, commencing from <date received>, the date the request was received. If you have any queries on the above, please do not hesitate to contact me on <phone number>.

Yours sincerely

Section 48 (Amendment) Request - Approval

Dear <Applicant>

I refer to your request under the *Freedom of Information Act 1982 (the FOI Act)* seeking to amend the Department's records relating to <subject of amendment>.

I am an officer authorised under section 23 of the FOI Act to make decisions under the FOI Act.

My decision follows.

I am pleased to inform you that I have made a decision to approve your request. Attached is your <evidence provided by applicant>. You should keep this letter as evidence of the change to your records.

Departmental records have now been amended to show <specify changes made>. You should understand that this decision only affects the records held by this Department and not those of any other organization.

Your rights of review of this decision are attached. Also attached is information on how to make a complaint to the Commonwealth Ombudsman.

Yours sincerely

Section 48 (Amendment) Request - Refusal

Dear <Applicant>

I refer to your request under the *Freedom of Information Act 1982 (the FOI Act)* seeking to amend the Department's records relating to <subject of amendment>.

I am an officer authorised under section 23 of the FOI Act to make decisions. My decision and reasons for it follow.

DECISION AND REASONS FOR DECISION

I have decided to refuse your request for amendment and therefore, the Department's records have not been amended, and still show <specify details not altered>.

In order for me to make an amendment or annotation under the FOI Act, I must be satisfied that the record of personal information is incomplete, incorrect, out-of-date or misleading.

In assessing the material above, my findings and weightings for such findings were:

- <list findings>
- ...

Having weighed all these factors, I am not satisfied of your claim for amendment because <state your reasons for your findings>.

Under the FOI Act, where a request for amendment is refused, the Department is required to make an annotation to the record explaining the claims made. Your claim that *<existing details>* should be amended to *<amendment requested>* has therefore been noted on the records.

Following an unsuccessful application for amendment you are entitled, under section 51 of the FOI Act, to submit an additional statement outlining the reasons you claim that the information is incomplete, incorrect out of date or misleading and what information would correct this. If you wish to provide such a statement, it will be added to your records.

Attached is your *<original evidence received>*.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision to refuse an amendment to the Department's records I relied on the following documentary evidence.

- *<list documents>*
- the Freedom of Information Act 1982
- *<any other documents>*

REVIEW RIGHTS

Your rights of review of this decision are attached. Also attached is information on how to make a complaint to the Commonwealth Ombudsman.

Yours sincerely