

Authority:

Office of the Victorian Information Commissioner (OVIC)

Country/State:

Australia – Victoria

Case title:

Ensuring Accuracy of Personal Information: Akers v Victoria Police

Official citation:

Akers v Victoria Police [2024] VSC 621 (10 October 2024)

Date of decision:

10 October 2024

Relevant law:

Freedom of Information Act 1982 (Vic), section 39 – right of individuals to request amendments to documents containing personal information

Decision:

The Supreme Court of Victoria allowed the appeal in part, finding that VCAT had misinterpreted section 39 regarding the assessment of information accuracy in an IBAC investigation report. The Court held that section 39 provides individuals the right to request amendments where information is incorrect or out of date, and this right extends to information about the applicant that had changed or become inaccurate after the finalisation of the report. The Court clarified that section 39 cannot be used to reinvestigate the complaint itself but must be interpreted in a way that protects the accuracy and integrity of personal information.

Key words:

Right to Information, FOI amendment requests, section 39, personal information, procedural fairness, IBAC investigation

Case Summary**1. Facts**

The applicant, Akers, filed a complaint with the Independent Broad-based Anti-corruption Commission (IBAC) regarding alleged mistreatment by Victoria Police at a police station.

IBAC investigated the complaint and concluded that the allegations were either unfounded or unsubstantiated. The findings were documented in an investigation report.

Akers made a request under section 39 of the Freedom of Information Act 1982 (Vic), seeking amendments to various sections of the report, arguing that some of the information concerning him was wrong or misleading.

The agency denied his request, and VCAT upheld this decision, concluding that section 39 did not allow the applicant to reinvestigate the underlying complaint or amend the report based on disagreement with the findings.

2. Disagreement / Argument

Akers challenged VCAT's interpretation, arguing:

- Some information in the report had become inaccurate or out of date after the charges or findings had changed;
- VCAT failed to properly apply section 39 in determining whether the report contained incorrect or misleading personal information;
- He had not been afforded proper procedural fairness in having his requested amendments considered.

3. Resolution

The Supreme Court clarified that:

- Section 39 protects the accuracy of personal information and is not limited to the date of finalisation of the report;
- Individuals cannot use section 39 to reinvestigate the substance of the complaint, but they can request amendments to ensure the information about them is accurate and up to date;
- Some sections of the report related to charges against Akers were inaccurate due to revisions of the charges.

The Court allowed Akers' appeal in part, granting him the right to amend the investigation report regarding the inaccurate or outdated information while upholding the overall findings of IBAC.

Note (Optional):

This case is significant because it clarifies the scope of FOI rights under section 39, emphasizing the balance between protecting personal information, ensuring accuracy, and maintaining the integrity of agency investigations. It also highlights the importance of procedural fairness in handling amendment requests and the limited but crucial power of individuals to correct official records that affect them.

Resource:

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/621.html>