



## Re 'K' and Department of Justice [2026] WAICmr 13

### Decision and reasons for decision

**Complainant:** K  
**Agency:** Department of Justice  
**OIC ref:** F2026268  
**Decision date:** 29 July 2026  
**Sections considered:** section 45

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### Decision

1. The decision of the agency not to amend the disputed document in accordance with the complainant's application under Part 3 of the *Freedom of Information Act 1992* (WA) (**FOI Act**) is confirmed.

### Summary

2. This matter relates to the Department of Justice's (**agency**) decision to refuse to amend personal information in accordance with an application under Part 3 of the FOI Act.
3. The complainant applied under section 45 of the FOI Act to amend their adoptive parents' death registrations on the Register maintained pursuant to the *Births, Deaths and Marriages Registration Act 1998* (WA) (**BDMR Act**). The complainant sought to amend those registrations to:
  - correct their legal name;
  - record their birth name;
  - record the name they are also known by (**alias**); and
  - record the date of their adoption.
4. Further background to this matter is set out in the Context section below.
5. The agency's refusal to amend personal information in the disputed document is justified. Amendment under section 45 of the FOI Act is not available in this instance because section 45(5) excludes its operation where another enactment provides a means or procedure by which the

complainant can have the information amended. The BDMR Act provides such a means or procedure.

6. My full reasons are set out in the following sections.

Patrick Ky

Patrick Ky

**Information Access Deputy Commissioner**

28 July 2026

## Reasons for decision

### Amendment of personal information under the FOI Act

7. Section 45(1) of the FOI Act gives individuals the right to apply for amendment of personal information about the person contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading.
8. An amendment can be made by way of:<sup>1</sup>
  - altering the information;
  - striking out or deleting information;
  - inserting information; or
  - inserting a note in relation to information.
9. Relevantly, section 45(5) of the FOI Act expressly states section 45(1) does not apply if another enactment provides a means or procedure by which the person can have the information amended.
10. The question before me in this matter is whether the *Births, Deaths and Marriages Registration Act 1998* (WA) (**BDMR Act**) is another enactment providing a means or procedure by which the complainant can have their personal information amended.
11. The relevant legislative provisions are set out in full in the Context section below.

### Part 3 of the FOI Act does not apply because the BDMR Act provides a means or procedure for the complainant to amend information

12. The BDMR Act is an Act to provide for the registration of births, deaths, marriages, changes of name, changes of registration of sex and gender, and information about certain parentage changes in Western Australia and for related matters.<sup>2</sup> It is a written law and clearly 'another enactment' for the purposes of section 45(5) of the FOI Act.<sup>3</sup>
13. The objects of the BDMR Act include:<sup>4</sup>
  - the registration of births, deaths, marriages, changes of name, changes of registration of sex and gender and parentage change information in Western Australia;
  - the keeping of registers for recording and preserving information about births, deaths, marriages, changes of name and parentage changes in perpetuity;
  - access to the information in the registers in appropriate cases by government or private agencies and members of the public, from within and outside the State; and
  - the issue of certified and uncertified information from the registers.
14. Part 8 of the BDMR Act deals with the Register. The Registrar of Births, Deaths and Marriages (**Registrar**) has the function of, among other things, establishing and maintaining the Register, and administering and ensuring the registration system operates efficiently, effectively and economically.<sup>5</sup>

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<sup>1</sup> FOI Act, s 46(2).

<sup>2</sup> BDMR Act, long title.

<sup>3</sup> *Interpretation Act 1984* (WA), s 5.

<sup>4</sup> BDMR Act, s 3(a)-(d).

<sup>5</sup> BDMR Act, s 6.

15. The Register must contain the particulars of all registrable events, including death.<sup>6</sup> The Registrar may also include on the Register records of information in addition to registrable information relating to registrable events, if the inclusion is considered appropriate by the Registrar.<sup>7</sup> In other words, the BDMR Act distinguishes between information that must be recorded and information that may be recorded at the Registrar's discretion.
16. Division 3 of Part 8 of the BDMR Act deals with correction and amendment of the Register.
17. Under section 51 of the BDMR Act, the Registrar may, and, if ordered by a State court to do so, must correct the Register. Most relevantly, section 51(1)(b) provides the Registrar may correct the Register 'to bring the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event'.
18. A correction can be made by adding or cancelling an entry in the Register, or by adding, altering or deleting particulars contained in an entry.<sup>8</sup>
19. Section 52 of the BDMR Act also provides, relevantly:

The Registrar, whether or not on the application of another person, may ... add additional registrable information to an entry in the Register or add an entry in the Register if there is sufficient evidence of the matters to be recorded.
20. Taken together, the provisions above establish the statutory framework governing the establishment, maintenance, and, most importantly, correction and amendment of the Register. In particular, the framework identifies the information that must or may be recorded on the Register and the circumstances in which the Register may be corrected or amended.
21. In my view, section 45 of the FOI Act therefore does not apply to information contained in the Register because section 45(5) recognises the general amendment mechanism in section 45 does not apply where another enactment provides a means or procedure by which a person can have the information amended. In this case, Part 8 of the BDMR Act establishes a statutory process for amendment and correction of the Register.
22. However, section 53 of the BDMR Act introduces some uncertainty. It provides:

Nothing in this Division affects a requirement in another written law for the Registrar to correct or amend the Register for the purposes of that law.
23. Section 53 of the BDMR Act appears to recognise the statutory framework established by the BDMR Act does not operate to the exclusion of all other written laws. It preserves the operation of some other written laws that impose a requirement on the Registrar to correct or amend the Register. In other words, section 53 contemplates that, in some circumstances, the Register may be required to be amended under a statutory provision outside the BDMR Act.
24. For the following reasons, section 53 should be interpreted narrowly and therefore does not conflict with section 45(5) of the FOI Act.
25. In my view, section 53 does not preserve a general right to seek amendment of the Register under another statutory scheme, such as Part 3 of the FOI Act. Its terms are directed to a requirement in another written law for the Registrar to correct or amend the Register. The provision therefore preserves laws that operate on the Register through the statutory functions conferred on the Registrar, rather than creating a general ability for a decision-maker exercising functions under another legislative scheme, such as Part 3 of the FOI Act, to amend the Register.
26. This narrow construction is consistent with the purpose and objects of the BDMR Act outlined above. Those objects indicate the Register is intended to operate as an authoritative statutory

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<sup>6</sup> BDMR Act, ss 4 and 49(2).

<sup>7</sup> BDMR Act, s 49(2A).

<sup>8</sup> BDMR Act, s 51(4).

record. The integrity of the Register depends on the information recorded in it being maintained and amended in accordance with the statutory framework established by the BDMR Act.

27. Further, Parliament has expressly identified the circumstances in which the Register may be corrected or amended and has entrusted responsibility for those decisions to the Registrar. The BDMR Act does not leave the amendment of the Register to a general administrative process. It identifies the circumstances in which the Registrar may or must exercise those functions.
28. Significantly, the BDMR Act distinguishes between circumstances in which the Registrar is *required* to amend or *may* amend. The only express circumstance in which the Registrar is required to correct the Register under the BDMR Act is where the State court orders the Registrar to do so. Otherwise, amendment of the Register involves the Registrar's exercise of statutory discretion having regard to the criteria established by the BDMR Act.
29. Finally, the BDMR Act also provides a person dissatisfied with a decision of the Registrar may apply to the State Administrative Tribunal for a review of the decision.<sup>9</sup> This also supports the conclusion Parliament intended decisions concerning the correction and amendment of the Register to be addressed within the statutory framework established by the BDMR Act, rather than through the amendment provisions of the FOI Act.
30. I acknowledge the former Information Commissioner reached a different conclusion on the interaction between section 45(5) of the FOI Act and the BDMR Act in *Re P and Department of Justice* [2025] WAICmr 2 (**Re P**). In that case:
  - the applicant sought to add their name, as the deceased's child, to their birth parent's death certificate in circumstances where, by reason of section 75 of the *Adoption Act 1994* (WA), the applicant was not the deceased's child under the law; and
  - the former Information Commissioner found section 51 of the BDMR Act did not provide a means or procedure for the applicant to apply for amendment of the complainant's birth mother's death registration as they were not her child under the law and, accordingly, section 45(5) of the FOI Act did not apply.
31. However, that decision did not expressly engage with the operation of section 52 (or section 53) of the BDMR Act.
32. To the extent the decision in *Re P* suggests section 45(5) of the FOI Act is not engaged where the Registrar refuses to make the amendment sought, I respectfully disagree. The relevant provisions in the BDMR Act provide a means or procedure for amending the Register.
33. In any event, the facts in *Re P* are distinguishable from the present case. Unlike the circumstances in *Re P* the complainant:
  - is a child of their adoptive parents under the law; and
  - may apply to the Registrar to add additional registrable information to an entry in the Register or add an entry in the Register, if there is sufficient evidence of the matters to be recorded, under section 52 of the BDMR Act.
34. Accordingly, I find the right to apply for amendment under section 45(1) of the FOI Act does not apply in the complainant's circumstances.

### **Inaccurate information on the Register should be amended under the BDMR Act**

35. I have considered the complainant's submissions and accept their legal name as currently recorded under particulars of children in the registration of the complainant's adoptive parents' deaths is incorrect.

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<sup>9</sup> BDMR Act, s 67(1).

36. However, the right to apply for an amendment under section 45(1) of the FOI Act does not apply for the reasons set out above. The agency's decision noted the complainant may apply to have their legal name amended in the record under section 51 of the BDMR Act. That is, the BDMR Act provides a means or procedure by which the complainant can have this information amended. I encourage the complainant to pursue this avenue.

**Balance of the registration is not inaccurate, incomplete, out of date or misleading**

37. In relation to the additional information the complainant wishes to have included in the Register, I appreciate the complainant's adoption status, birth name and alias are important to them and form an important part of their identity. I also acknowledge the complainant's position the Register may be used for the purposes of, among other things, research on their family tree and ancestry. However, the absence of such information in the registration of the complainant's adoptive parents' deaths does not affect the accuracy or completeness of the Register itself, nor does it misrepresent the information contained in it.
38. I appreciate this outcome will likely be disappointing to the complainant given the significance to them of the information they have sought to have addressed. However, the FOI Act is not the appropriate mechanism for resolving those matters. The correction and amendment of information contained in the Register are matters that fall within the statutory scheme established by the BDMR Act.

## Context

### Background

39. On 8 July 2025, the complainant applied to the agency under Part 3 of the FOI Act for amendment, by way of adding a notation, to the death registration of their adoptive parents in the Register.<sup>10</sup> In particular, the complainant requested a notation to be added to the Register with their correct adoptive name, their adoptive status, the name they are known by, and their birth name.
40. By notice of decision dated 1 September 2025, the agency decided to refuse to amend the complainant's personal information under section 45(5) of the FOI Act on the basis the BDMR Act provides the means or procedure by which a person can have information on the Register amended.
41. By notice of decision dated 23 January 2026, the agency confirmed its decision.
42. On 6 March 2026, the complainant applied to the Information Commissioner for external review of the agency's decision.
43. On 16 June 2026, the Information Access Deputy Commissioner (**Deputy Commissioner**) provided the parties with his preliminary view of the matter, being that the agency's decision is justified. The complainant was invited to withdraw their application for external review or otherwise provide further submissions.

### Parties' submissions

#### Complainant submissions

44. The complainant provided submissions in their internal review application, their external review application and submissions to this office. In summary, the complainant submits as follows:
  - Their legal name, as recorded in the death registration of their adoptive parents, is incorrect.
  - The Registrar had informed them notations are not added to the Register.
  - The information in the Register is used for proof of identity and is used for researching the family tree and ancestry.
  - The records show they have two identities, a birth identity and an adoptive identity.
  - Their current legal name is their adoptive name.
  - The records show their adoptive parents adopted them.

#### Agency submissions

45. The agency's submissions are set out in its initial decision and its internal review decision. In summary, the agency submits as follows:
  - The amendment provisions under section 45 of the FOI Act do not apply because of the operation of section 45(5) of the FOI Act.
  - The BDMR Act is another enactment which provides a means or procedure by which the information is amended.
  - The FOI Act is not the appropriate legislative mechanism to achieve the outcome the complainant is seeking
  - The complainant has been advised:

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<sup>10</sup> The Register is the register or registers of registrable events maintained by the Registrar under section 49(1) of the *Births, Deaths and Marriages Registration Act 1998* (WA).



- amendments to their adoptive parents' death registration on the Register can be made under section 51 of the BDMR Act; and
- the Registrar's refusal to add a notation about the complainant's adoptive status may be appealed under section 67 of the BDMR Act.

## Relevant legislation

### *Freedom of Information Act 1992 (WA)*

46. Section 45 of the FOI Act relevantly provides:

- (1) An individual (the **person**) has the right to apply to an agency for amendment of personal information about the person contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading;
- ...
- (5) This section does not apply if another enactment provides a means or procedure by which the person can have the information amended.

### *Births, Deaths and Marriages Registration Act 1998 (WA)*

47. The Registrar is defined as the Registrar of Births, Deaths and Marriages as referred to in section 5 of the BDMR Act.

48. Section 4 of the BDMR Act states:

**Register** means the Register referred to in section 49(1).

49. Section 49 of the BDMR Act provides:

- (1) The Registrar must maintain a register or registers of registrable events (the Register).
- (2) The Register —
  - (a) must contain the particulars of each registrable event required under this Act, or any other written law, to be included in the Register; and
  - (b) may contain further information if its inclusion is considered appropriate by the Registrar.
- (2A) The Registrar may maintain on the Register records of information, in addition to registrable information relating to registrable events, if the inclusion is considered appropriate by the Registrar.
- (3) The Register may be wholly or partly in the form of a computer database, in documentary form, or in another form the Registrar considers appropriate.
- (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

50. Section 4 defines 'registrable event' to mean:

a birth, death, marriage, change of name or an adoption or discharge of an adoption or the making or discharge of a parentage order as defined in the Surrogacy Act 2008 section 14...

51. 'Registrable information' is defined, in section 4, as:

the particulars and the further information referred to in section 49(2) or (2A) that must or may be included in the Register.

52. Section 41 of the BDMR Act sets out the powers of a State court or coroner to order the Registrar to include registrable information about a death in the Register.

53. Section 51 of the BDMR Act provides:

- (1) The Registrar may correct the Register-
  - (a) to reflect a finding made on inquiry under Division 2; or



- (b) to bring the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event.
- (2) The Registrar must correct the Register if ordered by a State court to do so.
- (3) The Registrar may correct the Register in accordance with a determination made by a court of another State or of the Commonwealth if the Registrar considers that it is appropriate to do so.
- (4) The Registrar is to correct the Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.

54. Section 52 of the BDMR Act provides:

[t]he Registrar, whether or not on the application of another person, may ... add additional registrable information to an entry in the Register or add an entry in the Register if there is sufficient evidence of the matters to be recorded.

55. Section 53 of the BDMR Act provides:

Nothing in this Division affects a requirement in another written law for the Registrar to correct or amend the Register for the purposes of that law.

56. Section 67(1) of the BDMR Act provides:

A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of a function under this Act may apply to the State Administrative Tribunal for a review of the decision.