



‘T’ and Department of Immigration and Citizenship [2012] AICmr 35 (24 December 2012)

Decision and reasons for decision of
Freedom of Information Commissioner, Dr James Popple

Applicant:	‘T’
Respondent:	Department of Immigration and Citizenship
Decision date:	24 December 2012
Application number:	MR11/00285
Catchwords:	Freedom of information — Amendment of personal records — Whether a record of date of birth should be amended — (CTH) <i>Freedom of Information Act 1982</i> ss 48, 50

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Summary

1. I affirm the decision of the Department of Immigration and Citizenship (the **Department**) of 11 August 2011 not to amend its record of the applicant’s date of birth under the *Freedom of Information Act 1982* (the **FOI Act**).

Background

2. On 27 June 2011, in connection with a separate application for Australian citizenship, the applicant applied to the Department to amend its record of his date of birth from 19 August 1988 to 18 August 1988. On 30 June 2011, the Department refused to make that amendment.
3. On 12 July 2011, the applicant requested internal review of the decision. On 11 August 2011, the Department affirmed its original decision.
4. On 12 September, the applicant sought IC review of that decision under s 54L of the FOI Act.

Decision under review

5. The decision under review is the internal review decision of the Department on 11 August 2011 to refuse to amend its record of the applicant's date of birth.

Amendment of personal records

6. Under s 48 of the FOI Act, a person may apply to an agency for amendment or annotation of documents of the agency that contain personal information that is incomplete, incorrect, out of date or misleading. Under s 50(1), an agency may amend the record where it is satisfied that the information that it contains is incomplete, incorrect, out of date or misleading. Under s 50(2), an amendment may be made by altering the document concerned to make the information complete, correct, up to date or not misleading; or by adding a note specifying the respects in which the information is incomplete, incorrect, out of date or misleading.
7. The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. The Guidelines explain that the material that an applicant needs to provide to support their claim will vary according to each case.¹

Issues

8. The issues to be decided in this IC review are whether the Department's record of the applicant's date of birth is incorrect and, if so, whether and how the record should be amended.

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982*, [7.28]. See also 'K' and Department of Immigration and Citizenship [2012] AICmr 20; 'M' and Department of Immigration and Citizenship [2012] AICmr 23; 'N' and Department of Immigration and Citizenship [2012] AICmr 26; 'O' and Department of Immigration and Citizenship [2012] AICmr 27.

Is the currently recorded date of birth incorrect?

9. The applicant was born in Saudi Arabia. His Saudi passport shows his date of birth as 19 August 1988. He has travelled to Australia, and other countries, using his Saudi passport on several occasions since 1997. The Department's record of the applicant's date of birth is based on the date given on his Saudi passport.
10. The applicant contends that that date was recorded on his passport as a result of a mistake made by Saudi authorities when converting his date of birth from the Hijri (Islamic) calendar to the Gregorian calendar. He says that he was actually born on 18 August 1988. In support of this, the applicant has provided the following documents:
 - a certified copy of a document in Arabic, which the applicant says is his Saudi birth certificate
 - a translation of that document, which gives the applicant's date of birth as 6 Muharram 1409 (in the Hijri calendar) and as 18 August 1988 (in the Gregorian calendar), and
 - a letter from the Saudi Embassy in London dated 15 February 2011, which states that the applicant's date of birth is 18 August 1988 'according to the Saudi birth certificate'.
11. The letter from the Saudi Embassy says that '[t]his acknowledgment has been issued upon the request of [the applicant] with no obligation on the part of this Embassy'. This is a significant qualification. I give this letter little weight.
12. In its reasons for its internal review decision, the Department said that it was unable to determine the authenticity of the birth certificate and therefore gave it little weight. It also gave little weight to the information in the letter from the Saudi Embassy, on the basis that it was self-reported. The Department took the view that any discrepancy between the applicant's Saudi passport and other documents was a matter for the Saudi Government to resolve. The applicant says that he has tried to get the Saudi authorities to change the date on his passport but they have refused.
13. The applicant has provided a copy of his birth certificate, not the original. The translation has been stamped 'Association of Translation Companies', but the name of the translator has not been given. Both the birth certificate and the translation have been certified by an individual who is identified by name, but whose qualification for certifying documents is not indicated. Nonetheless, I think that the certificate is likely to be authentic. But its authenticity is not the principal obstacle facing the applicant.

14. There are several online resources that will convert dates from the Hijri calendar to the Gregorian calendar. Given the applicant's date of birth as shown in the translation of his birth certificate (6 Muharram 1409), these return a Gregorian equivalent of 18 August² or 19 August 1988.³ One of these notes that '[t]here is a small probability of one day error'.⁴ Presumably this is at least in part due to the fact that Hijri calendar days begin at sunset while Gregorian calendar days begin at midnight.
15. In correspondence with Office of the Australian Information Commissioner, the applicant noted that different date calculators give different results, but claimed that it is 'extremely unlikely' that his date of birth was incorrectly written in his birth certificate when it was issued. It is more likely, he claimed, that the Gregorian date was incorrectly calculated when his passport was first issued. I do not agree. I think that the calculation made when the applicant's birth certificate was issued is no more likely to be correct than one made years later, notwithstanding that the first calculation would have been made much close to his date of birth.

Findings

16. The applicant's birth certificate and passport show different dates of birth. The question is not which of the two dates is the more reliable;⁵ the question is whether the currently recorded date of birth (based on the date shown on the passport) is incorrect.
17. I am satisfied that, on the balance of probabilities, the applicant's date of birth on the Department's record is not incorrect.

Should the Department's record be amended?

18. Given my finding about the currently recorded date of birth, there is no need for me to consider whether and how the record should be amended.

² See www.islamweb.net/emainpage/index.php?page=dateconverter; and www.linktoislam.net/islamic_calendar/date_conversion.aspx.

³ See www.fourmilab.ch/documents/calendar/; www.funaba.org/en/calendar-conversion.cgi; www.islamicfinder.org/dateConversion.php.

⁴ See www.islamicfinder.org/dateConversion.php.

⁵ That is the test that is applied when deciding whether to amend a record, having decided that the existing record is incorrect: see *'K' and Department of Immigration and Citizenship* [2012] AICmr 20, [33]–[40].

Decision

19. Under s 55K of the FOI Act, I affirm the Department's decision of 11 August 2011.

James Popple
Freedom of Information Commissioner
24 December 2012

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.