



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>U49 and Department of Education [2024] QICmr 22 (30 May 2024)</i></b>
<b>Application Number:</b>	<b>317792</b>
<b>Applicant:</b>	<b>U49</b>
<b>Respondent:</b>	<b>Department of Education</b>
<b>Decision Date:</b>	<b>30 May 2024</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - request for employment related information - agency previously decided to refuse access to all or parts of some of the requested documents - whether the later application, on its face, discloses any reasonable basis for again seeking access to the documents - section 62 of the <i>Information Privacy Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. On 18 December 2023<sup>1</sup> the applicant applied to the Department of Education (**Department**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to documents created between 1 January 1999 and 31 December 2009 concerning the applicant's conduct and performance while employed by the Department, and documents concerning complaints about the applicant when the applicant was employed at two named state schools (hereafter referred to as **School A** and **School B**) (**Current Access Application**).
2. On 18 January 2024 the Department decided to refuse to deal with the applicant's access application on the basis that the applicant had previously applied to the Department for access to the same documents.<sup>2</sup>
3. On 25 January 2024 the applicant applied<sup>3</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. For the reasons set out below, I affirm the Department's decision and find that the Department was entitled to refuse to deal with the applicant's Current Access

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<sup>1</sup> The application was dated 11 December 2023 but received by the Department on 18 December 2023.

<sup>2</sup> Pursuant to section 62 of the IP Act.

<sup>3</sup> By undated letter received on 25 January 2024 (**External Review Application**).

Application on the basis that it was a later application for the same documents as applied for under a previous application.

## Background

5. By application dated 15 August 2014 the applicant applied to the Department under the IP Act for access to *all documents* created between 1 January 1999 and 15 August 2014 relating to the applicant's employment, including documents pertaining to the applicant's time at School A and School B (**First Application**). The Department located 494 pages from Corporate Services (Human Resources Branch), a Regional Office, School A and School B that were responsive to the application and decided on 24 October 2014 to (Department's ref. 340/5/3366):
  - grant full access to 480 pages
  - grant partial access to 14 pages; and
  - refuse access in full to 2 pages.
6. In its decision on the First Application, the Department decided to refuse access to the 14 part pages and 2 full pages on the basis that disclosure of the information would, on balance, be contrary to the public interest.<sup>4</sup>
7. The applicant applied<sup>5</sup> for external review of the Department's decision on the First Application. On external review (**Previous External Review**), following the release of additional information from 8 pages to the applicant, the applicant agreed to resolve the external review informally. A notice under section 103(4)(a) of the IP Act confirming that the matter had been resolved informally was issued to the applicant and to the Department on 8 May 2015.
8. On 31 October 2017, the applicant applied to the Department under the IP Act for access to *all documents* about the applicant created between 1 January 1999 and 31 December 2009 including documents regarding complaints, allegations or investigations about the applicant generally and specifically while employed at Schools A and B (**Second Application**). The Department located 31 documents from School B and Corporate Services (Human Resources Branch) and decided on 21 December 2017 to (Department's ref. 171441):
  - grant full access to 26 pages
  - grant partial access to 3 pages; and
  - refuse access in full to 2 pages.
9. The applicant did not seek external review of the Department's decision on the Second Application.
10. The applicant then applied to the Department on 2 January 2018 (Department's ref. 180010) (**Third Application**) for access to documents regarding a particular complaint about the applicant created between 1 January 1999 and 31 December 2009 under the IP Act. The Department decided on 14 February 2018 to refuse to deal with the Third Application pursuant to section 62 of the IP Act on the basis that any documents captured by the scope of the Third Application had been dealt with under the more broadly framed First and Second Applications and therefore the Third Application

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<sup>4</sup> Citing schedule 4, part 3, items 3, 16 and 19 and schedule 4, part 4, section 6 of the *Right to Information Act 2009 (Qld)* (**RTI Act**) as public interest factors in favour of nondisclosure of the information in issue and which outweighed the public interest factors in favour of disclosure, being schedule 4, part 2, item 7 of the RTI Act and the general pro disclosure bias contained in the IP Act.

<sup>5</sup> Online application form received on 5 November 2014.

sought access to one or more of the same documents applied for in the First and Second Applications.

11. On 5 February 2018, the applicant applied to the Department again (Department's ref. 180415) (**Fourth Application**) under the IP Act, in substantially similar terms as the Third Application, for access to documents regarding a particular complaint created between 1 January 1999 and 31 December 2009. The Department decided on 14 February 2018 to refuse to deal with the Fourth Application pursuant to section 62 of the IP Act on the basis that any documents captured by the scope of the Fourth Application had been dealt with under the more broadly framed First and Second Applications and therefore the Fourth Application sought access to one or more of the same documents applied for in the First and Second Applications.
12. The Current Access Application seeks conduct and performance documents and complaint documents from School A and School B about the applicant for the same time period covered by the four previous applications.

### Reviewable decision

13. The Department's decision dated 18 January 2024, refusing to deal with the applicant's Current Access Application pursuant to section 62 of the IP Act, is the decision under review.

### Evidence considered

14. The significant procedural steps taken during the external review process are set out in the Appendix.
15. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
16. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>6</sup> I consider that in observing and applying the law prescribed in the RTI Act and IP Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>7</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>8</sup>

### Issue/s for determination

17. The issue for determination in this review is whether the Department correctly refused to deal with the Current Access Application on the basis that it is a later application for one or more of the same documents applied for in an earlier application without a reasonable basis for again applying for the same document or documents being evident on the face of the Current Access Application.

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<sup>6</sup> As embodied in section 21 of the HR Act.

<sup>7</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw 'no reason to differ' from this position ([23]).

<sup>8</sup> *XYZ*, [573].

## Relevant law

18. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information,<sup>9</sup> however, this right of access is subject to a number of exclusions and limitations.<sup>10</sup>
19. Relevantly, where an applicant has made an access application under the IP Act, and then makes a later application under the IP Act to the same agency seeking access to one or more of the same documents,<sup>11</sup> section 62 of the IP Act enables the agency to refuse to deal with the later access application if:
  - the agency's decision in respect of the earlier application was to give access to some or all of the documents sought, refuse access to the documents sought under section 67 of the IP Act or refuse to deal with the application under Chapter 3, Part 4 of the IP Act;<sup>12</sup> or
  - the agency's decision in respect of the earlier application was the subject of a completed review by the OIC;<sup>13</sup> and
  - the later application does not on its face disclose a reasonable basis for seeking access to those same documents.<sup>14</sup>
20. Section 32C of the *Acts Interpretation Act 1954* (Qld) provides:

### **32C Number**

*In an Act—*

*(a) words in the singular include the plural; and*

*(b) words in the plural include the singular.*

## Findings

### ***Is there a later application seeking access to one or more of the same documents sought under a previous application?***

21. In short, the answer to this question is, yes.
22. As noted at paragraph 1, the applicant's Current Access Application seeks access to documents created between 1 January 1999 and 31 December 2009 concerning the applicant's conduct and performance while employed by the Department and documents concerning complaints about the applicant when the applicant was employed at School A and School B. I consider these documents were captured by the terms of the applicant's First and Second Applications. The First Application was broadly worded and sought access to **all** documents related to the applicant's employment and included documents pertaining to the applicant's time at Schools A and B and created between 1 January 1999 and 15 August 2014. Likewise, the applicant's Second Application sought access to **all** documents about the applicant created between 1 January 1999 and 31 December 2009 including specific complaint information related to their tenure at School A and School B. While, in addition to the catch all reference to **all** documents, the applicant listed specific types of documents

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<sup>9</sup> Section 40 of the IP Act.

<sup>10</sup> Noting that under section 58 of the IP Act, the IP Act is to be administered with a pro-disclosure bias and an agency or minister should deal with an application unless this would not be in the public interest.

<sup>11</sup> Section 62(1) of the IP Act.

<sup>12</sup> Sections 62(3)(b)(i), 62(3)(b)(iii) and 62(3)(b)(iv) of the IP Act.

<sup>13</sup> Section 62(3)(d) of the IP Act.

<sup>14</sup> Section 62(1)(b) of the IP Act.

being sought in the First and Second Applications, I consider those specific types of documents were merely a subset of the broader category of *all* documents being sought by the applicant. I am satisfied that the broad wording of the First and Second Applications, which sought *all* documents related to the applicant's employment by the Department (during the same, or expanded – in the case of the First Application – time period as the Current Access Application), encompasses the documents sought in the Current Access Application. While the specifics of the complaints referred to in the Current Access Application differ slightly to those referred to in the First and Second Applications, they are nonetheless encompassed by the broad terms of the First and Second Applications which sought access to *all* documents about the applicant.

23. Additionally, I consider that section 32C of the *Acts Interpretation Act* allows me to consider the First and Second Applications when considering the application of section 62 of the IP Act. While section 62 refers to a previous application having been made in the singular, I consider it is not contrary to the intention of section 62 to read previous application as a reference to more than one previous application. Therefore, I am satisfied that I may consider the First and Second Applications when considering the application of section 62 to the Current Application.
24. Consequently, I find that the Current Access Application is a later application which seeks access to one or more of the same documents sought under a previous application.

***Were the decisions in respect of the First and Second Applications of the type referred to in section 62(3)(b) or section 62(3)(d) of the IP Act?***

25. Yes, for the following reasons.
26. As noted above:
  - the Department's decision on the First Application was the subject of an external review by the OIC, which review was completed upon the issuing of a notice of informal resolution under 103(4)(a) of the IP Act, thus satisfying section 62(3)(d) of the IP Act; and
  - the Department provided a written decision under section 68 of the IP Act to the applicant that access was to be given to some or all of the documents sought under the Second Application, thus satisfying section 62(3)(b)(i) of the IP Act.
27. Accordingly, I am satisfied the First and Second Applications were the subject of decisions of the type specified in section 62 of the IP Act. Consequently, the Current Access Application is a later application which seeks access to one or more of the same documents sought under a previous application about which a notice was issued pursuant to section 62(3)(d) of the IP Act (the First Application) and section 62(3)(b)(i) of the IP Act (the Second Application).

***Does the later application, on its face, disclose any reasonable basis for again seeking access to the documents?***

28. In short, the answer to this question is no.
29. I have carefully considered the terms of the Current Access Application. There is nothing *on the face* of the Current Access Application which discloses a reasonable basis for the applicant to again seek access to the documents. However, the applicant explained in her External Review Application that her reasons for seeking access to the same documents were that:

- she wished to bring a Police investigation to a close; and
  - she believed the disc containing the documents provided in response to the First Application was taken from her home either by the Queensland Police Service (**QPS**) or a named lawyer or his agent.
30. When invited to provide further particulars about these reasons for again applying for the information the applicant reiterated her submission that the police and/or a named lawyer, or his agent, were involved in the disappearance of the disc from her home. The applicant also made various allegations about persons employed by the Department being involved in adverse events in her life.<sup>15</sup> However, the applicant did not provide particulars about when or how she believed the disc with the documents was taken. I acknowledge that, in these submissions, the applicant was seeking to better explain why there was a reasonable basis for making the Current Access Application.
31. As regards the applicant's submission about a police investigation, I note that on 20 November 2017<sup>16</sup>, OIC was contacted by the Queensland Police Service (**QPS**) in relation to the Previous External Review. QPS advised that the applicant had presented to a police station with a copy of a letter from the OIC asserting that the letter from the OIC stated that QPS was investigating the applicant. QPS informed OIC that it did not have any record of an investigation of the applicant.
32. The applicant made the same assertion in her External Review Application in this review, namely, that the OIC had stated to her, in a letter dated 17 April 2015, that QPS were investigating her (**OIC's Letter**). I note that OIC's Letter stated:

*I have carefully considered the information **you have provided** to OIC on external review.<sup>23</sup>*

*In summary, **you submit that:***

- *you have a number of concerns about your treatment by staff members of the Department*
- *you believe that the information in your file is defamatory and has resulted in a number of problems in your life; and*
- *the Department has conducted an investigation as a result of your request and the police have investigated you as a result of the opinions which you believe are expressed in the documents on your file.*

**[My emphasis and Footnotes removed]**

33. OIC's Letter was clearly paraphrasing information that the applicant had provided to the OIC in the course of the Previous External Review. The applicant appears to be under the misapprehension that the information in OIC's Letter was fresh information from the OIC when it was no more than a paraphrased version of the information she had provided to the OIC.
34. I have carefully read the applicant's external review application, submission received on 13 March 2024, and OIC's Letter. It is evident from those documents that the applicant holds a number of beliefs about the actions of specific persons and government agencies, including that she is being investigated by police. However, the applicant has provided no evidence or cogent reasoning in support of her beliefs and assertions in that regard. Moreover, it is clear that she has misunderstood correspondence that she has received from OIC. In those circumstances, I am not satisfied that the information relied upon by the applicant evidences a reasonable basis for making the Current Access Application.

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<sup>15</sup> Applicant's undated 18 page submission received on 13 March 2024.

<sup>16</sup> Email from QPS dated 20 November 2017 regarding the Previous External Review, OIC reference 312242.

35. The terms of section 62(1)(b) of the IP Act are clear – a reasonable basis for making the Current Access Application must be disclosed on the face of the application itself. As stated at paragraph 29, I consider that there is no reasonable basis for again applying for the same information evident on the face of the Current Access Application. Nonetheless, as noted above, I have carefully considered the applicant's submissions about the basis for again seeking access to the documents. I note that the Current Access Application brings the total number of applications by the applicant for the same or substantially the same documents, to five. I also note that the applicant did not provide a reasonable basis for seeking access to the same documents on the face of any of either the Second, Third or Fourth Applications. Given my finding in paragraph 34 regarding the applicant's unsupported assertions, I consider there is no reasonable basis for the applicant to again be seeking access to the same information.
36. Consequently, I am satisfied that the Department's decision to refuse to deal with the Current Access Application on the basis that it is a later application for the same documents applied for in a previous application, and that there is no reasonable basis on the face of the Current Access Application for applying again, was correct.

## **DECISION**

37. I affirm the Department's decision to refuse to deal with the applicant's Current Access Application under section 62 of the IP Act.
38. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**V Corby**  
**Assistant Information Commissioner**

**Date: 30 May 2024**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
25 January 2024	OIC received an application for external review of the Department's decision dated 18 January 2024.
30 January 2024	OIC received the preliminary documents from the Department.
9 February 2024	OIC made enquiries with the Department via telephone regarding opportunities for informal resolution. OIC also requested additional information about the previous access applications from the Department.
23 February 2024	OIC received the additional information about the past access applications from the Department.
4 March 2024	OIC notified the parties that it had accepted the application for external review. OIC also conveyed a preliminary view to the applicant.
13 March 2024	OIC received a submission from the applicant.
15 May 2024	OIC made further enquiries with the Department via telephone regarding opportunities for informal resolution.
21 May 2024	OIC made further enquiries with the Department via email regarding opportunities for informal resolution.
22 May 2024	OIC received confirmation from the Department that an informal resolution could not be reached.