



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>F59 and Queensland Corrective Services [2024] QICmr 45 (24 September 2024)</i></b>
<b>Application Number:</b>	<b>317882</b>
<b>Applicant:</b>	<b>F59</b>
<b>Respondent:</b>	<b>Queensland Corrective Services</b>
<b>Decision Date:</b>	<b>24 September 2024</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for a parole suitability report - whether to refuse to deal with the application - whether document has been the subject of a previous application - whether the applicant has a reasonable basis for applying again - section 62(3)(b)(i) of the <i>Information Privacy Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied under the *Information Privacy Act 2009 (Qld)* (**IP Act**)<sup>1</sup> for copies of all case notes, reports and assessments regarding himself and copies of correspondence between Queensland Corrective Services (**QCS**) and the Commonwealth Parole Office.<sup>2</sup>
2. QCS located 139 pages responsive to the application and decided<sup>3</sup> to:
  - refuse to deal with part of the application to the extent that the applicant had previously applied for a document and the document was partially released;<sup>4</sup> and
  - refuse access to 18 full and 20 part pages.<sup>5</sup>
3. The applicant applied to the Information Commissioner for external review.<sup>6</sup> Following release of some additional information, the applicant advised that he only seeks access to a parole suitability report.<sup>7</sup>
4. For the reasons set out below, I affirm QCS's decision.

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<sup>1</sup> By application dated 1 December 2023.

<sup>2</sup> Between 1 October 2021 to the date of application.

<sup>3</sup> Decision dated 20 February 2024.

<sup>4</sup> Section 62(3)(b)(i) of the IP Act.

<sup>5</sup> On the basis it was comprised of exempt information or disclosure would, on balance, be contrary to the public interest (section 67 of the IP Act and sections 47(3)(a) and (b) of the *Right to Information Act 2009 (Qld)* (**RTI Act**)).

<sup>6</sup> External review application received on 12 March 2024.

<sup>7</sup> Confirmed in submission received 10 June 2024.

## Background

5. Significant procedural steps relating to the external review are set out in the Appendix.

## Reviewable decision

6. The reviewable decision is QCS's decision dated 20 February 2024.

## Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken into account the applicant's submissions<sup>8</sup> to the extent they are relevant to the issue for determination in this review.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>9</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.<sup>10</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>11</sup>

## Issue for determination

9. On external review, the applicant initially explained that he seeks access to two documents:
  1. an unredacted copy of a parole suitability report (**Parole Suitability Report**); and
  2. a response to a show cause letter.
10. During the review, QCS agreed to release a copy of the show cause letter to the applicant.<sup>12</sup> As such, this decision only deals with the applicant's entitlement to access an unredacted copy of the Parole Suitability Report.
11. The issue for determination is whether there are grounds to refuse to deal with the application (now that the applicant only seeks access to the Parole Suitability Report) on the basis that the document has been the subject of a previous application to QCS by the applicant.

## Relevant law

12. Under the IP Act, an individual has a right to be given access to government held documents containing their personal information.<sup>13</sup> This right is subject to certain limitations including grounds to refuse to deal with an application.<sup>14</sup>

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<sup>8</sup> Including the external review application received 12 March 2024 and submissions from the applicant received on 10 June 2024 and 4 July 2024.

<sup>9</sup> Section 21(2) of the HR Act.

<sup>10</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]. The Information Commissioner'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 our position [23].

<sup>11</sup> I also note the following observations made by Bell J in XYZ at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*... 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 FOI Act.*

<sup>12</sup> Submission from QCS received on 9 April 2024. The applicant confirmed receipt of the show cause letter in the submission received 10 June 2024.

<sup>13</sup> Section 40 of the IP Act.

<sup>14</sup> Section 58(2) of the IP Act.

13. An agency (or the Information Commissioner, on external review)<sup>15</sup> may refuse to deal with an access application where:<sup>16</sup>
- a) an applicant makes an access application under the IP Act<sup>17</sup> to an agency<sup>18</sup> and is given notice under section 68 that access was to be given to the document sought or to some or all of the documents sought (**criteria a**)<sup>19</sup>
  - b) the applicant then makes a later access application to the same agency seeking access to the same document (**criteria b**);<sup>20</sup> and
  - c) the later access application does not, on its face, disclose any reasonable basis for again seeking access to the document (**criteria c**).<sup>21</sup>

### Applicant submissions

14. The applicant submits:<sup>22</sup>
- he previously applied for the Parole Suitability Report, but it was ‘fully redacted’
  - the information in the report is required to provide him an opportunity to respond to parole considerations and show cause; and
  - the previous decision is incorrect, and he is entitled to an unredacted copy of the Parole Suitability Report, as he has been provided with an unredacted copy of a *different* parole suitability report conducted in May 2022.

### Findings

15. In considering whether to refuse to deal with this application, I have not considered, nor am I required to consider, the reasons QCS previously refused access to the Parole Suitability Report and whether that decision is correct.

### *The previous application and decision*

16. By application dated 26 June 2023, the applicant applied under the IP Act for the ‘*parole assessment report of Queensland Corrective Services (QCS) completed in 2023*’ (**First Application**). In its decision dated 8 August 2023, QCS explained that access to the Parole Suitability Report dated 9 June 2023 would be given, subject to the deletion of certain exempt information (**First Decision**). Such a decision is in accordance with section 68(2)(c) of the IP Act. This satisfies criteria a.
17. The applicant made a later application dated 1 December 2023 (which is the subject of this review) for copies of all reports and assessments regarding him and copies of all correspondence between QCS and the Commonwealth Parole Office, between the date range of 1 October 2021 and 1 December 2023 (**Later Application**). This captured the Parole Suitability Report dated 9 June 2023.<sup>23</sup> The applicant has

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<sup>15</sup> Section 118(1) of the IP Act.

<sup>16</sup> Section 62 of the IP Act.

<sup>17</sup> Or the RTI Act.

<sup>18</sup> Section 62(1)(a) of the IP Act.

<sup>19</sup> Section 62(3)(b)(i) of the IP Act.

<sup>20</sup> Section 62(1)(b) of the IP Act.

<sup>21</sup> Section 62(1)(b) of the IP Act.

<sup>22</sup> Submissions received on 10 June 2024 and 4 July 2024.

<sup>23</sup> The applicant initially stated the Parole Suitability Report was dated on 5 June 2023, however the applicant later acknowledged via submission received on 10 June 2024 that it was dated 9 June 2023.

confirmed this is the document he seeks in this review and accepts that he previously applied for this document.<sup>24</sup> This satisfies criteria b.

### ***A reasonable basis for again applying***

18. Turning to whether the Later Application discloses, on its face, a reasonable basis for again applying, I note that the Later Application does not refer to the First Application, nor state any reason for applying again. It is clear that the application does not, *on its face*, disclose any reasonable basis for again seeking access to the Parole Suitability Report.
19. On external review, the applicant submits that he was previously given a 'fully redacted' copy of the Parole Suitability Report.<sup>25</sup> However, QCS provided a copy of the First Decision and the previously released Parole Suitability Report,<sup>26</sup> which indicate that the document was partially released to the applicant, with exempt information deleted.<sup>27</sup> In either event, the applicant submits that he needs 'an unredacted copy' for his parole application.<sup>28</sup> I take the applicant's submissions to be an attempt to explain a reasonable basis for making the Later Application.
20. The provisions of the IP Act are clear, the reasonable basis for making a repeat application must be disclosed *on the face* of the application itself.<sup>29</sup> I have nevertheless considered the applicant's submission seeking to now explain the basis for applying again.
21. I acknowledge that the applicant explains that he requires the report for his parole process, and that he disagrees with the First Decision to partially refuse access to it. The IP Act provides that a person affected by a reviewable decision may apply to have the decision reviewed by the agency (internal review)<sup>30</sup> or the Information Commissioner (external review).<sup>31</sup> These review rights were conveyed to the applicant, as set out on page 4 of the First Decision. To my knowledge, the applicant has taken neither of the review options available to him. Instead, he has made the Later Application for the Parole Suitability Report.
22. Seeking to challenge the First Decision is not a reasonable basis for again applying for the Parole Suitability Report. If the applicant disagrees with the outcome of the First Application, the correct course of action is to seek review of the First Decision.
23. Nothing in the Later Application or the applicant's submissions on external review persuades me that he has raised a reasonable basis to again seek access to the Parole Suitability Report.
24. On that basis, criteria c is satisfied.

### **DECISION**

25. For the reasons set out above, I affirm QCS's decision and refuse to deal with the application for the Parole Suitability Report.<sup>32</sup>

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<sup>24</sup> External review application dated 24 February 2024 and submission from applicant received 10 June 2024.

<sup>25</sup> External review application dated 24 February 2024.

<sup>26</sup> During the review, QCS provided to the applicant a copy of the Parole Suitability Report in the form it was previously released.

<sup>27</sup> As permitted under section 89 of the IP Act.

<sup>28</sup> External review application dated 24 February 2024 and submission from applicant received 10 June 2024.

<sup>29</sup> Section 62(1)(b) of the IP Act.

<sup>30</sup> Section 94(1) of the IP Act.

<sup>31</sup> Section 99 of the IP Act.

<sup>32</sup> Section 62(3)(b)(i) of the IP Act.

26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Jane Williams**  
**Assistant Information Commissioner**

**Date: 24 September 2024**

## APPENDIX

### Significant procedural steps

Date	Event
12 March 2024	The Information Commissioner received the external review application. The Information Commissioner requested and received preliminary documents from QCS.
25 March 2024	The Information Commissioner advised QCS and the applicant that the external review had been accepted and requested QCS provide a copy of the information in issue.
9 April 2024	QCS provided a submission and the information in issue as originally released to the applicant.
18 April 2024	OIC requested QCS provide an unredacted copy of the Parole Suitability Report.
19 April 2024	QCS provided an unredacted copy of the Parole Suitability Report.
24 April 2024	The Information Commissioner asked QCS to release information to the applicant to resolve the review.
8 May 2024	QCS agreed to re-release the Parole Suitability Report to the applicant (in the form previously released) and release the show cause letter in full.
10 May 2024	The Information Commissioner provides a preliminary view to the applicant.
21 May 2024	QCS confirmed the information has been released to the applicant.
10 June 2024	The Information Commissioner receives a submission from the applicant. The applicant confirmed he received a copy of the previously released report but advised he does not agree to resolve the review.
12 June 2024	The Information Commissioner requested that QCS provide a copy of the First Application and the First Decision.
13 June 2024	The Information Commissioner sends a second preliminary view to the applicant.
21 June 2024	QCS provided a copy of the First Application and First Decision.
4 July 2024	The Information Commissioner received a submission from the applicant.