



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>J6Q8CH and Department of Justice and Attorney-General (No. 2) [2018] QICmr 50 (12 December 2018)</i></b>
<b>Application Number:</b>	<b>313722</b>
<b>Applicant:</b>	<b>J6Q8CH</b>
<b>Respondent:</b>	<b>Department of Justice and Attorney-General</b>
<b>Decision Date:</b>	<b>12 December 2018</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - applicant seeking access to information about herself in documents relating to the processing of a previous access application - whether documents contain the applicant's personal information - whether the documents can be the subject of an access application under the <i>Information Privacy Act 2009</i> (Qld) - section 40(1)(a) of the <i>Information Privacy Act 2009</i> (Qld)</b> <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - documents relating to processing of a previous access application - hostile communications and threats by the applicant - whether disclosure of information could reasonably be expected to result in a serious act of harassment or intimidation against certain individuals - whether access to information may be refused under section 67 of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and schedule 3, section 10(1)(d) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Justice and Attorney-General (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access information about the procedural actions taken by the Department in processing a previous access application she had made under the IP Act (**Prior Application**).<sup>2</sup>

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<sup>1</sup> On 19 December 2017.

<sup>2</sup> Being an access application dated 12 October 2017, numbered IP180525 by the Department. The Prior Application requested access to a range of communications. The Department refused access to some of the information located in response to the Prior Application and the applicant sought external review of the Department's decision. That external review (313709) was finalised by the Information Commissioner's decision dated 10 December 2018 in *J6Q8CH and Department of Justice and Attorney-General* [2018] QICmr 49 (**J6Q8CH No. 1**).

2. The Department located 202 pages of documents. Given the nature of the information requested by the applicant, the majority of the located documents comprised emails and correspondence the Department sent to or received from the applicant about the Prior Application and documents recording the searches and enquiries conducted by the Department to locate documents responsive to the Prior Application.
3. The Department decided<sup>3</sup> to refuse access to some of the located information<sup>4</sup> and also delete certain pages<sup>5</sup> on the basis those pages fell outside the scope of the application.
4. The applicant applied<sup>6</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision and raised concerns about the Department's processing of the Prior Application.
5. For the reasons set out below, I vary the Department's decision and find that the majority of the information being considered in this review may be refused on the ground that it is exempt information and one page may be deleted as it is outside the scope of the access application.

## Background

6. Significant procedural steps taken in this external review are set out in Appendix 1.

## Reviewable decision

7. The decision under review is the Department's decision dated 23 January 2018.

## Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendices).
9. The applicant has provided a number of submissions to OIC.<sup>7</sup> Generally, the applicant submitted<sup>8</sup> that she wanted to determine if the Prior Application was '*processed fairly following a standard procedure*'. However, a large proportion of the applicant's submissions contend that information relevant to the Prior Application should be fully disclosed to her and, in this regard, I note that submissions of this nature have been addressed in the previous decision of this Office in *J6Q8CH No. 1*. The applicant's submissions also outline her belief that she has been '*repeatedly wrongfully convicted*'<sup>9</sup> and that various government agencies have engaged in a smear campaign against her.<sup>10</sup> Additionally, the applicant provided information about further complaints and applications that she has lodged with other agencies, Ministers and various entities.
10. In these reasons for decision, I have only considered and addressed submissions made by the applicant to the extent they raise issues *relevant* to the issues for determination in this review, as set out below.

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<sup>3</sup> On 23 January 2018.

<sup>4</sup> Being 27 full pages and parts of 106 pages.

<sup>5</sup> Being 38 full pages.

<sup>6</sup> On 25 January 2018.

<sup>7</sup> As set out in Appendix 1.

<sup>8</sup> External review application.

<sup>9</sup> Submissions dated 21 June 2018.

<sup>10</sup> External review application.

## Information in issue

11. The **Information in Issue** is identified in Appendix 2 and consists of 58 pages<sup>11</sup> and parts of 106 pages.
12. I am unable to disclose the content of the Information in Issue,<sup>12</sup> however, I generally categorise it as follows:

Category	Description
Deleted Information	One page deleted on the basis it falls outside the scope of the access application.
Category A Information	Names, contact details and signatures of various Department officers.
Category B Information	Information about the applicant's interactions with various individuals.

13. The Category A Information appears on the 106 partly disclosed pages. As a result of the information that has been disclosed to the applicant, the applicant is aware of the substance of the documented communications in these 106 pages and the work titles of the public sector officers who were parties to them. I also note that some of the Category A Information appears in email chains between Department officers and the applicant and in letters addressed to the applicant—as a result, it is reasonable to assume that the applicant may be aware of, or already possess copies of, some of the Category A Information.<sup>13</sup>
14. During the external review, the applicant sought<sup>14</sup> confirmation about whether 30 pages of the Category B Information<sup>15</sup> contained specified information about her.<sup>16</sup> OIC informed the applicant<sup>17</sup> that the 30 pages did not contain information of the type she specified but instead comprised information about the applicant's *'interactions with various individuals (including details of historical charges against [her])'*.

## Issues for determination

15. Some issues were informally resolved on external review.<sup>18</sup> The remaining issues to be determined are whether the Information in Issue may be deleted or refused on the grounds that it falls outside the scope of, or is irrelevant to, the terms of the access application or it is exempt information.

<sup>11</sup> To clarify, these 58 pages include some of the pages which the Department deleted on the basis they fell outside the scope of the application.

<sup>12</sup> Section 121 of the IP Act.

<sup>13</sup> I also note that in some of her submissions, the applicant appeared to indicate she did not wish to access names within the Information in issue (or some of them)—for example, in submissions dated 6 August 2018, the applicant stated that she *'accepted not needing to know names unless they are judicial or QCAT officers or registrars'* and in submissions dated 28 August 2018, the applicant stated she did not need names (but requested the person's position which, as noted above, has in most cases been disclosed).

<sup>14</sup> Submissions dated 21 July 2018.

<sup>15</sup> Being pages 32-61. During the review, the Department accepted OIC's preliminary view that these 30 pages, which it had deleted as irrelevant, fell within the scope of the access application.

<sup>16</sup> Specifically, the applicant sought confirmation as to whether those 30 pages contained *'plans to influence a judicial decision against [the applicant] – wrongful conviction – photos or data about [the applicant's] personal life that show stalking, photos or gossip laughing about [the applicant] being knocked unconscious outside [a courthouse], sexual references to [the applicant], gender slurs, references to knowing [the applicant] personally from somewhere'*. In this regard, I also note the applicant's submissions dated 21 June 2018 stated: *'If those communications about [the applicant] did not involve any contact with a judicial officer [the applicant] is not interested in knowing about them. [The applicant fails] to see how they affect [the applicant's] life if they are from low level staff and not shown to decision makers'*.

<sup>17</sup> By letter dated 6 August 2018.

<sup>18</sup> The Department agreed to disclose seven pages to the applicant, which had been deleted as falling outside the scope of the access application. This disclosed information does not form part of the Information in Issue.

## Preliminary issues

16. Before considering the issues for determination, it is necessary to deal with preliminary issues arising from concerns expressed by the applicant in her submissions.
17. The applicant alleged<sup>19</sup> that OIC's decision not to engage in further telephone communications with her was made in '*retaliation*'.<sup>20</sup>
18. External review by the Information Commissioner<sup>21</sup> is merits review.<sup>22</sup> The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.<sup>23</sup> As noted in *J6Q8CH No. 1*, the decision to cease telephone communications with the applicant was not made lightly but as a result of the way the applicant had conducted herself in conversations with OIC staff, including the language used towards OIC staff. In this matter, I consider that despite ceasing telephone communication with the applicant, she was nonetheless afforded procedural fairness, for example, by conveying a preliminary view to the applicant in writing and inviting her to provide further submissions supporting her case.<sup>24</sup>
19. The applicant also asserted<sup>25</sup> that OIC had not sent her any evidence of her '*hostile communications*' towards anyone and was therefore biased. Further, the applicant contended that the letter conveying OIC's preliminary view was '*disgusting*' and a '*victim blaming DAVRO strategy letter*'<sup>26</sup> and that it showed an '*unusual level of vitriol and subjectivity*'.<sup>27</sup>
20. As noted in paragraph 12 above, given constraints imposed by the IP Act,<sup>28</sup> I have necessarily adopted a level of generality in describing the Information in Issue in this decision. The Information Commissioner also has no discretion under the IP Act to disclose any of the Information in Issue to the applicant.<sup>29</sup> In these circumstances, the nondisclosure of the Information in Issue to the applicant is not evidence of bias. I also note that the material before me in this review includes the applicant's submissions which reference<sup>30</sup> a prior conviction she received for sending an offensive email.
21. The preliminary view letter was sent to the applicant to appraise her of the facts and the law applicable in the matter<sup>31</sup> and to ensure the applicant was given an opportunity to provide an informed submission to this office. The letter was written with great care and in a neutral tone. While it summarised factual information about the applicant's conduct towards various individuals in order to explain how the preliminary view had been formed, I consider the letter did not '*attack*' or '*victim blame*' the applicant. Additionally, I reject the applicant's assertion that the letter, or more generally the external review process, was subjective.

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<sup>19</sup> Submissions dated 21 June 2018.

<sup>20</sup> More specifically, the applicant alleged because she had already begun legal action against OIC '*on the grounds of discrimination and whistleblower retribution*', OIC was not '*in an objective position to claim that [she was] hostile and aggressive*'.

<sup>21</sup> Or delegate.

<sup>22</sup> Merits review is an administrative reconsideration of a case that can be described as '*stepping into the shoes*' of the decision-maker, to determine what is the correct and preferable decision.

<sup>23</sup> Section 108 of the IP Act.

<sup>24</sup> In this regard, I note that the applicant provided written submissions to OIC on six separate occasions after OIC conveyed its preliminary view to the applicant.

<sup>25</sup> Submissions dated 21 June 2018. More specifically, the applicant submitted she believed that such evidence of her hostile communications did not exist and she requested that OIC send evidence to her if OIC considered such material was before OIC.

<sup>26</sup> I understand that '*DAVRO*' is an acronym for '*Deny, Attack, and Reverse Victim and Offender*'.

<sup>27</sup> Submissions dated 21 July 2018.

<sup>28</sup> Under section 121 of the IP Act.

<sup>29</sup> Section 120 of the IP Act.

<sup>30</sup> Submissions dated 21 June 2018.

<sup>31</sup> In this regard, I note that the letter identified relevant background; a preliminary view about the issues in the review; relevant law; and the information to be released to the applicant in accordance with the preliminary view.

22. Finally, the applicant asserted<sup>32</sup> that OIC decided to give little weight to her right to '*fair and just access to her own information*' and thereby acted with bias, vindictiveness, discrimination, retribution and a failure to comply with the intent of the IP Act. While the IP Act is to be administered with a pro-disclosure bias,<sup>33</sup> an individual's right to access government held information under the IP Act is subject to a number of exclusions and limitations, including grounds for refusal of access. In considering whether access may be given to the Information in Issue, I have considered the requirements of the IP Act as they apply to the Information in Issue. My reasons and considerations are set out in this decision.
23. In these circumstances and taking into consideration the material before me, I am satisfied that none of the matters raised by the applicant evidence a lack of objectivity, or bias, discrimination or vindictiveness by OIC staff or in the external review process.
24. The applicant also made further allegations of bias and retaliation stemming from separate matters she has with OIC, which involve other functions of the OIC<sup>34</sup>—as those separate matters are not relevant to the issues for determination in this review, they are not addressed in these reasons for decision, however, I consider that none of these further allegations evidence bias or a conflict of interest on the part of OIC or its staff regarding this external review.
25. Finally, as noted in paragraph 4 above, the applicant raised concerns about the conduct of Department officers during the processing of her application. I note that information released to the applicant confirms that the Department referred the applicant's complaint about such officer conduct to the Crime and Corruption Commission. In these circumstances, it is not appropriate for me to address those conduct concerns in these reasons for decision.
26. I will now turn to consideration of the substantive issues to be determined in this review.

### Relevant law

27. 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>35</sup> If a document does not contain any personal information of the individual, it is outside the scope of an access application made under the IP Act and the individual does not have a right to access that document under the IP Act.
28. '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.
29. As noted in paragraph 22 above, the right of access under the IP Act is subject to a number of exclusions and limitations, including grounds for refusal of access. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 47(3)(a) of the RTI Act relevantly permits an agency to refuse access to documents to the extent they comprise exempt information.

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<sup>32</sup> Submissions dated 21 June 2018.

<sup>33</sup> Section 64(1) of the IP Act.

<sup>34</sup> I am unable in these reasons for decision to provide any further details of these matters.

<sup>35</sup> Under section 40(1)(a) of the IP Act.

## Findings – Deleted Information

30. I have carefully reviewed the Deleted Information and I am satisfied that it does **not** contain any of the applicant’s personal information—it does not identify the applicant and is not about the applicant.
31. I note the applicant has made no submissions contesting the reasoning or conclusions in paragraph 30 above.<sup>36</sup>
32. I find that the Deleted Information is outside the scope of the access application, which was made under the IP Act, and cannot be considered as part of the application.

## Findings – Category A Information and Category B Information

33. Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, information is exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation (**Harassment or Intimidation Exemption**).<sup>37</sup>
34. As the RTI Act does not define ‘*a serious act of harassment or intimidation*’, those terms are given their ordinary meanings.<sup>38</sup> As noted in *J6Q8CH No. 1*,<sup>39</sup> the Information Commissioner has previously accepted the following definitions:<sup>40</sup>
  - ‘*harass*’ includes ‘*to trouble by repeated attacks, ... to disturb persistently; torment*’; and
  - ‘*intimidate*’ includes ‘*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear*’.
35. For the Harassment and Intimidation Exemption to apply:
  - the expected harassment or intimidation must be ‘*serious*’ in nature<sup>41</sup>—conduct which is competitive, disparaging, unpleasant or ‘*irksome and annoying*’ is not sufficient to establish the exemption<sup>42</sup>
  - there must also be a reasonable expectation of serious harassment or intimidation—this requires that the expectation be reasonably based on an objective examination

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<sup>36</sup> Which were put to the applicant on a preliminary view basis on 21 June 2018, for her consideration and reply.

<sup>37</sup> Schedule 3, section 10(1)(d) of the RTI Act. This provision is subject to the exceptions contained in schedule 3, section 10(2) of the RTI Act.

<sup>38</sup> *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [188]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as this provision, and the reasoning in *Sheridan* has since been cited with approval in relation to the RTI Act, in decisions including *Mathews and Department of Transport and Main Roads* [2014] QICmr 37 (19 September 2014) and *Bowmaker Realty and Department of Justice and Attorney-General; Andrews* [2015] QICmr 19 (17 August 2015) (**Bowmaker**).

<sup>39</sup> At paragraph 24.

<sup>40</sup> *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) at [13] and *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13], applying the Macquarie Dictionary Online (Fourth Edition) definitions referred to in *Sheridan* at [194]-[200].

<sup>41</sup> ‘*Serious*’ relevantly means ‘*weighty or important, ‘giving cause for apprehension; critical*’: Macquarie Dictionary Online (as at 12 December 2018).

<sup>42</sup> *Bowmaker* at [31].

of the relevant evidence<sup>43</sup> and must not be irrational, absurd or ridiculous,<sup>44</sup> nor a mere possibility;<sup>45</sup> and

- the expectation of serious intimidation or harassment must arise as a **result of disclosure**, rather than from other circumstances<sup>46</sup>—that is, I must be satisfied that the disclosure of the Category A and B Information, rather than the nature of the pre-existing relationship between the relevant parties, could reasonably be expected to cause the serious act of harassment or intimidation.

**(i) Is the expected harassment or intimidation serious in nature?**

36. Yes, for the reasons set out below.

37. As previously noted, the applicant submitted<sup>47</sup> that OIC did not have any evidence of her 'hostile communications'<sup>48</sup> and any allegation about her being hostile or aggressive is 'mere retaliation'.<sup>49</sup> Again, I am constrained as to the level of detail I can provide about the Category A and B Information.<sup>50</sup> I have carefully considered the information available to OIC—some of which is sensitive in nature and cannot be set out in these reasons—and I am satisfied that there is a demonstrated history of the applicant's enmity towards various public sector offices (and certain officers employed at a number of those public sector offices). More specifically, the evidence available to me demonstrates that the applicant has:

- (a) previously threatened to harm individuals, including certain Department staff<sup>51</sup>
- (b) previously been convicted of using a carriage service to menace, harass or offend<sup>52</sup>
- (c) engaged in hostile correspondence with the Department; and
- (d) employed hostile and inflammatory language in her verbal communications with Department officers.<sup>53</sup>

38. On an objective assessment, I consider that the conduct identified in paragraph 37 above has repeatedly and persistently troubled, tormented and disturbed certain officers of the Department, and other individuals, and caused them to experience significant and prolonged distress,<sup>54</sup> even if this was not the applicant's intention. Accordingly, I find that the applicant has engaged in a pattern of unreasonable behaviour that constitutes harassment for the purposes of the RTI Act.

39. The applicant submitted that Department officers do not need protection as she is not violent and has a history of only 'petty offences'.<sup>55</sup> Further, the applicant submitted that,

<sup>43</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**) at [45]-[47].

<sup>44</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**).

<sup>45</sup> *Murphy* at [44]. In reaching a finding, it is not necessary for a decision-maker 'to be satisfied upon a balance of probabilities' that disclosing the document will produce the anticipated prejudice, or, in this case, serious harassment or intimidation: see *Sheridan* at [192-193] citing *Cockcroft*. In *Sheridan*, the Information Commissioner identified factors that might be relevant in considering whether an event could reasonably be expected to occur as including past conduct or a pattern of previous conduct, the nature of the information in issue, the nature of the relationship between the parties and/or third parties and relevant contextual and/or cultural factors.

<sup>46</sup> *Watson v Office of Information Commissioner Qld & Ors* [2015] QCATA 95 per Thomas J at [19].

<sup>47</sup> Submissions dated 21 June 2018.

<sup>48</sup> As noted in footnote 25 above, the applicant requested, if OIC believed it had such evidence, that it be provided to her.

<sup>49</sup> Submissions dated 21 June 2018.

<sup>50</sup> Section 121 of the IP Act.

<sup>51</sup> An email partially released to the applicant (at page 31 in IP 180853 File 12) records that the applicant 'threatened to harm a QCAT case officer ... and police were involved'. Further, as noted in *J6Q8CH No. 1*, a threat by the applicant was also characterised as 'a death threat' in information released to the applicant.

<sup>52</sup> To avoid identifying the applicant, I am unable to provide further details about this conviction in these reasons, however, I note that the applicant's submissions dated 21 June 2018 reference the action she took which is the subject of this conviction.

<sup>53</sup> A File Note partially released to the applicant (at page 159 in IP 180853 File 12) refers to an 'abusive' phone call the Department received from the applicant in which the applicant used 'foul language'.

<sup>54</sup> Refer to *Toogood and Cassowary Coast Regional Council* [2018] QICmr 13.

<sup>55</sup> Submissions dated 11 July 2018.

in any event, Department officers have police protection available to them should they feel harassed or menaced.<sup>56</sup> However, I note that it is not necessary to demonstrate a likelihood of criminal behaviour (such as assault) for the Harassment and Intimidation Exemption to apply.<sup>57</sup>

40. In this case, I consider the conduct referred to in paragraph 37 above is beyond merely unpleasant or annoying, and is a cause for serious concern by a number of individuals, particularly given the hostile nature of the applicant's interactions with Department officers and the threats the applicant has made against various individuals. For this reason, I am satisfied that this pattern of behaviour constitutes 'serious' harassment.

**(ii)-(iii) Is the expectation of serious harassment reasonably based and does it arise from disclosing the Category A and B Information?**

41. Yes, for the reasons that follow.

42. The applicant submitted that:

- she considers it is '*highly suspicious and unethical that persons who are processing an application and making a decision about me have such a conflict of interest that their processes need to be concealed*'<sup>58</sup>
- if Department officers were '*merely doing their jobs there should be nothing there that would provoke harassment*'<sup>59</sup>
- given her personal circumstances, there is '*no real threat of this insulting allegation that I am a risk to harass anybody*';<sup>60</sup> and
- it is discriminatory to take her '*unrecorded*' and '*spent*' conviction for an incident that occurred some years ago into consideration.<sup>61</sup>

43. In this regard I note that the information disclosed to the applicant has, for the most part, provided the applicant with an understanding of the documented actions taken by the Department in its processing of the Prior Application and the work titles of the public sector officers who were parties to communications which occurred as part of processing that application. In this sense, I consider the Department's procedures and actions taken in processing the Prior Application have mostly been disclosed to, rather than concealed from, the applicant.

44. The applicant also submitted that she considers a range of Department officers, including judicial officers, are '*running a smear campaign*' about her and have engaged in '*highly illegal conduct*' and that, as a result of these activities, she has been wrongfully convicted.<sup>62</sup> The Category A Information includes the names and contact details of various Department officers. Given this and the nature of the Category B Information, I consider the applicant's prior conviction for using a carriage service to menace, harass or offend is relevant evidence to be considered in determining whether an expectation of serious harassment arising as a result of disclosing the Category A and B Information is reasonably based.

45. Having carefully considered the content of the Category A and B Information, I am satisfied that its disclosure would result in *further* harassment of particular individuals—

<sup>56</sup> Submissions dated 21 June 2018.

<sup>57</sup> *Conde and Queensland Police Service* (Unreported, Queensland Information Commissioner, 18 October 2012) at [23].

<sup>58</sup> External review application.

<sup>59</sup> Submissions dated 21 June 2018.

<sup>60</sup> Submissions dated 21 June 2018.

<sup>61</sup> Submissions dated 11 July 2018. The applicant further submitted that it is against the law to '*withhold [her] government information based on an [unrecorded] and historic conviction*'.

<sup>62</sup> Submissions dated 21 June 2018.



that is, on the evidence available to me, I am satisfied that disclosure of the Category A and B Information, rather than the applicant's pre-existing enmity towards the Department, could reasonably be expected to result in further conduct similar to the conduct identified in items (a), (c) and (d) of paragraph 37 above. To the extent the Category B Information relates to individuals who are not Department officers, I am also satisfied that disclosure of this information could reasonably be expected to result in further conduct similar to the conduct identified in items (a), (c) and (d) of paragraph 37 above.

**(iv) Do any of the exceptions in schedule 3, section 10(2) of the RTI Act apply?**

46. Having carefully considered the Category A and B Information, I am satisfied that none of the exceptions listed in schedule 3, section 10(2) of the RTI Act<sup>63</sup> apply.

**Conclusion**

47. I find that access to the Category A and B Information is refused on the ground that it comprises exempt information.<sup>64</sup>

48. I note that the applicant raised a number of public interest arguments in support of her view that the Information in Issue should be disclosed to her, including that she requires the Information in Issue to appeal her wrongful convictions. As noted in *J6Q8CH No. 1*, there is no requirement for me to consider the applicant's public interest submissions in respect of the Category A and B Information because I have found that it is exempt information and Parliament has determined that disclosure of exempt information would, on balance, be contrary to the public interest in all instances.<sup>65</sup>

**DECISION**

49. I vary the Department's decision and find that access to all but one page of the Information in Issue may be refused on the grounds that it is exempt information. The remaining page may be deleted on the basis that it is outside the scope of the access application.

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

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**Assistant Information Commissioner Corby**

**Date: 12 December 2018**

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<sup>63</sup> The exceptions specified in schedule 3, section 10(2) of the RTI Act arise when information consists of: (a) matter revealing the scope of a law enforcement investigation has exceeded the limits imposed by law; (b) matters containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; (c) a report on the degree of success achieved in a program, adopted by an agency for dealing with a contravention or possible contravention of the law; (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the *Crime and Corruption Act 2001*); and (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.

<sup>64</sup> Under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(d) of the RTI Act.

<sup>65</sup> Section 48(2) of the RTI Act.

## APPENDIX 1

### Significant procedural steps

Date	Event
25 January 2018	OIC received the external review application.
15 February 2018	OIC received the applicant's submissions.
7 and 12 March 2018	OIC received the applicant's emails addressed to other agencies (which were copied to OIC).
14 March 2018	OIC received the applicant's further submissions by telephone.
6 April 2018	OIC received the applicant's email concerning access applications to agencies other than the Department.
10 April 2018	The applicant raised concerns relating to searches performed by the Department and provided oral submissions. OIC received the applicant's further written submissions.
11 April 2018	OIC asked the applicant to confirm her sufficiency of search concerns.
27 April 2018	OIC notified the applicant that OIC staff would not engage in further telephone communication with the applicant and any submissions the applicant wished to make were required in writing.
5 June 2018	OIC conveyed its preliminary view to the Department.
6 June 2018	The Department confirmed that it accepted OIC's preliminary view.
21 June 2018	OIC conveyed its preliminary view to the applicant. OIC received the applicant's further submissions.
22 June 2018	OIC received the applicant's further submissions.
11 July 2018	OIC received the applicant's further submissions.
21 July 2018	OIC received the applicant's further submissions, which included a request for a description of 30 pages to which, in OIC's view, access may be refused.
2 August 2018	The Department confirmed it did not object to a nominated description of the 30 pages being provided to the applicant.
6 August 2018	OIC conveyed a description of the 30 pages to the applicant. OIC received the applicant's further submissions.
25 and 28 August 2018	OIC received the applicant's further submissions.

## Appendix 2

### Information in issue

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Page	Part or full refusals/deletion	Category of refused/deleted information
1-3	part	Category A Information
5-6	part	Category A Information
8-9	part	Category A Information
15-16	part	Category A Information
17	full	Category B Information
18	part	Category A Information
19-21	full	Category B Information
23	part	Category A Information
25	part	Category A Information
27	part	Category A Information
28-29	part	Category A Information
30	full	Deleted Information
31	part	Category A Information
32-61	full	Category B Information
62-69	part	Category A Information
71-79	part	Category A Information
81	part	Category A Information
83-88	part	Category A Information
90	part	Category A Information
91-95	full	Category B Information
96	part	Category A Information
98	part	Category A Information
100-106	part	Category A Information
108-109	part	Category A Information
111-112	part	Category A Information
114-120	part	Category A Information
122	part	Category A Information
125-133	part	Category A Information
135-141	part	Category A Information
142-143	full	Category B Information
144-145	part	Category A Information
146-147	full	Category B Information
148-155	part	Category A Information
156	full	Category B Information
157-160	part	Category A Information
161-164	full	Category B Information
165-166	part	Category A Information
167-176	full	Category B Information
177-179	part	Category A Information
181	part	Category A Information
183	part	Category A Information
185	part	Category A Information
187-189	part	Category A Information
192	part	Category A Information
194	part	Category A Information