



Decision and Reasons for Decision

Citation:	<i>A74 and Queensland Police Service [2020] QICmr 75 (17 December 2020)</i>
Application Number:	315657
Applicant:	A74
Respondent:	Queensland Police Service
Decision Date:	17 December 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - PREVIOUS APPLICATION FOR SAME DOCUMENTS - application for information about the applicant's referral for a mental health assessment - where the agency's decision in respect of the previous application has been the subject of review - whether the later application, on its face, discloses any reasonable basis for again seeking access - section 62(3) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access information concerning a mental health referral made by the Queensland Fixated Threat Assessment Centre (**QFTAC**).²
2. QPS refused to deal with the application under section 62(3) of the IP Act³ on the basis that the applicant had previously applied for the same information and that application had been the subject of a completed external review.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.⁴
4. For the reasons set out below, I affirm QPS's decision refusing to deal with the application, as the requested information was the subject of a previous application under the IP Act; the agency's decision in respect of that previous application has been the subject of a completed review; and the later access application does not, on its face, disclose any reasonable basis for again seeking access.

¹ The undated application was received by QPS on 17 August 2020 (QPS reference RTI/31674).

² QFTAC is a joint initiative between QPS and the Queensland Forensic Mental Health Service that identifies fixated individuals through irregular communications with public office holders. QFTAC seeks to mitigate the risk posed by fixated individuals by linking them with mental health interventions and addressing other identified risk factors.

³ Decision dated 15 September 2020.

⁴ On 15 September 2020.

Reviewable decision and evidence considered

5. The decision under review is QPS's decision dated 15 September 2020, refusing to deal with the application.
6. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
7. The applicant provided extensive submissions to OIC in support of his case.⁵ I have reviewed these submissions, and, to the extent they are relevant to the issue for determination in *this particular review*, I have considered and referred to them below.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁶ particularly the right to seek and receive information.⁷ 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 the *Right to Information Act 2009* (Qld).⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*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*'.¹⁰
9. Significant procedural steps relating to this review are set out in the Appendix.

Issue for determination

10. The issue for determination is whether, under section 62 of the IP Act, QPS may refuse to deal with the access application on the basis that the applicant has previously sought access to the information under the IP Act.

Relevant law

11. Under section 62 of the IP Act, an agency may refuse to deal with an access application in certain circumstances, relevantly including where:
 - a) an applicant makes an access application to an agency, and then makes a later access application to the same agency seeking access to one or more of the same documents¹¹
 - b) the agency's decision on the previous application is the subject of a completed review (other than internal review) or an incomplete review;¹² and
 - c) the later access application does not, on its face, disclose any reasonable basis for again seeking access to the documents.¹³

⁵ As set out in the Appendix. I also note that the applicant has corresponded with OIC on multiple occasions in relation to other matters and that all such correspondence has been examined by OIC to determine its relevance to this particular review.

⁶ Which came into force on 1 January 2020.

⁷ Section 21 of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

¹¹ Section 62(1) of the IP Act.

¹² Section 62(3)(d) of the IP Act.

¹³ Section 62(1)(b) of the IP Act.

12. A review is defined in section 62(5) of the IP Act to include an external review under the IP Act and a review will be taken to be complete if it has ended because of an informal resolution or because of a decision of the entity conducting the review.¹⁴
13. If an external review is resolved informally, the Information Commissioner is required to give each review participant a notice that the external review is complete and the external review is taken to be complete at the date of such notice.¹⁵

Findings

Does the later application seek access to one or more of the same documents sought under a previous application?

14. Yes, for the following reasons.
15. In an access application dated 6 October 2019¹⁶ (the **First Application**), the applicant sought access to:

*All documents "absolutely" with respect of a QFTAC referral to the Mental Health Tribunal for an Examination Authority of myself at the Gold Coast University Hospital Acute Mental Health Team on the 3 October 2019 and [sic] seen by a Psychiatrist, [Dr G] pursuant to Section 504 of the Mental Health Act 2016 (Qld), ("the Act") by [Ms C] on the 27 September 2019. To narrow the scope. All documents, but not limited to memos, emails or notes...*¹⁷

16. The access application that is the subject of this review (the **Later Application**) seeks access to:

*All documents absolutely with respect of a Queensland Fixated Threat Assessment referral to the Mental Health Review Tribunal for an Examination Authority pursuant to Section 502 (1) of the Mental Health Act 2016 (Qld) of myself where I was seen by a [Dr G] at the Gold Coast University Hospital on the 2 October 2019 and a follow up with [Dr U] at the Southport Health Precinct on the 9 October 2019, but not limited to QPRIME reports, internal memos, diary notes, emails, letters and any form of memorandum including telephone calls.*¹⁸

17. Having carefully considered the above scopes, I am satisfied that the Later Application seeks access to the same documents sought under the First Application.

Was QPS's decision on the First Application the subject of a complete or incomplete review?

18. Yes, for the following reasons.
19. On 12 November 2019, QPS decided to refuse to deal with the First Application under section 59 of the IP Act, on the ground it considered all of the requested documents comprised exempt information. The applicant applied to OIC for external review of that decision.¹⁹ The external review application was accepted by OIC (external review 314983) and, on 28 February 2020, the applicant was advised that QPS had agreed to resolve the external review by dealing with the First Application and issuing a considered

¹⁴ Section 62(6) of the IP Act.

¹⁵ Section 103(4) of the IP Act.

¹⁶ QPS reference RTI/28332.

¹⁷ The application also listed specific categories of information that the request included and outlined the applicant's concerns about the examination order. The date range of the application was identified as 'From 15/9/2019 until the feedback provided by the Southport Health Precinct [sic] to the app/ notifier of the EA with my appt on 9/10/19'.

¹⁸ The nominated application date range was 1 September 2019 to 20 October 2019.

¹⁹ On 11 November 2019. I also note that, prior to this date, the applicant had contacted OIC about the First Application and in response, OIC had notified the applicant on 4 November 2020 that, at that time, no reviewable decision had been made by QPS.

decision by 27 March 2020. In accordance with the requirements of section 103(4) of the IP Act, the applicant was provided with a notice that external review 314983 was complete on 28 February 2020.

20. On 28 March 2020, the applicant notified OIC that he had not received documents from QPS. The applicant then sent a series of emails to OIC about his non-receipt of the requested documents.²⁰
21. OIC notified the applicant that if he had not received a decision from QPS, he could seek external review.²¹ The applicant responded in the following terms:

Don't good morning me. I told you stop harassing myself. You are not functus officio. You closed your file prematurely as this was dependant on the decision by the 27 March 2020. So you should have waited to close you [sic] file then. Now the External Review pursuant to Section 99 of the Information Privacy Act 2009 (Qld). ("the Act"). Now for the 10th time. What have you done about Section 126 (1) of the Act. Now get off your back side and do your job. Now don't send me any harassing emails. Now stop helping the Queensland Police Service for a change.²²

What is happening Section the [sic] Section 99 of the Information Privacy Act 2009 (Qld), ("the Act") External Review and when are you going to comply with Sections 103 & 108 of the Act and Section 32CA (2) of the Acts 1954 (Qld). Even when you sent me your email advising that the decision would be forthcoming on the 27 March 2020 was misleading. Indeed you were not functus officio then and you are still not now. So what on earth are you doing...²³

22. As the applicant continued to seek access to the documents requested in the First Application,²⁴ OIC treated the applicant's emails as an application under section 99 of the IP Act for external review of the decision QPS was deemed to have made under section 66 of the IP Act, refusing access to the requested documents.²⁵
23. The external review application was accepted by OIC (external review 315352) and, on 31 July 2020, OIC notified the applicant that QPS had agreed to partially disclose the information requested in the First Application. In response, the applicant requested that OIC 'cease harassing' him and not contact him again.²⁶ On this basis, and in accordance with the requirements of section 103(4) of the IP Act, the applicant was provided with a notice that external review 315352 was complete.²⁷ The information which QPS had agreed to disclose was sent to the applicant on 18 August 2020.
24. The applicant contends that, as QPS agreed in external review 314983 to issue a considered decision by 27 March 2020 and failed to do so, external review 314983 was incomplete.²⁸ However, as noted above, the applicant was given a notice on 28 February 2020 that external review 314983 was complete and, under section 103(4)(b) of the IP Act, the external review was taken to be complete on that date.

²⁰ Emails received 29 March 2020 at 2.52 pm and 3.28pm, 30 March 2020 at 2.34pm and 4.13pm and 31 March 2020 at 2.06am and 3.36pm.

²¹ This notification also confirmed that unless the applicant was applying for external review of QPS's deemed decision, OIC was unable to further assist him.

²² By email received at 2.52pm on 1 April 2020.

²³ By email received 2 April 2020 at 7.15pm. Additional emails were received on 4 April 2020 at 3pm and 3.26pm (two copies of these emails were received), 8 April 2020 at 6.39pm, 9 April 2020 at 5.18am, 10 April 2020 at 3.52pm (two copies of this email were received), 11 April 2020 at 2.53pm and 21 April 2020 at 2.48am.

²⁴ As noted, some of the applicant's email specifically referred to section 99 of the IP Act, which creates a right for a person affected by a reviewable decision to apply for external review.

²⁵ The applicant submits that he did not apply for external review of the decision QPS was deemed to have made, refusing access to the documents requested in the First Application (for example, by emails received 20 November 2020 at 1.46am and 29 November 2020 at 4.26pm).

²⁶ By email dated 1 August 2020.

²⁷ On 12 August 2020.

²⁸ For example, by email received 20 September 2020 at 11.04pm.

Further, while the applicant considers that QPS issuing a decision by 27 March 2020 was a condition precedent to completion of external review 314983, the Information Commissioner does not have power under the IP Act to provide a conditional notice of completion to external review participants where an external review is resolved informally.

25. I also note that in the subsequent external review 315352, a delegate of the Information Commissioner considered the applicant's entitlement to the relevant documents as part of an external review process, and after QPS's agreement to release some of those documents to the applicant, the applicant explicitly requested the OIC to cease communication with him. This review was also completed following the provision of a notice under section 103(4)(b) of the IP Act.
26. Based on the above sequence of events, I am satisfied that section 62(3)(d)(ii) of the IP Act applies, as QPS's decision in respect of the First Application has been the subject of a completed external review.

Does the Later Application, on its face, disclose any reasonable basis for again seeking access to the requested information?

27. No. The Later Application does not, on its face, give any reason for again seeking access to the information requested in the First Application. It does not refer to the First Application and there is nothing in the Later Application which discloses a reasonable basis for the applicant to again seek access to the requested information.
28. On external review, the applicant submits that QPS did not partially disclose to him the documents requested in the First Application, as they were blank documents, and there was no external review on foot as OIC had closed its file.²⁹ A copy of the partially redacted documents the applicant received from QPS in respect of the First Application was attached to an email which OIC received from the applicant on 26 October 2020. These documents did not appear to be blank documents and disclosed parts of the information requested by the applicant.³⁰
29. Accordingly, I do not consider that the applicant's submissions in this regard disclose any reasonable basis for again seeking access to the requested information, and in any case, these contentions were not included on the face of the Later Application.

Conclusion

30. Based on the above, I am satisfied that:
 - the Later Application sought access to one or more of the same documents sought under the First Application
 - the First Application was the subject of completed external review 314983; and
 - the Later Application does not, on its face, disclose any reasonable basis for again seeking access to the requested information.
31. Accordingly, QPS may refuse to deal with the Later Application,³¹ as the requested information was the subject of the First Application, which was the subject of a completed external review.

²⁹ Emails received 20 September 2020 at 2.37pm and 14 October 2020 at 3.30pm.

³⁰ This email was addressed to a government agency and was copied to OIC and others.

³¹ Under section 62 of the IP Act.

DECISION

32. For the reasons set out above, as a delegate of the Information Commissioner,³² I affirm QPS's decision refusing to deal with the application under section 62 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 17 December 2020

³² Under section 139 of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
15 September 2020	OIC received the applicant's application for external review.
20 September 2020	OIC received five emailed submissions from the applicant (at 11.04am, 2.27pm, 2.37pm, 2.42pm and 3.10pm).
21 September 2020	OIC received an emailed submission from the applicant.
24 September 2020	OIC received an emailed submission from the applicant.
6 October 2020	OIC received a further application for external review from the applicant.
7 October 2020	OIC notified the QPS and the applicant that the application for external review had been accepted and conveyed a preliminary view to the applicant that QPS was entitled to rely on section 62 of the IP Act to refuse to deal with his application.
10 October 2020	OIC received an emailed submission from the applicant.
11 October 2020	OIC received two emailed submissions from the applicant (at 9.26am and 10.08am).
12 October 2020	OIC received an emailed submission from the applicant.
14 October 2020	OIC received an emailed submission from the applicant.
21 October 2020	OIC received a copy of the partially redacted documents QPS released to the applicant in respect of the First Application.
2 November 2020	OIC received two emailed submissions from the applicant (at 4.11pm and 6.59pm).
17 November 2020	OIC wrote to the applicant confirming a preliminary view that QPS was entitled to rely on section 62 of the IP Act to refuse to deal with his application. OIC received three emailed submissions from the applicant (at 4.25pm, 4.45pm and 5.40pm).
20 November 2020	OIC received an emailed submission from the applicant.
21 November 2020	OIC received two emailed submissions from the applicant (at 2.42pm and 5.22pm).
24 November 2020	OIC received an emailed submission from the applicant.
25 November 2020	OIC received an emailed submission from the applicant.
29 November 2020	OIC received two emailed submissions from the applicant (at 4.26pm and 4.30pm).
6 December 2020	OIC received an emailed submission from the applicant.