Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***Poyton and Department of Education* [2023] QICmr 13 (16 March 2023)**
Application Number:	**316778**
Applicant:	**Poyton**
Respondent:	**Department of Education**
Decision Date:	**16 March 2023**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - whether an agency is taken to have made a deemed decision - whether the Information Commissioner has jurisdiction to conduct a review - whether an application for external review is misconceived - sections 66 and 99 and 107(1)(a) of the *Information Privacy Act 2009* (Qld).** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - whether an application complies with all relevant application requirements - requirement to provide evidence of identity for the applicant - electronic submission of certified identification - sections 43 and 53 of the *Information Privacy Act 2009* (Qld) and section 16 of the *Electronic Transactions (Queensland) Act 2001* (Qld)**

REASONS FOR DECISION

Summary

1. On 20 May 2022, the applicant made an application to the Department of Education (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about himself.

2. On 3 July 2022, the applicant applied for external review, submitting that the Department had not made a decision on his application and was therefore taken to have made a deemed decision refusing access to the requested information.[1]

3. The Department submits that the applicant did not make a compliant application, and a deemed decision cannot have been made. Accordingly, the Department contests the Information Commissioner's jurisdiction to consider the applicant's external review application.

4. I find that the Department is taken to have made a deemed decision refusing access to the requested information and the applicant has applied for external review of a

[1] Under section 66 of the IP Act.

reviewable decision. I set aside that decision and find that the application does not comply with all relevant application requirements.[2]

Issues for determination

5. The Department considers that it has not made a deemed decision, and therefore there was no reviewable decision which can be the subject of an external review at the time the applicant applied for review, so it is necessary to first determine this issue.

6. The applicant considers that his application complies with all relevant application requirements, so it is also necessary to determine this issue.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including in footnotes and the appendix).

8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.[3] 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 Right to Information Act *2009* (Qld) (**RTI Act**) and IP Act.[4] 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 similar pieces of Victorian legislation[5] that *'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.'[6]

Relevant law

9. Under Chapter 3 of the IP Act, an individual who wishes to be given access to a document of an agency or document of a Minister, to the extent it contains the individual's personal information, may apply to the agency or Minister under the IP Act for access to the document.[7] The access application must be in the approved form; give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and state an address to which notices may be sent to the applicant.[8]

10. The applicant must also provide with the application, or within 10 business days after making the application, *evidence of identity* for the applicant.[9] *Evidence of identity* means the evidence of identity prescribed under the *Information Privacy Regulation 2009* (Qld) (**IP Regulation**).[10] The evidence of identity prescribed is a document verifying the person's identity, including, relevantly, a driver licence.[11] If a document is

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[2] Section 53 of the IP Act.
[3] Section 21(2) of the HR Act.
[4] *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]. I further note that OIC's approach to the HR Act was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw *'no reason to differ'* from this position).
[5] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[6] *XYZ* at [573].
[7] Section 43(1) of the IP Act.
[8] Section 43(2) of the IP Act.
[9] Section 43(3)(a) of the IP Act.
[10] In accordance with section 43(4) of the IP Act.
[11] Section 3(1) of the IP Regulation. The other examples provided are a passport, a copy of a certificate or extract from a register of births, a statutory declaration from an individual who has known the person for at least 1 year, or, if the person is a prisoner within the meaning of the *Corrective Services Act 2006* (Qld)—a copy of the person's identity card from the Department administering that Act that is certified by a corrective services officer within the meaning of that Act.

a photocopy of an original document,[12] the document must be certified by a qualified witness as being a correct copy of the original document.[13]

11. If a person purports to make an access application[14] to an agency or Minister and the application does not comply with all relevant application requirements, the agency or Minister must make reasonable efforts to contact the person within 15 business days after the purported application is received and inform the person.[15] The agency or Minister must not refuse to deal with an application because it does not comply with all relevant application requirements[16] without first giving the applicant a reasonable opportunity to consult with a view to making an application in a form which does comply.[17] The applicant is taken to have made an application under the IP Act if and when the application is made in a form complying with all relevant application requirements.[18]

12. If, after giving the applicant the opportunity to make the application compliant, the agency or Minister decides the application does not comply with all relevant application requirements, section 53(6) of the IP Act provides that the agency or Minister must, within 10 business days after making the decision, give the applicant *prescribed written notice* of the decision.

13. Section 65 of the IP Act provides that if a person makes an access application for a document to an agency or Minister, the agency or Minister must, after considering the application, make a decision (a ***considered decision***) whether access is to be given to the document,[19] and give the applicant *written notice* of the decision under section 68 of the IP Act.

14. Section 68 of the IP Act requires that an agency or Minister must give to an access applicant a *prescribed written notice* of the decision on the application, including a decision to refuse to deal with the application,[20] and sets out certain details that must be stated in such notices. Section 199 of the IP Act sets out other details that must be stated in prescribed written notices generally.

15. Section 66 of the IP Act provides that if an applicant is not given written notice of the decision by the end of the *processing period* for an access application, on the last day of that period, the principal officer of the agency or Minister is taken to have made a decision (a ***deemed decision***) refusing access to the document.[21] The processing period for an access application is a period of 25 business days from the day the application is received by the agency or Minister.[22] As soon as practicable after a deemed decision is taken to have been made, the principal officer of the agency or Minister must give prescribed written notice of the decision to the applicant.[23]

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[12] Other than a prisoner's identity card certified by a corrective services officer.
[13] Section 3(2) of the IP Regulation.
[14] Or amendment application.
[15] Section 53(1) and (2) of the IP Act.
[16] Defined in section 53(7) as—for an access application—a matter set out in section 43(2) of (3) of the IP Act that is required for the application.
[17] Section 53(3) of the IP Act.
[18] Section 53(4) of the IP Act.
[19] And, if access is to be given, whether any access charge must be paid before access is given.
[20] And, if the application relates to a document that is not a document in the possession, or under the control, of the agency or Minister—the fact that the document is not a document in the possession, or under the control, of the agency or Minister.
[21] Section 66(1) of the IP Act.
[22] Section 22 of the IP Act. However, certain periods such as the following do not count as part of the processing period and, in practice, operate to extend this period: the transfer period (if the application is transferred to another agency or Minister under section 57 of the IP Act); the further specified period (if the agency or Minister asks the applicant for a further specified period under section 55(1) of the IP Act); ten business days (if the application involved consultation with a third party under section 56 of the IP Act); or the prescribed consultation period under 61 of the IP Act (if the applicant is given a notice under section 61(1)(a) of the IP Act).
[23] Section 66(2) of the IP Act.

16. A person affected by a *reviewable decision* may apply to have the decision reviewed by the Information Commissioner.[24] Relevantly, in this case, *reviewable decision* includes both a decision that an access or amendment application does not comply with all relevant application requirements under section 53(6), and a deemed decision.[25]

Analysis and findings

Issue 1: Is there a reviewable decision on which to conduct an external review?

17. It is not in dispute that:[26]

    a) The applicant sent his application to the Department by email on 20 May 2022, attaching a scanned version of a certified copy of his driver licence.
    b) On 24 May 2022, the Department contacted the applicant to advise that the application did not comply with all relevant application requirements. The Department requested further information to identify relevant documents and requested that the applicant provide the original certified copy of his evidence of identity, rather than a scanned version of the certified copy.
    c) On 24 May 2022, after some negotiation, the applicant agreed to the scope proposed by the Department. The applicant also advised the Department that he would not provide physical copies of his identity documents and requested that the Department provide a written decision on his application.

18. The applicant then applied for external review on 3 July 2022, submitting that he had not been given notice of the Department's decision within the processing period and therefore the Department made a deemed decision refusing access to the requested documents.[27]

19. After receiving the external review application, the Information Commissioner conveyed a preliminary view to the Department[28] that it appeared the Department was taken to have made a deemed decision on the application, explaining that while it had historically been the view that the processing period only commenced once a valid application was received, this was at odds with McMurdo JA's comments in *Powell & Anor v Queensland University of Technology & Anor* (***Powell***).[29] In that matter, the applicants had applied under the IP Act to access documents and the agency decided that the applications did not comply with all relevant application requirements. The decisions were affirmed on external review but set aside on appeal.

20. In the proceedings before the Court of Appeal:

    - the Information Commissioner submitted:

      > *[T]he processing period had not commenced, because* "the provisions of the IP Act relating to the timeframes for giving a written notice of decision are not enlivened until the agency is satisfied that it has received an access application which meets all the relevant requirements."[30]

[24] Section 99 of the IP Act.
[25] Defined in schedule 5 of the IP Act.
[26] The applicant provided copies of these emails to OIC, and the Department set out these events in its submissions dated 12 December 2022.
[27] Applicant's external review application dated 3 July 2022. The applicant expanded on this position in submissions dated 11 October 2022.
[28] On 5 August 2022.
[29] [2017] QCA 200.
[30] Ibid, [142].

- McMurdo JA expressly rejected the Information Commissioner's submission, stating:

> *The Commissioner's submission that the processing period does not begin until an agency is satisfied that it has received a duly made application, cannot be accepted. Section 22 relevantly defines the processing period as a period of 25 business days from the day the application is received by the agency. It does not distinguish between a duly made application and an application having some formal defect. And that distinction would be problematic, because according to s 43(3), evidence of identity need not be provided with the application but could be provided within a further 10 business days. Nor does the definition of the processing period distinguish between the receipt of an application which the agency considers to be compliant and that of an application which it believes, rightly or wrongly, to be non-compliant. A non-compliant application is not in this context a nullity: it still requires the action of the agency, under s 53, to dispose of it by a reviewable decision of the agency.*[31]

21. In response to this preliminary view, the Department submitted:[32]

> [The applicant]*'s application is not in a form that complies with all relevant application requirements, in that it does not contain, and he has not subsequently provided, 'evidence of identity for the applicant.'*
>
> *It follows that the Department never became subject to an obligation to make a considered decision about* [the applicant]*'s purported application, or to give* [the applicant] *written notice of such decision, under s 65 of the IP Act.*
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> *Where s 65 of the IP Act was not enlivened, the operation of s 66 of the IP Act was never engaged in relation to* [the applicant]*'s purported application, and the Department therefore cannot be deemed to have made a decision refusing* [the applicant]*'s purported application.*
>
> *Accordingly,* [the applicant]*'s application for external review is misconceived and does not properly engage the OIC's jurisdiction under s 99 of the IP Act in respect of the Department's purported deemed decision.*
>
> *It follows, then, that the obiter comments of McMurdo JA in* Powell *in relation to the meaning of the term 'processing period' as it applies to s 66 of the IP Act are not relevant to this matter. In any event, the facts in* Powell *are distinguishable from the present matter. Unlike the present matter, before the relevant QCAT appeal in* Powell *was heard, the agency concerned 'agreed to treat the applications for access as if they had been regularly made,' despite the decision-maker having previously decided, under s 53(6), that the applications did not comply with s 43(3) because they had not received the requisite evidence of identity.*
>
> *...*
>
> *A person only 'makes' an access application for the purposes of s 65 of the IP Act 'if and when the application is made in a form complying with all relevant application requirements.' Prior to s 53(4) being satisfied, there is only a 'purported' access application (see s 53(1)(a)), which an agency is not required to decide under s 65, because that section must be read together with ss 53(1)(a) and 53(4).*
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> *The Department further understands that s 66 of the IP Act must be read harmoniously with s 65 of the IP Act. That being the case, the duty in s 65 of the IP Act to make a*

[31] Ibid, [152].
[32] Submissions dated 12 December 2022 (footnotes omitted).

> *considered decision does not arise where an application is not taken to have been made as required by the IP Act.*
>
> *Where s 65 of the IP Act is not enlivened, there cannot have been a failure within the meaning of s 66 of the IP Act 'to give written notice of the decision' (whether or not that occurs by the end of the processing period) such that a deemed decision refusing access has been made. That is, where an access application has not been properly made in accordance with s 53(4), the end of the processing period prescribed by the IP Act which would trigger a deemed decision is not relevant because the duty under s 65 of the IP Act to make a considered decision did not arise in the first place.*

22. The Department also points to OIC's guideline on calculating timeframes which states that '*the processing period is triggered by the arrival of a valid application*'[33] and annotated legislation, which refers to *Stanway and Queensland Police Service* [2018] QICmr 7 (22 February 2018), a published decision where the Information Commissioner states, *'*[t]*he RTI Act requires an agency to make a decision on a valid access application within 25 business days. Failure to do so results in a Deemed Decision'* (Footnotes omitted)[34] (both of which were available on the OIC website at the time the view was conveyed).

23. The IP Act specifies that the starting point for interpreting its provisions is that they must be interpreted in keeping with the objects of the IP Act.[35] More generally, the interpretation that will best achieve the purpose of the Act is to be preferred.[36] The primary object of the IP Act includes providing a right to access government held personal information. Also, Justices McHugh, Gummow, Kirby and Hayne explained in *Project Blue Sky Inc v Australian Broadcasting Authority*:[37]

> *The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined "by reference to the language of the instrument viewed as a whole".*

24. While the Department is correct that the provisions of the IP Act must be read and interpreted together, I differ in the approach to this task.

25. The Department's interpretation is premised on its view that the applicant has not provided evidence of identity and therefore has not met all relevant application requirements under section 43(3) of the IP Act. This matter is addressed at Issue 2. below. Proceeding on this premise, the Department then contends that:

    a) Based on reading section 65 together with section 53, the requirement for the Department to make a considered decision under section 65 of the IP Act is not enlivened.
    b) Then, based on reading section 65 together with section 66, as the section 65 requirement to make a considered decision is not enlivened, section 66 of the IP Act cannot be engaged and the Department cannot be taken to have made a deemed decision.

26. In terms of a), it is my understanding that the Department considers that section 65, when read together with sections 53(1)(a) and (2) (particularly the words *purport* and *purported* when referring to a non-compliant application) and 53(4) (particularly the

[33] *How to calculate timeframes*.
[34] Submissions dated 12 September 2022.
[35] Section 3(2) of the IP Act.
[36] Section 14A(1) of the *Acts Interpretation Act 1954* (Qld).
[37] (1998) 194 CLR 355, at 381.

word *made* when stating that an application is taken to be *made* when it is in a form which complies with all relevant requirements), should be interpreted as meaning that an agency is not required to make a decision under section 65 when all relevant application requirements are not satisfied. However, as noted by McMurdo JA in *Powell*, *'a non-compliant application is not in this context a nullity: it still requires the action of the agency, under s 53, to dispose of it by a reviewable decision of the agency'*.

27. In my view, section 65 is not the only provision in the IP Act which requires an agency or Minister to issue a prescribed written notice. Other provisions – including, relevantly, section 53, as noted by McMurdo JA – also require this.[38] Specifically, section 53(6) of the IP Act provides that, if an agency *decides the application does not comply with all relevant application requirements*, the agency must give prescribed written notice of its *decision that an access or amendment application does not comply with all relevant application requirements*, and the definition of reviewable decision includes such a decision.[39]

28. Notably, section 53(6) of the IP Act and the relevant definition of reviewable decision refer to deciding an *application* which does not comply with all necessary requirements. The Department's concerns about the effect of the words *purport* and *purported* in sections 53(1)(a) and (2) do not, in my opinion, align with the nature of a decision under section 53(6), given the precise purpose of that provision is for an agency to make a decision about non-compliance with application requirements.

29. Also, the effect of section 53(4)'s statement that an applicant is taken to have *made* an application under the IP Act if and when the application is made in a compliant form is not, as the Department suggests, that prior to this it is not an application at all. Rather, I interpret section 53(4) of the IP Act as meaning that once the application is validly made, the application is taken to have been re-presented and the processing period recommences. This is logical, given that the whole processing period may be used in consulting on and deciding a non-compliant application. It is reasonable for the agency to have the benefit of the processing period recommencing once that issue is rectified, to allow the agency time to search for and consider documents and issue a considered decision.

30. I will now address the Department's second contention noted at paragraph 25.b) above. It is my understanding that the Department's position is that, where it considers that a decision that an application is non-compliant is appropriate, but it has not yet issued such a decision, the threshold issue of non-compliance precludes a considered decision under section 65, and this in turn disallows the occurrence of deemed decision under section 66. Presumably, the Department would make the same argument in circumstances where it considered that a decision under section 52(2) or 54(5)(b) of the IP Act was appropriate, but it had not yet issued such a decision, as the jurisdictional matters these provisions address would also preclude a considered decision. It appears that the logical extension of the Department's position might be that, wherever an agency or Minister intended, or perhaps stated that it intended, to issue a decision under sections 53(6), 52(2) or 54(5)(b) (regardless of the reasonableness or otherwise of that approach in the particular circumstances) but had not yet done so, an applicant would have neither a decision nor a deemed decision, and would have no ability to seek review.

[38] See also sections 52(2), 54(5)(b) and 56(3)(c) of the IP Act.
[39] See paragraph (b) of definition of *reviewable decision* in schedule 5 of the IP Act.

31. I am of the view that the Department's focus on section 65 and position that sections 65 and 66 operate in a binary manner is inconsistent with the language, intent and purpose of the IP Act as a whole. Interpreting the provisions in the way the Department submits effectively permits an agency to ignore an application for an indefinite period without consequence, denying the applicant the right to seek review of an adverse decision. I consider it unlikely that it is the legislature's intention that an applicant is left without effective remedy in such circumstances. On the other hand, interpreting the provisions as deeming an application as refused when an agency has not provided notice of a decision within a period which approximates the processing period for applications that satisfy threshold and jurisdictional issues affords an applicant in these circumstances the same opportunity to seek review within a short timeframe as is afforded an applicant who receives any other adverse decision.

32. In response to the Department's submission that McMurdo JA's comments in Powell are not relevant to this matter, I am of the view that his obiter statements are highly persuasive because they were not limited to the facts before him and addressed the more general point that a non-compliant application is not a nullity and must be dealt with in accordance with the provisions set out in section 53 of the IP Act, which ultimately includes issuing the applicant with a reviewable decision.[40]

33. In conclusion, reading the abovementioned sections of the IP Act together with the object of the IP Act and McMurdo's comments in *Powell*, I find that an agency is required to provide an applicant with written notice of a reviewable decision within the processing period – even where the application does not comply with all relevant application requirements – and, in the event that an agency fails to do so, it is taken to have made a deemed decision on the last day of the processing period to enable an applicant to seek external review. I acknowledge that this represents a departure from the Information Commissioner's prior position on the issue and I recognise the importance of consistency. However, the emergence of cases can result in the evolution in understanding and application of legislation, which may require a change in position.

34. In the present matter, as the access application was received by the Department on 20 May 2022, the Department was required to provide the applicant with written notice of its decision by 24 June 2022 or avail itself of the provisions which operate to extend the processing period.[41] This did not occur. As such, I am satisfied that the applicant was not given written notice of the Department's decision by the end of the processing period, and therefore, on 24 June 2022, the Department is taken to have made a deemed decision refusing access to the requested documents.[42]

35. Further, given a deemed decision is a reviewable decision,[43] I am satisfied that the applicant is affected by a reviewable decision and is therefore entitled to seek review of this decision, as he did on 3 July 2022. In these circumstances, the applicant's application for external review is not misconceived.[44]

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[40] I note that the wording of section 53(6) could be construed as stipulating no strict timeframe for *making* the decision on the application and only a timeframe for consulting with the applicant and communicating the decision *after* making it. Under section 38(4) of the *Acts Interpretation Act 1954* (Qld), '*if no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the relevant occasion occurs*.' In this case however, I consider that the provisions of the IP Act, when considered as a whole as set out above (in particular, stipulating a consequence where an applicant is not provided with a decision within the defined timeframe), indicate a contrary intention.

[41] Set out in section 22 of the IP Act.

[42] In accordance with section 66(1) of the IP Act.

[43] See paragraph (l) of definition of *reviewable decision* in schedule 5 of the IP Act.

[44] And I decline to refuse to deal with the application on that basis as provided for under section 107(1)(a) of the IP Act.

36. Even if I am wrong and the Department is **not** taken to have made a deemed decision on the application, I note that the Department provided the applicant with written notice that his application did not comply with all relevant application requirements under section 53(6) of the IP Act on 12 December 2022. This notice would constitute a *reviewable decision*[45] about which the applicant is entitled to seek review,[46] enlivening the Information Commissioner's review jurisdiction.[47]

Issue 2: Does the application comply with all relevant application requirements?

37. The applicant emailed his application to the Department by email on 20 May 2022, attaching a scanned version of the certified copy of his driver licence. The Department advised the applicant that they '*require that* (he) *provide the actual physical piece of paper that was signed and stamped by the certifier*.'[48] The applicant declined to do so, submitting that the scanned copy was sufficient to satisfy the application requirements.

38. The Department submitted that the applicant did not satisfy the evidence of identity requirements and his application was non-compliant.[49]

39. After receiving the application for external review, the Information Commissioner conveyed a view to the applicant that it appears his application does not meet the relevant evidence of identity requirement.

40. In response, the applicant submitted:[50]

- the provision of evidence of identity as required by the IP Act is satisfied by providing by email as a reliable way of maintaining the integrity of the information contained in the identity document and to be readily accessible so as to be useable for subsequent reference
- the Department has a discretion to accept evidence of identity provided electronically and must exercise this power reasonably
- many other agencies, dealing with sensitive information, accept emailed evidence of identity as satisfying the evidence of identity requirements
- the Department's position that it will not accept evidence of identity via electronic means is not reasonable; and
- the discretion of the Department's decision maker was fettered.

41. An applicant is required, when making an access application under the IP Act, to provide evidence of their identity[51] and an agency is entitled to refuse to deal with an application which does not comply with this requirement.[52] A copy of a driver licence certified by a qualified witness[53] will satisfy this requirement, however, the issue in this case is whether that requirement was satisfied when the applicant provided the certified copy of evidence of identity by scanned version attached to an email.

42. The *Electronic Transactions (Queensland) Act 2001* (Qld) (**ETQ Act**) provides that if a person is required by a state law to produce a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person

[45] That is, a decision that the application does not comply with all relevant application requirements under section 53(6) of the IP Act.
[46] As he did on 12 December 2022.
[47] Under section 99 of the IP Act.
[48] Email dated 24 May 2022.
[49] Department submissions dated 4 July 2022 and 12 December 2022.
[50] Applicant submissions dated 11 October 2022 and 12 December 2022.
[51] Section 43(3)(a) of the IP Act.
[52] Section 53(6) of the IP Act.
[53] Section 43(3)(a) of the IP Act and section 3 of the IP Regulation.

produces an electronic form of the document by an electronic communication, in the following circumstances:[54]

a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document[55]
b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
c) the person to whom the document is required to be produced consents to the production, by an electronic communication, of an electronic form of the document.

43. OIC has previously determined that section 16 of the ETQ Act confers a 'discretion to decide whether to accept evidence of identity electronically' when considering an access application.[56]

44. The applicant submits that criteria a) and b) are satisfied. I consider it unnecessary to make findings on these because c) is clearly not established. The Department did **not** consent to the production of an electronic form of the certified identity document by an electronic communication.

45. The purpose of the requirement to produce evidence of an applicant's identity is not a mere technicality. Indeed, it goes to the very object and purpose of the IP Act—the protection of personal information through fair collection and handling. Further, the making of such a policy is mandated by the IP Act where it states that an agency must ensure that any information intended for the applicant is received only by the applicant (or the applicant's agent, as applicable) through the adoption of appropriate procedures.[57] The requirement that reliable evidence of identity be provided ensures that personal information is released only to the person to whom it relates. Similarly, the certification of a copy of an identity document ensures that a qualified witness has viewed the original. I consider it reasonable for an agency to be concerned that the integrity of this process may be undermined by the provision of a certified copy electronically because, in such circumstances, it may be difficult to detect alteration. In addition to this, the scanning of the certified copy arguably creates a *new* copy (that is, a copy of the certified copy) which has not been verified and certified and would not satisfy the requirement to produce a certified copy of the original.

46. In considering the reasonableness of the Department's policy, I also observe that alternatives were available and offered to the applicant, that is, by posting the certified copy of the evidence of identity to the Department or presenting to have the original sighted.

47. I am satisfied that it is appropriate and reasonable for the Department to have enacted a policy requiring production of the actual certified copy of evidence of identity to ensure that personal information is handled with care, and only released to the person to whom it relates, and for the Department to have applied that policy in the circumstances of this case. For the sake of clarity, I do not imply that all agencies must

[54] Section 16 of the ETQ Act.
[55] Section 16(3) of the ETQ Act provides that the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from the addition of any endorsement or any immaterial change arising in the normal course of communication, storage or display.
[56] *Y63 and Department of Health* [2022] QICmr 3, [24]. See also *Mathews and Attorney General and Minister for Justice* (Unreported, Queensland Information Commissioner, 20 May 2013).
[57] In accordance with the precaution provisions set out in section 85 of the IP Act.

adopt this policy. I merely observe that it is reasonable for the Department to have done so.

48. For these reasons, I find that:

- as required, consultation was undertaken with the applicant about the deficiency in his application and he was given a reasonable opportunity to respond; and
- the application does not comply with all relevant application requirements,[58] as the provision of an electronic copy of a certified copy of the applicant's evidence of identity does not satisfy the requirement to provide evidence of identity[59] in the absence of the agency's consent to receive it this way.

DECISION

49. I find that the applicant has applied for external review of a reviewable decision by the Department. I set aside the deemed decision and find that the application does not comply with all relevant application requirements.[60]

50. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.

Stephanie Winson
Right to Information Commissioner

Date: 16 March 2023

[58] Section 53(6) of the IP Act.
[59] Section 43(3) of the IP Act.
[60] Section 53(6) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
3 July 2022	Applicant applied for external review.
4 July 2022	The Department was notified of the application for external review and procedural documents were requested. The Department provided submissions.
5 July 2022	The applicant requested that all correspondence be in writing.
21 July 2022	The Department is advised in a telephone discussion that the applicant submits that the Department has made a deemed decision on his access application and the Information Commissioner is undertaking a preliminary assessment of this issue.
4 August 2022	The Department is advised in a telephone discussion of the preliminary view that it is taken to have made a deemed decision refusing access to the requested documents and OIC proposes the Department apply for further time to deal with the application.
5 August 2022	Written preliminary view issued to the Department that it is taken to have made a deemed decision refusing access to the requested documents, and informal resolution proposed on the basis that the Department apply for further time to deal with the application.
15 August 2022	The Department requested an extension to provide a response.
16 August 2022	The Department was granted an extension to provide its response to the preliminary view.
5 September 2022	The Department requested and was granted a further extension to provide a response to the preliminary view.
12 September 2022	The Department provided submissions in response to the preliminary view.
27 September 2022	The applicant and Department were advised that the application for external review had been accepted on the basis that the Department is taken to have made a deemed decision, and a view conveyed to the applicant that his application does not comply with all relevant application requirements. The applicant was encouraged to consider resolving the matter.
11 October 2022	Applicant provided submissions in response to the preliminary view.
12 October 2022	OIC proposed resolution on the basis that the Department accept the electronic version of the evidence of identity. The Department declined this proposal. OIC requested and the Department provided a copy of its email to the applicant explaining how to satisfy the evidence of identity requirements.
12 December 2022	The Department purported to issue a considered decision on the application and provided further submissions to OIC along with a copy of the purported decision notice. The applicant purported to apply for external review of the Department's purported decision.
16 December 2022	OIC reiterated the preliminary view to both review parties and advised that a decision will shortly be issued in finalisation of the matter.
19 December 2022	The Department was advised of the applicant's purported application for external review.