



## Decision and Reasons for Decision

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**Application Number:** 310078

**Applicant:** Grenning

**Respondent:** Queensland Law Society Inc

**Decision Date:** 23 November 2010

**Catchwords:** **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – NON-EXISTENT DOCUMENTS - applicant seeks access to documents concerning redundancy of his position – applicant contended additional information should exist – whether there are reasonable grounds for agency to be satisfied that documents exist to the extent they should be in the agency’s possession – whether agency has taken all reasonable steps to locate the documents - whether access to documents can be refused under sections 47(3)(e) and 52(1)(b) of the *Right to Information Act 2009* (Qld)**

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## REASONS FOR DECISION

### Summary

1. The applicant seeks access to information relating to his former employment with the Queensland Law Society (**QLS**). While some documents were located, the applicant maintains that there should be more documents concerning his former position being made redundant.
2. QLS accepts that there should be additional documentation relating to the redundancy process but submits that the relevant senior manager<sup>1</sup> did not create such documents.
3. After carefully considering all the submissions and evidence before me, I am satisfied that:
  - no additional documents exist, and
  - access to additional documents can be refused under sections 47(3)(e) and 52(1)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

### Reviewable Decision

4. The decision under review is QLS's internal review decision dated 14 December 2009.

### Issues in this review

5. The only remaining issue for determination concerns the sufficiency of QLS's searches in relation to the access application. More specifically, whether:
  - there are reasonable grounds for QLS to be satisfied that no further responsive documents exist, and
  - all reasonable steps have been taken by QLS to find the additional documents sought.

### Applicant's submissions

6. In summary, the applicant submits that:
  - he was informed that his position was made redundant as a result of a decision made under the Organisational Alignment Project (**OAP**)
  - QLS should have located more relevant documents, particularly in relation to the redundancy process and the OAP<sup>2</sup>
  - it is absurd to believe there are no additional documents responsive to the application.

### QLS's submissions

7. In summary, QLS submits that:
  - the OAP was a high level project focused on the re-alignment of QLS structure at a departmental, rather than positional level
  - the OAP was separate from the redundancy process involving the applicant

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<sup>1</sup> Who is no longer employed by QLS.

<sup>2</sup> For example, meeting notes, minutes and memoranda.

- at the time of the applicant's redundancy, the CEO understood that a senior manager (who no longer works with QLS) was documenting the redundancy process, including taking notes of meetings and creating relevant memoranda and file notes
- as a result of searches conducted, all documents responding to the access application were located and provided to the applicant, aside from those documents to which the applicant was refused access under the RTI Act
- QLS acknowledges that there are gaps in its documentation in relation to the redundancy process
- QLS expected there to be evidence and documents in relation to the redundancy process, however no further documents could be located
- given the lack of documents located as a result of the searches and other incidences of lack of documentation involving the same senior manager, QLS believes that documents relating to the redundancy process were never created by the senior manager.<sup>3</sup>

### **Searches conducted by QLS**

8. QLS made a number of submissions regarding the searches conducted in relation to the access application. QLS relevantly indicated that:
- upon receipt of the access application, search requests were sent to:
    - the Director, Information Systems, as this area is responsible for QLS's electronic databases and information systems
    - the Manager, Professional Standards, to ensure a complete search of QLS
    - the Director, Member Central, as the Director of this area acted as CEO from February to May 2009 and was involved in the OAP
    - the Secretariat, because this area was originally involved in the OAP and to ensure a complete search of QLS
    - the Office of the President, because the applicant provided advice to the President and staffing decisions were made in consultation with the President
    - the Office of the CEO, because the applicant provided advice to the CEO and the CEO was involved in staffing decisions
    - the Director, People and Organisational Performance, as this area manages QLS's human resources functions
    - the Office of General Counsel, as this area provides in-house legal advice
    - the Group Chief Finance Officer, as this area maintains QLS's payroll functions
  - upon receipt of the internal review application, further searches were conducted with People and Organisational Performance and consultation occurred with the CEO
  - electronic searches were conducted of QLS's Contact Management System (**Contact**) using the search term '*Grenning*'
  - physical searches were conducted of files relating to the OAP

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<sup>3</sup> QLS also advises that there would not have been an opportunity for any relevant documents to have been disposed of by the senior manager.

- the Office of the President searched the President's emails, his Executive Assistant's emails and the Contact system using the search terms 'Russell' and 'Grenning'
- the CEO's office searched any incoming and outgoing emails of the applicant, the CEO and the CEO's Executive Assistant
- a manual search was conducted of the applicant's personnel file
- People and Organisational Performance searched using the terms 'Russell', 'Grenning', 'Corporate Relations Adviser' and 'redundancy' including a search of any electronic folders relating to the applicant
- the Office of General Counsel located one file which was a legal file created following the applicant's redundancy
- the Group Chief Finance Officer also held a personnel file for the applicant and also undertook searches using the terms 'Russell', 'Grenning' and 'redundancy'

9. The CEO also made enquiries with the former senior manager, to see if she might have taken documents with her. The former senior manager confirmed that she did not take anything with her or have any documents in her possession.

### Relevant evidence

10. In making this decision, I have taken the following into account:

- the applicant's applications and supporting material
- QLS's decisions
- records of telephone conversations between staff of the OIC and the applicant and QLS
- QLS's correspondence to the OIC
- record of meeting between staff members of the OIC and QLS
- relevant provisions of the RTI Act
- previous decisions of the Information Commissioner of Queensland as identified in this decision.

### Relevant law

11. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

12. Section 47(3)(e) of the RTI Act provides:

**47 Grounds on which access may be refused**

... ..

(3) *On an application, an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister—*

... ..

(e) *because the document is nonexistent or unlocatable as mentioned in section 52; or*

... ..

**Section 52 of the RTI Act**

13. Section 52 of the RTI Act is also relevant and provides:

**52 Document nonexistent or unlocatable**

(1) For section 47(3)(e), a document is nonexistent or unlocatable if—

(a) the agency or Minister dealing with the application for access is satisfied the document does not exist; or

Example—

*a document that has not been created*

(b) the agency or Minister dealing with the application for access is satisfied—

(i) the document has been or should be in the agency's or Minister's possession; and

(ii) all reasonable steps have been taken to find the document but the document can not be found.

14. The Information Commissioner considered this ground for refusal of access in *PDE and the University of Queensland*<sup>4</sup> (**PDE**). Although this decision concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act and on this basis, the reasoning in *PDE* is relevant to this review.

15. In *PDE*, the Information Commissioner said that:<sup>5</sup>

*Sections 28A(1) and (2) of the FOI Act address two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.*

16. The Information Commissioner also found that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach)

<sup>4</sup> (Unreported, Queensland Information Commissioner, 9 February 2009).

<sup>5</sup> At paragraph 34.

- other factors reasonably inferred from information supplied by the applicant including:
    - the nature and age of the requested document/s
    - the nature of the government activity the request relates to.
17. Accordingly, for QLS to be entitled to refuse access to the additional documents sought under sections 47(3)(e) and 52(1)(b) of the RTI Act, it is necessary to ask the following questions:
- are there reasonable grounds for QLS to be satisfied that additional documents exist (to the extent that they have been or should be in the agency's possession), and
  - has QLS taken all reasonable steps to find the additional documents sought.

**Are there reasonable grounds for QLS to be satisfied that additional documents exist (to the extent that they have been or should be in the agency's possession)?**

18. I have carefully considered all of the submissions and evidence before me and note that the parties agree that there *should be* additional documents in relation to the redundancy of the applicant's position and the redundancy process.
19. In respect of the QLS restructure, I accept that the OAP was not a position specific project and that the redundancy process was independent from that OAP.
20. Further, on the information available to me, I accept QLS's submission that at the relevant time the CEO believed the senior manager was documenting the redundancy process (and therefore, caused no other records to be created).
21. On the basis of the matters set out above, I am satisfied that there are reasonable grounds for QLS to be satisfied that additional documents existed, to the extent that they *should* have been in the agency's possession.

**Has QLS taken all reasonable steps to locate additional documents?**

22. I acknowledge the applicant's frustration with the lengthy search process. However, I note that ultimately, QLS has conducted comprehensive searches using its knowledge of its organisational structure<sup>6</sup> to appropriately identify the relevant areas to search and persons with whom to make enquiries.
23. On the basis of the matters set out above including details of QLS's searches, I am satisfied that QLS has taken all reasonable steps to locate additional responsive documents and that these documents cannot be located because they do not exist.

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<sup>6</sup> And its internal practices and procedures.

## **DECISION**

24. I vary the decision under review by finding that access can be refused to additional documents sought under sections 47(3)(e) and 52(1)(b) of the RTI Act on the basis that these documents do not exist.
25. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 23 November 2010**