



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>S14 and Department of Justice [2026] QICmr 13 (3 February 2026)</i></b>
<b>Application Number:</b>	<b>318776</b>
<b>Applicant:</b>	<b>S14</b>
<b>Respondent:</b>	<b>Department of Justice</b>
<b>Decision Date:</b>	<b>3 February 2026</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EXEMPT DOCUMENTS - whether all documents requested in the access application are comprised of exempt information - section 59 of the <i>Information Privacy Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. Acting as agent for a family member, the applicant applied<sup>1</sup> to Department of Justice (**Department**) under the *Information Privacy Act 2009* (Qld)<sup>2</sup> (**IP Act**) for access to various documents concerning a criminal prosecution of the family member (**Access Application**).
2. By decision dated 17 June 2025,<sup>3</sup> the Department refused to deal with the Access Application under section 59 of the IP Act on the basis that all of the documents requested in the Access Application were comprised of exempt information: that is, all documents were exempt under schedule 3, section 10(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that their disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law. The Department stated that the inquiries it had made with the Office of the Director of Public Prosecutions indicated that the prosecution in question was still under investigation.
3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.

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<sup>1</sup> Access application dated 15 May 2025.

<sup>2</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting significant changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). References in this decision to the IP Act and the RTI Act, however, are to those Acts as in force prior to 1 July 2025 in accordance with Chapter 8 Part 3 of the IP Act and Chapter 7 Part 9 of the RTI Act, comprising transitional provisions requiring that access applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

<sup>3</sup> The **decision under review**.

<sup>4</sup> External review application dated 9 July 2025.

## External Review Process

4. Upon reviewing the specific terms of the Access Application, OIC advised the Department that it was unclear how disclosure of at least some of the requested documents (which appeared to be of an administrative/procedural, rather than investigatory, nature) could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law, such as to comprise exempt information. As section 59(1)(b) of the IP Act requires that all of the documents to which an access application relates are comprised of exempt information in order to give rise to a right to refuse to deal with the application under section 59(2), it appeared that the requirements of section 59 had not been established.
5. The Department accepted OIC's preliminary view that the requirements for refusing to deal with the Access Application under section 59 of the IP Act were not established.<sup>5</sup> Accordingly, the issue for OIC's determination in this review – whether the Department was entitled to decide to refuse to deal with the Access Application – has been resolved in the applicant's favour.
6. The Department agreed to OIC's proposal for informal resolution of the review under section 103(1) of the IP Act: that is, it agreed to take the Access Application back and to re-commence processing it. However, the applicant did not agree to this informal resolution proposal. The applicant instead required OIC to finalise the review by way of decision under section 123(1) of the IP Act.<sup>6</sup>
7. The Department bears the onus of justifying its decision under review.<sup>7</sup> As noted, however, it has accepted OIC's view that its decision cannot be sustained. In these circumstances, it is necessary only to formally record my finding that the decision under review is set aside.

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<sup>5</sup> Email of 27 November 2025.

<sup>6</sup> The proposed next steps regarding the informal resolution of the review and the return of the Access Application to the Department to continue processing were explained to the applicant in emails on 3 December 2025, 9 December 2025 and 16 December 2025, as was the effect of any decision that OIC would issue. However, the applicant confirmed in her responses to those emails on 8 December 2025, 13 December 2025 and 16 December 2025 that she was not prepared to resolve the review informally, and that she required OIC to issue a decision in order to finalise the review.

<sup>7</sup> Section 100(1) of the IP Act.

## DECISION

8. I set aside the decision under review. In substitution for that decision, I decide<sup>8</sup> that there is no basis to refuse to deal with the Access Application under section 59 of the IP Act and that the Department is therefore required to continue processing the application.<sup>9</sup>
9. 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.



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R Moss  
Principal Review Officer

**Date: 3 February 2026**

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<sup>8</sup> Under section 123(1)(c) of the IP Act, and consistently with OIC decisions made in analogous circumstances (the setting aside of an agency decision refusing to deal with an information access application) in, for example, *Law Abiding Firearms Owners Inc and Queensland Police Service* [2019] QICmr 46 (25 October 2019), *P60 and Department of Education* [2021] QICmr 35 (1 July 2021), and *G46 and Queensland Police Service* [2020] QICmr 11 (24 February 2020). See also the same approach in comparable jurisdictions: eg., *Seven Network (Operations) Limited and Public Transport Authority, Re* [2018] WAICmr 1; *Jamieson and City of South Perth, Re* [2013] WAICmr 22; *Fletcher and Prime Minister of Australia* [2013] AICmr 11.

<sup>9</sup> In making this decision, I have had regard to the provisions of the *Human Rights Act 2019* (Qld) to the extent they are relevant to the issue under consideration which has been determined in the applicant's favour.