



Vexatious Applicant Declaration

Applicant: Cairns and Hinterland Hospital and Health Service
Respondent: [Respondent]
Declaration Date: 26 October 2017

Contents

REASONS FOR DECLARATION	3
Background	3
Relevant law.....	3
Evidence considered	3
Findings	4
Has the respondent repeatedly engaged in access actions?.....	4
Does the repeated engagement involve an abuse of process for an access action?.....	4
Unreasonable interference with agency operations - duplicate proceedings and wastage of public funds	4
Harassment or intimidation of applicant's staff.....	5
Conclusion	6
APPENDIX	7
Significant procedural steps	7

DECLARATION

Section 127 of the *Information Privacy Act 2009* (Qld) Section 114 of the *Right to Information Act 2009* (Qld)

I declare, in accordance with section 127 of the *Information Privacy Act 2009* (Qld) and section 114 of the *Right to Information Act 2009* (Qld), that [respondent] is a vexatious applicant on the basis that he has repeatedly engaged in access actions and the repeated engagement involves an abuse of process for an access action.

I make the declaration in the following terms:

[Respondent] is prohibited from making any access or amendment applications under the Information Privacy Act 2009 (Qld) and the Right to Information Act 2009 (Qld) to the Cairns and Hinterland Hospital and Health Service for a period of 12 months from the date of this declaration.

I make this declaration pursuant to a delegation from the Information Commissioner under section 145 of the *Right to Information Act 2009* (Qld) dated 12 September 2017, and a delegation under section 139 of the *Information Privacy Act 2009* (Qld) dated 11 October 2017.

J Mead
Right to Information Commissioner
26 October 2017

REASONS FOR DECLARATION

Background

1. The applicant seeks a declaration that the respondent is a vexatious applicant, including a condition that the respondent be required to obtain written permission from the Information Commissioner to make any access or amendment applications to the applicant and to make any internal or external review applications in relation to decisions made by the applicant's decision-makers.
2. The respondent was a client of the applicant's mental health service for a period of time. The respondent became dissatisfied with the applicant's treatment of him. In April 2016, he began making applications seeking access to his health records and other documents concerning aspects of his medical treatment by the applicant, and his related interactions with the applicant and its staff.
3. Significant procedural steps taken in the course of deciding the applicant's application are set out in the Appendix to this Declaration.

Relevant law

4. On the application of an agency or on the Information Commissioner's own initiative, the Information Commissioner may declare in writing that a person is a vexatious applicant under section 127 of the *Information Privacy Act 2009* (Qld) (**IP Act**) and/or section 114 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Such a declaration is subject to any terms or conditions stated in the declaration. A declaration can only be made if the respondent has been given an opportunity to make written or oral submissions. The Information Commissioner can declare a person a vexatious applicant if satisfied that:
 - (a) the person has repeatedly engaged in access or amendment actions; and
 - (b) the repeated engagement involves an abuse of process for an access or amendment action.
5. Section 127(8) of the IP Act and section 114(8) of the RTI Act sets out a non-exhaustive list of circumstances which might constitute an 'abuse of process'.

Evidence considered

6. In deciding to make this declaration, I have considered the following evidence:
 - the application and the applicant's submissions
 - access and external review applications made by the respondent; and
 - evidence relating to the nature of the respondent's interactions with staff of the applicant.
7. As required by section 127(3) of the IP Act and section 114(3) of the RTI Act, the respondent was advised of the application and the submissions made by the applicant, and was invited to respond.¹ However, he did not provide any submissions or evidence in response, or otherwise address the applicant's application in his correspondence with this Office.

¹ Letter to the applicant dated 7 August 2017.

Findings

Has the respondent repeatedly engaged in access actions?

8. Yes, for the reasons that follow.
9. Making an access application, amendment application, internal review application or external review application is an access or amendment action.²
10. I accept the applicant's submission that the respondent lodged 18 access applications between 8 April 2016 and 13 February 2017. Of those applications, 16 were lodged in a three month period between 10 November 2016 and 13 February 2017. The respondent made a total of 15 applications for external review.
11. I am satisfied that the respondent has repeatedly engaged in access actions.

Does the repeated engagement involve an abuse of process for an access action?

12. Yes, for the reasons that follow.
13. Section 127(8) of the IP Act and section 114(8) of the RTI Act state that an 'abuse of process' includes but is not limited to:
 - harassing or intimidating an individual or an employee of an agency in relation to the access action; and
 - unreasonably interfering with the operations of an agency in relation to the access action.
14. Other grounds for abuse of process established in the common law include:
 - duplicate proceedings already pending or determined and therefore incapable of serving a legitimate purpose³
 - the making of unsubstantiated or defamatory allegations in applications;⁴ and
 - wastage of public resources and funds.⁵

Unreasonable interference with agency operations - duplicate proceedings and wastage of public funds

15. The applicant submitted that:
 - at least six of the respondent's access applications sought access to documents which were covered by earlier access applications and in respect of which the applicant had applied for external review
 - many access applications contained overlapping and repeated requests for a particular report which was already a document in issue on external review
 - two access applications (17/1088 and 17/1090) were in nonsensical terms and did not request access to identifiable documents;⁶ and
 - two applications sought access to documents prepared by the applicant in processing earlier of the respondent's access applications.

² See the definitions in section 127(8) of the IP Act and section 114(8) of the RTI Act.

³ *Walton v Gardner* (1993) 177 CLR 378 at 410.

⁴ *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557.

⁵ *Re Cameron* [1996] 2 Qd R 218 at 220.

⁶ Application 17/1088 sought access to information about what the applicant's mental health units had done to 'rectify the wrongs' done to the respondent. Application 17/1090 questioned why the applicant was refusing to identify the authors of emails that were sent to him.

16. In terms of access applications that seek access to documents prepared by an agency in the course of processing earlier access applications, there is nothing in the IP Act or RTI Act that prohibits such applications. It is not, in fact, uncommon for applications of this type to be made by access applicants. As such, I do not consider that this issue is relevant to my consideration of whether the grounds necessary to make the declaration have been established.
17. The applicant also submitted that the making of 16 access applications within a three month period amounted to an unreasonable interference with its operations. Taking account of the fact that the applicant had only one full-time and one part-time formally delegated information access decision-maker, the applicant argued that the processing of the applications would substantially and unreasonably divert the applicant's resources from their use in the performance of the applicant's functions.
18. It is important to note that the mere fact that an agency will be required to expend significant resources to process an access application is not, of itself, sufficient to demonstrate an unreasonable diversion of resources. It must be shown that the diversion of resources or interference with normal operational functions is unreasonable. The size of the agency is a relevant factor as well as the ability of the agency to perform its other functions. I am not satisfied, on the basis of the information provided by the applicant, that this factor is relevant to my consideration of whether the grounds necessary to make the declaration have been established.
19. Having reviewed the volume of applications lodged by the respondent within a period of three months and the terms of those applications, I am satisfied that the respondent's repeated engagement with the applicant amounted to an abuse of process because many of his applications were incapable of serving a legitimate purpose and to process them would involve a wastage of public funds.

Harassment or intimidation of applicant's staff

20. The applicant submitted that the respondent engaged in behaviour in connection with his access applications that amounted to harassment or intimidation of the applicant's employees. The applicant provided examples of the respondent's communications with its staff. It submitted that these evidenced the respondent's *'propensity to communicate in language that is inappropriate and designed to harass, threaten and intimidate staff'*.
21. I have reviewed the communications and note that they:
 - contain references to the respondent often being in an intoxicated, aggressive and abusive state when he telephoned staff of the applicant;
 - contain threats by the respondent that he will take legal action to prosecute both the applicant and individual staff members, including "destroying [them] in court";
 - contain threats by the respondent that staff members will lose their jobs;
 - contain threats by the respondent that that he will report staff members to the Queensland Police Service and the Crime and Corruption Commission;
 - contain assertions by the respondent that he will make more and more access applications until the applicant gives him access to his documents; and
 - evidence that the respondent often called or emailed the applicant's hospital switchboard and mental health work units multiple times within a very short period

of time, sometimes late into the evening and on weekends, abusing staff on the telephone and then hanging up.⁷

22. I note that one file note made by a staff member of a telephone call from the respondent records that the respondent stated to the staff member, *"How would you like it if I came down there and killed you"*.
23. The applicant submitted that the respondent's behaviour had a significant impact upon the wellbeing of its staff and the workplace management of staff. In particular, staff had ongoing concerns for their safety and wellbeing because of the *'threatening and abusive nature of [the respondent's] interactions'*, including his regular physical attendance at the applicant's offices. This resulted in workplace absences, automated diversion of email correspondence, installation of CCTV cameras, and physical relocation of staff to another building. The applicant advised that it had written to the respondent on three occasions requesting that he refrain from engaging in abusive and threatening behaviour towards staff, with no effect.
24. The applicant also submitted that concerns had been raised previously with Queensland Police Service about possible stalking behaviour of the respondent towards a staff member of the applicant. In addition, it advised that the respondent had previously been convicted of assault.
25. Based on the submissions and evidence provided by the applicant, I am satisfied that the respondent's repeated engagement with the applicant amounted to an abuse of process because it involved harassment or intimidation of the applicant's employees in relation to the access applications.

Conclusion

26. Based on the material provided by the applicant in support of its application, I am satisfied that the respondent has repeatedly engaged in access actions and that the repeated engagement involves an abuse of process for an access action. I am also satisfied that the respondent was advised of the applicant's application and was given an opportunity to make written or oral submissions. I therefore make the declaration in the terms set out above.
27. While the declaration sought by the applicant involved the respondent seeking the Information Commissioner's written permission before making any further access or amendment applications, or any internal or external review applications, I do not consider that the imposition of this condition is necessary given that the respondent is not currently residing in the local area and is not engaging with the applicant in terms of receiving medical treatment. It is therefore reasonable to expect that the applicant has not prepared any additional documents relating to the respondent since the date of the respondent's last access application.
28. I make the declaration as a delegate of the Information Commissioner, under section 139 of the IP Act and section 145 of the RTI Act.

J Mead
Right to Information Commissioner
Date: 26 October 2017

⁷ The applicant advised that, on one day, the respondent telephoned Cairns Hospital's switchboard on 20 occasions.

APPENDIX

Significant procedural steps

Date	Event
14 July 2017	Application for a Declaration received from the applicant.
27 July 2017	Letter to the applicant summarising the information to be provided to the respondent for response.
7 August 2017	Letter to the respondent advising of the application and inviting a submission in response by 1 September 2017.
22 August 2017	Letter to the respondent reminding him that the due date for a submission is 1 September 2017.
13 September 2017	Letter to the respondent attaching a copy of the letter dated 7 August 2017 and advising that a decision on the applicant's application would be made.