



Office of the Information Commissioner
Queensland

RESEARCH PAPER

[External Reviews Involving Repeat Applicants](#)



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The purpose of this paper is to analyse the impact of ‘repeat applicants’ on service delivery by Queensland’s Office of the Information Commissioner (OIC) with respect to performing independent external review of public sector decision making under the *Freedom of Information Act 1992*, the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

What is a repeat applicant?

OIC defines a ‘repeat applicant’ as an applicant who:

- makes a relatively large number of applications¹
- submits the applications in short bursts of activity and
- engages in ‘unreasonable conduct’² regarding those applications.

Through statistical analysis this research paper identifies the number of repeat applicants at which there is an identifiable impact on the efficiency of the external review function.

Not journalists or MPs

While journalists and Members of Parliament make a large number of applications, they usually do so on a consistent basis over extended periods of time. Journalists are unlikely to engage in unreasonable conduct as defined for the purpose of this paper during the course of an external review. In any event, it is arguable that it is in the public interest that journalists and MPs should be afforded greater latitude when making applications, as they have relatively greater capacity to enhance participation in debate regarding important issues. For these reasons, OIC considers that journalists and Members of Parliament do not fall within the definition of ‘repeat applicant’.

OIC statistics

OIC examined all external reviews finalised between 1 July 2006 and 21 February 2011³ in order to analyse the impact of repeat applicants on OIC. The external reviews considered were finalised under the *Freedom of Information Act 1992*, the *Right to Information Act 2009* or the *Information Privacy Act 2009*. The differences between the legislative provisions are not considered significant for the purposes of this exercise. The external review functions and powers of OIC remain largely the same.

During the specified period, 1552 external reviews applications by 849 different applicants were finalised.

Respectively, four media organisations and Members of Parliament made 29 and 17 applications in total. These applicants and their applications have been included in the totals of 1552 applications and 849 applicants used in this paper’s calculations. However, they have not been included in calculations regarding repeat applications. Instead, they have been nominally assigned to the category of “one or more” external review applications made

¹ In OIC’s context, the applications are applications for external review. However, OIC considers that this definition also applies in the preceding agency context, where the applications are the initiating applications for access or amendment, or applications for internal review.

² As defined by Chris Wheeler, Deputy NSW Ombudsman in *Dealing with Repeat Applications* (2007) 54 AIAL Forum 64, 65. Set out in greater detail under heading ‘Engagement in unreasonable conduct’ below.

³ There is no significance attached to the date of 21 February 2011—this was simply the date on which the data set was captured.

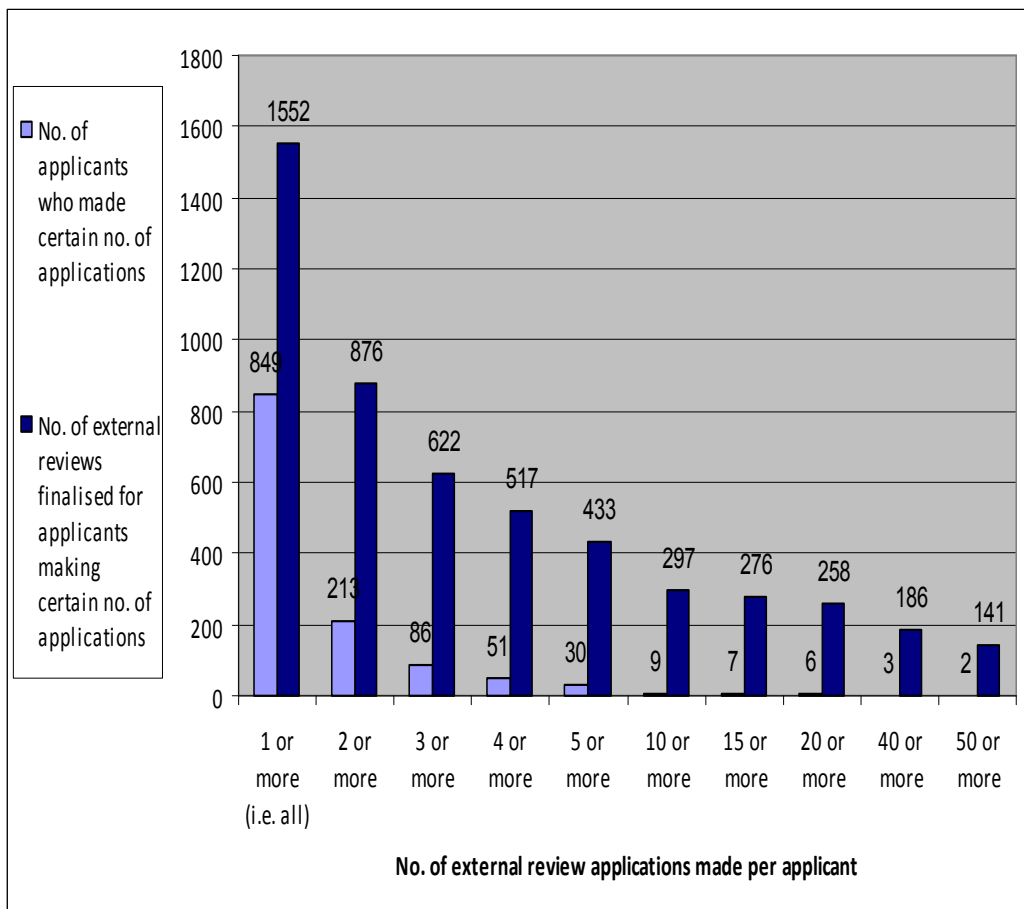
per applicant.⁴ This approach was taken so that the applications of journalists and Members of Parliament could be taken into account as part of the total workload of OIC, but removed from analyses regarding repeat applicants.

Apart from journalists and Members of Parliament, an analysis of OIC’s records indicates that:

- 19.14% of external reviews finalised were made by 1.06% of applicants, who each made 10 or more applications for external review
- 16.62% of external reviews finalised were made by 0.71% of applicants, who each made 20 or more applications for external review
- 9.09% of external reviews finalised were made by 0.24% of applicants, who each made 50 or more applications for external review.

These statistics are illustrated in the below graph.

Figure 1 Number of applicants who made certain numbers of applications compared with number of external reviews finalised for those applicants



⁴ Therefore journalists and MPs and their applications are represented in the first set of columns of data—“1 or more (i.e. all)—in Figure 1.

Who are OIC’s repeat applicants?

While a statistical analysis could reveal various levels of significance, ultimately the applicants who are to be called ‘repeat applicants’ is a matter of definition. For the purposes of this research paper OIC considers that each of the nine applicants who made 10 or more external review applications in the relevant period satisfies OIC’s definition of a ‘repeat applicant’. The definition of ‘repeat applicant’ has three limbs and it is considered that these nine applicants satisfy all three limbs, for reasons detailed below.

An analysis of the finalised external reviews made by the nine applicants indicates that in all instances:

- the applications originally focused on a single event involving the applicant personally and a particular agency
- the focus of the applicant’s concerns expanded over time—usually with an associated expansion in the number of agencies and Ministers involved.

De-identified details of the originating events for the nine applicants are set out in Table 1. Table 1 also sets out the number of external review applications and the agencies/Ministers to whom the initiating access applications were made over the relevant period.

Table 1 Respondents to the nine applicants external review applications and originating event

Applicant	No. of Applications	No. of Agencies/Ministers ⁶	Agencies/Ministers ⁵ to whom applications made	No. per Agency/Minister ⁵	Originating event
A	10	3	Housing Police Communities	5 1 4	Applicant in dispute with other public housing tenants
B	11	5	A local government Queensland Health Building Services Authority Ombudsman <i>Minister for Local Government</i>	5 2 2 1 1	Applicant in dispute with his/her local government
C	18	1	Queensland Medical Board	18	Applicant deregistered as a health professional
D	21	1	Police	21	Applicant convicted of criminal offence against another person
E	22	2	Corrective Services Police	21 1	Applicant seeking audio and CCTV recordings taken while a prisoner in gaol
F	29	10	A local government Police Crime & Misconduct Commission Queensland Audit Office Surveyors Board Natural Resources Environmental Protection Agency Primary Industries & Fisheries Nominal Defendant Mines & Energy	7 4 6 2 2 3 1 1 2 1	Applicant in dispute with his/her local government
G	45	9	A university Two local governments Primary Industries & Fisheries	17 16+1 4	Applicant in dispute with neighbouring university

⁵ The respondents are agencies unless otherwise indicated by:

- *italic text*—these respondents are Ministers
- an asterisk *—these respondents are not agencies or Ministers to whom applications may be made under Queensland’s right to information legislation.

Applicant	No. of Applications	No. of Agencies/Ministers ⁶	Agencies/Ministers ⁵ to whom applications made	No. per Agency/Minister ⁶	Originating event
			Queensland Water Commission Queensland Rail <i>Minister for Primary Industries</i> <i>Minister for Police</i> <i>Minister for Transport</i>	1 1 2 1 2	
H	54	9	A university Crime & Misconduct Commission Police Health Quality and Complaints Commission OIC* Child Safety Queensland Health Legal Aid Queensland Communities	12 4 17 1 1 1 13 3 2	Applicant in dispute with a service offered by his/her university
I	87	15	Two local governments Residential Tenancies Authority OIC* Superannuation Complaints Tribunal* Centrelink* Commonwealth Bank of Australia* Emergency Services Queensland Health Housing Police Energex Federal Privacy Commissioner* Queensland Medical Board Justice & Attorney-General	13+2 51 3 2 2 1 1 5 2 1 1 1 1 1	Applicant in dispute with his/her local government

Of the nine applicants, three were female, five were male and one was comprised by a male-female couple. The relative prevalence of male repeat applicants accords with findings in other studies.⁶

Why does OIC consider the nine applicants to be repeat applicants?

As mentioned above, OIC defines a 'repeat applicant' to be an applicant who:

- makes a relatively large number of applications
- submits the applications in short bursts of activity and
- engages in 'unreasonable conduct' regarding those applications.

Relatively large number of applications

Table 2 sets out comparative figures regarding the number of external review applications made by applicants.

Table 2 Percentage of applicants who made certain numbers of external review applications

No. of applications	1 only	2 or more	3 or more	4 or more	5 or more	10 or more	20 or more
Percentage of applicants	74.91%	25.09%	10.13%	6.01%	3.53%	1.06%	0.71%

⁶ For example, Grant Lester, Beth Wilson, Lynn Griggin and Paul Mullen 'Unusually persistent complainants' (2004) *British Journal of Psychiatry* 352, 352; Grant Lester and Simon Smith 'Inventor, Entrepreneur, Rascal, Crank or Querulent? Australia's Vexatious Litigation Sanction 75 Years On' (2006) 13(1) *Psychiatry, Psychology and Law* 1, 14; Parliament of Victoria Law Reform Committee, *Inquiry into Vexatious Litigants, Final Report*, (2008), 35.

Given these figures, it appears that 10 or more applications during the relevant period—as made by the nine applicants in issue—is a relatively large number of applications.

However, number of applications alone is not indicative of a repeat applicant. The following further characteristics are also relevant.

Applications submitted in short bursts of activity

It is the experience of OIC that applicants who make relatively large numbers of external review applications do so in a series of short bursts of activity. Each burst of activity may relate to the same set of issues regarding an originating event. Alternatively, each burst of activity may relate to an expanding number of issues regarding subsequent events flowing from the originating event.

The periods of activity are followed by quiet periods. It is OIC’s experience that these periods occur when applicants instead concentrate on making submissions regarding their applications that are on foot, or shift focus to other complaints and review processes that they have initiated with bodies other than OIC (regarding either the same, or related, issues).

Table 3 illustrates this pattern with respect to the nine applicants who each made 10 or more external review applications:

Table 3 Number of external review applications made by the nine applicants

Applicant	No. of external review applications					Total
	2006-07	2007-08	2008-09	2009-10	2010-11 ⁷	
A	0	0	5	3	2	10
B	0	0	1	4	6	11
C	12	6	0	0	0	18
D	9	0	10	2	0	21
E	16	6	0	0	0	22
F	19	2	8	0	0	29
G	16	22	6	0	1	45
H	13	0	3	26	12	54
I	0	16	56	10	5	87

The outcome of this pattern of applicant activity for agencies/Ministers and OIC is that, in periods following the bursts of activity, it becomes necessary to devote disproportionate amounts of resources to processing the resulting applications. Unfortunately and unavoidably, doing so reduces the resources available for other applicants. The pattern of these applications therefore has a detrimental impact on other applicants’ equitable access to timely right to information and privacy processes.

If applicants spread their applications evenly over the relevant period, it would appear that some—for example, Applicants A and B—posed no problem for service delivery. Making 10 or 11 external review applications over the relevant period works out to be just over two applications per year. This has minimal impact on the equitable access of other applicants to right to information/privacy processes. The second limb of the test- the pattern of making applications over a short period of time is important to the degree of impact on service delivery.

Making even more external review applications may not be detrimental to equitable access. For example, the 29 applications made by journalists had negligible impact on equitable access. However, the 29 applications made by Applicant F did reduce equitable access. The

⁷ To 21 February 2011.

difference in outcomes arises as a result of the third parameter for defining repeat applicants—engagement in unreasonable conduct. As explained below, such conduct increases the amount of work required per external review.

Engagement in ‘unreasonable conduct’

Consistent with the experience of vexatious or querulous litigants in other jurisdictions and other areas of law, OIC has observed at least some of the following types of behaviour described by Grant Lester among each of the nine applicants who each made 10 or more external review applications:

- *He appeared to me to ignore the basis on which the [decision-makers] had held against him. He returned again and again to points which he had argued unsuccessfully on previous occasions. He was an example of a litigant who will not take no for an answer, will not consider the reasons which have been given in clear language as to why his claims have not been successful, and is willing, not only to seek to re-litigate them again and again and again, but also, to bring what, in my judgment, are completely misconceived claims [against other involved parties].*⁸
- *[T]hough untrained they will have developed ... factual knowledge of the law without understanding of the legal framework, let alone its spirit or implications for society. This often results in them focussing on, and quoting from documents such as the Magna Carta, International Covenant on Civil and Political Rights, or the Constitution with little true understanding. Often they will use the concept of natural justice and its subtleties.*

Regardless of their apparent competency they will usually become overwhelmed and disorganised and will as a result spend large amounts of Court time justifying why they are out of time for instituting actions or submitting documents.

*There is often transfer of focus from their original grievances to the legal processes or particular personalities in their legal world. Conspiracies are formed involving magistrates, judges, police and others.*⁹

- *They will appear to have pressure of speech such that interrupting them is difficult and they will speak to you as if you already know all the details of the case. Their speech is vague and full of unnecessary and often confusing and irrelevant detail.*

*Written communications have the appearance of having been written in excitement with numerous notes of exclamation and interrogation. These are often like a legal document except the entire surface is covered with script (including the margins). The substance is repeated in several different ways with undue grammatical emphasis and underlining. They will often refer to themselves in a third person legalistic style, for example as “the defendant”. Coloured inks are used for emphasis as are the star asterisk key and the use of capitalisation. Cut outs from newspapers, personal diaries and irrelevant materials abound. They will be initially seductive and recruiting, however, if you show any lack of response they rapidly become angry and will speak to you as if you are part of the persecuting opposition.*¹⁰

When engaging in such behaviour, applicants display most, if not all, of the following five categories of ‘unreasonable conduct’ that have been identified in a National Project by the eight Ombudsman of Australia:¹¹

⁸ *Bhamjee v Forsdick (No. 1)* [2003] EWCA Civ 799 at paragraph 17.

⁹ Grant Lester, [Querulous Paranoia and the Vexatious Litigant \(dissertation\)](#), Victorian Institute of Forensic Mental Health, undated), 45.

¹⁰ Grant Lester, ‘The Vexatious Litigant’ (2005) 17(3) *Judicial Officers’ Bulletin, Judicial Commission of NSW* 17, 18.

¹¹ Wheeler, above n 2, 65.

- **unreasonable persistence**—persisting with a complaint even though it has been comprehensively dealt with, reframing a complaint in an attempt to get it taken up again, showing an inability to accept the umpire’s decision
- **unreasonable demands**—insisting on outcomes that are unattainable, wanting what is not possible or appropriate, issuing instructions and demands
- **unreasonable lack of cooperation**—presenting a large quantity of information which is not sorted, classified or summarised, presenting information in dribs and drabs, refusing to define the issues of the complaint
- **unreasonable arguments**—holding irrational beliefs, holding conspiracy theories and
- **unreasonable behaviours**—confronting, aggressive, threatening behaviour.

An analysis of the finalised external reviews of these applicants indicates that the unreasonable conduct is manifested through:

- relatively more correspondence
- correspondence that is—
 - relatively lengthy and difficult to understand and, at times, even unintelligible
 - more likely to enclose supporting materials of varying degrees of relevance
 - more likely to use legal terms and concepts inappropriately
 - sent to other entities and copied to OIC
- relatively more telephone calls
- telephone calls that are relatively lengthy and demanding for review officers
- relatively more demands for changes in review officer.¹²

Such unreasonable conduct necessitates the implementation of intensive management strategies.¹³ This requires resources over and above those required to deal with the substance of the external reviews.

Consequently, it is OIC’s experience that the disproportionate amount of resources devoted to repeat applicants due to the number of their applications is compounded by the relatively difficult conduct of those applicants.

Despite the implementation of intensive management strategies, there are some differences between applicants as a whole, and those who make a relatively large number of external review applications, regarding how external reviews are finalised, and the length of time taken to do so. These are illustrated by the figures in Table 4.

¹² These characteristics are consistent with characteristics noted in Lester et al (2004), above n 7, 353-354.

¹³ Also outlined in the National Project and set out in n 2 at 65.

Table 4 How external reviews are resolved, and how long they take to resolve

		Applicants for external review							
		All applicants		Made ≥ 10 applications		Made ≥ 20 applications		Made ≥ 50 applications	
		%	Av. no. of days	%	Av. no. of days	%	Av. no. of days	%	Av. no. of days
How finalised	Decisions	18.23	260.60	22.56	231.94	22.87	223.12	14.18	16.70
	Informal resolution	53.29	125.40	47.81	141.19	45.74	149.59	39.01	66.02
	Out of jurisdiction	20.62	21.59	25.25	13.55	27.91	13.90	42.55	6.73
	Decision not to deal	2.13	114.50	1.35	40.25	1.55	40.25	0.71	7.00
	Allow agency more time	5.73	12.39	3.03	13.60	1.94	19.00	3.55	19.60
Overall			127.18		122.65		122.67		31.84

The figures in Table 4 indicate that:

- there is little difference between the applicants who made 10 or more applications and the applicants who made 20 or more applications
- there are differences between:
 - applicants overall and
 - the applicants who made 10 or more applications to 20 or more applications and
 - the applicants who made 50 or more applications
- the applicants who made 10 or more applications to 20 or more applications, compared to applicants overall, are:
 - more likely to require a decision—however, the decision takes less time to issue
 - less likely to agree to informal resolution—which takes longer to be reached
 - more likely to lodge an application that is outside OIC’s jurisdiction—which is identified by OIC relatively quickly
- the applicants who made 50 or more applications, compared to both the applicants who made 10 or more applications or 20 or more applications and applicants overall, are:
 - highly likely to lodge an application that is outside OIC’s jurisdiction—which is identified by OIC very quickly
 - substantially less likely to require a decision—which takes substantially less time to issue
 - also less likely to agree to informal resolution—however, when they do so, they do so relatively quickly.

Do repeat applicants raise a concern?

The above statistics in Table 4 indicate that the bulk of repeat applicants (but not those making extremely large numbers of applications) are less likely to agree to informal resolution, and more likely to require a decision.

In terms of implications for service delivery, it can be concluded that repeat applicants consume a disproportionately large amount of OIC’s external review team resources as a result of:

- the relatively substantial numbers of the external review applications they lodge

- the implementation of intensive management strategies required in order to deal with unreasonable conduct
- for most repeat applicants:
 - the extra time (and therefore work) involved in achieving informal resolution
 - the increased likelihood that informal resolution measures will prove unsuccessful and it will be necessary to perform the extra work required to issue a decision.

Overall, the result is that repeat applicants have a detrimental impact on the equitable access of other persons to external review of access and amendment decisions in Queensland.

Undoubtedly, repeat applicants also impact on agency/Minister resources in a similar manner. This has been confirmed to OIC on numerous occasions anecdotally.

Fewer applications from repeat applicants would enable both agencies/Ministers and OIC to apportion more of their resources to dealing with applications from persons other than repeat applicants, and finalising those applications in a timelier manner.