



Decision and Reasons for Decision

Citation:	<i>D83 and Queensland Building and Construction Commission [2025] QICmr 22 (30 April 2025)</i>
Application Number:	317885
Applicant:	D83
Respondent:	Queensland Building and Construction Commission
Decision Date:	30 April 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - APPLICATION OUTSIDE SCOPE OF ACT - ENTITIES TO WHICH ACT DOES NOT APPLY IN RELATION TO A PARTICULAR FUNCTION - application requesting documents concerning an agency's processing of prior access applications - whether the application is to an entity to which the Act does not apply - section 32 and schedule 2, part 2, item 7 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Building and Construction Commission (QBCC) under the *Right to Information Act 2009* (Qld) (RTI Act) to access certain documents related to the applicant's prior access applications, complaints and document requests.
2. Before the end of the processing period, QBCC wrote to the applicant:²
 - notifying him that identified items of the Access Application requested documents of an entity to which the RTI Act did not apply
 - affording the applicant an opportunity to remove those identified items from the Access Application; and
 - providing links to two Guidelines published by OIC.³
3. In his response, the applicant did not exclude the identified items from the Access Application.⁴

¹ Access application dated 18 January 2024 (Access Application).

² QBCC's email dated 20 February 2024.

³ These Guidelines are titled '*Can I apply for RTI processing documents*' and '*Applications outside the scope of the Act*'. The second Guideline outlined that, where an access application includes both documents of an agency and documents excluded from the Act under schedule 1 or schedule 2, part 2 of the RTI Act (that is, a mixed application) and the applicant does not agree to remove the documents excluded from the Act, the agency is entitled to give a decision under section 32 of the RTI Act in respect of the entire application.

⁴ Applicant's email dated 20 February 2024.

4. Applying the principles set out in *T71 and Queensland Police Service*⁵ (**T71**), QBCC decided⁶ that the Access Application was outside the RTI Act under section 32(1)(b) and schedule 2, part 2, item 7 of the RTI Act.⁷
5. The applicant then applied to the Office of the Information Commissioner (**OIC**) for an external review of QBCC's decision.⁸ It is the applicant's position that *T71* is 'fundamentally flawed due to [being] based on an incorrectly broadened extension of the (also flawed) broad interpretation set out by Justice Hoeben' in *Carmody*⁹ and no part of the Access Application is outside the RTI Act.
6. For the reasons set out below, I affirm QBCC's decision.

Background

7. The applicant requested access to the following documents:¹⁰
 1. All documents related to each of our requests for the Delegations Manual (including any legal services engagement/advice costs). To assist with locating these requests they were made on:
 - 09/08/21 as part of RTI-1014 (to the RTI Unit including [Officer B] & [Officer S])
 - 01/03/22 as part of the Internal Review of RTI-1014 ([Officer C])
 - 12/04/23 by QCAT Notice to Produce (refused to date by NRF & the QBCC Officers instructing NRF)
 - 09/08/23 to the Commissioner & CLO (no response)
 - 10/08/23 refused by the CLO
 - 22/08/23 to the Commissioner (still no response)
 - 25/08/23 to the CLO & Commissioner (still no response)
 - 25/08/23 to [Officer S][Officer M][Officer D]
 - 25/09/23 refused by the RTI Director
 2. All documents related to our RTIs (RTI-2013 & RTI-2014)
 3. All documents related to our RTI-1014 made on 9/8/21 including but not limited to:
 - a) documents related to the Internal Review of 1/3/22
 - b) documents related to the complaint of 25/8/23.
 4. All documents related to our Privacy Complaint #1045 made 2/9/21 including but not limited to:
 - a) documents related to the follow up & complaint begun on 19/12/23.

NOTE: "documents" includes any and all information related to the above items but excludes any documents & emails that were provided to us directly. Examples of this inclusion could be correspondence to/from ancillary units such as Legal, ICB, CSU, ESU.
8. When corresponding with the parties during the review, the nine components of Item 1 of the Access Application were referred to as Item 1(a) to Item 1(i), inclusive. I will use the same item references in this decision.

⁵ [2022] QICmr 10 (4 March 2022). This decision applied the comments made by Hoeben J of the Queensland Civil and Administrative Tribunal (**QCAT**) in *Carmody v Information Commissioner & Ors (5)* [2018] QCATA 18 (**Carmody**) regarding applications that seek access to documents created or received by an agency decision maker in the course of processing and deciding an access application under the RTI Act. It decided that such an application is outside the scope of the RTI Act because:

- in undertaking an external review under the RTI Act or the IP Act, the Information Commissioner is a quasi-judicial entity exercising quasi-judicial functions; and
- an agency decision maker who processes an access application and makes a reviewable decision on the application is 'connected with' the Information Commissioner in relation to the Information Commissioner's quasi-judicial functions.

⁶ Decision dated 29 February 2024.

⁷ QBCC also decided, on 29 February 2024, to waive processing and access charges in respect of the Access Application.

⁸ On 14 March 2024 (**External Review Application**).

⁹ Applicant's email dated 29 August 2024. I note that this email addressed a number of external review matters (including one where the applicant was not the access applicant).

¹⁰ The date range of the application was specified as 'Broadly 01/01/2021-present; but limited to the specific date ranges where listed in each RTI Item'.

9. 'RTI-1014' (as referenced in Item 1(a), Item 1(b) and Item 3 of the Access Application) is the number QBCC allocated to the applicant's previous access application dated 9 August 2021 (**First Prior Application**). The First Prior Application is the subject of an ongoing external review.
10. 'RTI-2014' (as referenced in Item 2 of the Access Application) is the number QBCC allocated to the applicant's previous access application dated 1 November 2023 (**Second Prior Application**). 'RTI-2013' (as referenced in Item 2 of the Access Application) is the number QBCC allocated to an access application dated 1 November 2023 which was made by an individual other than the applicant¹¹ (**Third Prior Application**). Both the Second and Third Prior Applications have been the subject of completed external reviews.¹²
11. When accepting the External Review Application, the applicant was invited to consider removing the components of the Access Application which sought QBCC's internal communications or documents which related to QBCC's processing of the First, Second and Third Prior Applications (**Processing Documents**).¹³ The applicant did not agree to remove any part of the Access Application and provided a submission detailing his disagreement with the comments of Hoeben J in *Carmody* and how they had been applied in *T71*.¹⁴
12. A preliminary view was subsequently conveyed to the applicant¹⁵ that his requests for the Processing Documents sought documents of an entity to which the RTI Act did not apply.¹⁶ The applicant disagreed with that position and requested the issue of a formal decision.¹⁷
13. On 18 March 2025, QCAT issued its decision in *Stella v Griffith University*¹⁸ (**Stella**), which considered an access application made under the IP Act that included a request for agency processing documents. In that decision, Judicial Member DJ McGill SC confirmed that an agency decision-maker, on an application that is reviewable by the Information Commissioner, is not an agency for the purposes of the RTI Act because the decision-maker falls within schedule 2, part 2, item 7 of the RTI Act as the holder of an office connected with a quasi-judicial entity (ie the Information Commissioner) in relation to the Information Commissioner's quasi-judicial functions.
14. On 1 April 2024, the applicant was notified of the *Stella* decision¹⁹ and, following the findings in that decision, a further preliminary view was conveyed to the applicant that his requests for the Processing Documents sought documents of an entity to which the RTI Act did not apply. Although the applicant was invited to provide any further submissions he wished to make, he provided no response.
15. The procedural steps taken during the external review are set out in the Appendix to this decision.

¹¹ The disclosure consent of this individual was attached to the Access Application.

¹² To avoid identifying the applicant, I cannot provide any further details of the external reviews which relate to these prior applications.

¹³ Letter dated 24 April 2024, which enclosed a further copy of the OIC Guideline titled '*Can I apply for RTI processing documents*'.

¹⁴ Applicant's email dated 29 August 2024. I again note that this email addressed a number of external review matters (including one where the applicant was not the access applicant).

¹⁵ By letter dated 23 December 2024.

¹⁶ It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

¹⁷ Applicant's email dated 28 March 2025.

¹⁸ [2025] QCATA 20.

¹⁹ The applicant was also provided with a link to access the *Stella* decision (via the Supreme Court Library website).

Reviewable decision

16. The decision under review is QBCC's decision dated 29 February 2024.
17. The applicant argued that the relevant decision under review is a deemed decision, made under section 46 of the RTI Act, and he is therefore entitled to receive a refund of the paid application fee (together with interest) and a deemed decision notice.²⁰ For the reasons that follow, I disagree with the applicant's position. I also note that, while my factual findings below are relevant to the issue of the applicant's entitlement to a refund of the application fee, they are of no practical consequence to the reviewable issue in this matter, given the merits review nature of the external review.²¹
18. The applicant contended that the QBCC decision-maker who issued the decision on 29 February 2024 (**QBCC Officer**) was not '*authorised*' to deal with, or decide, the Access Application.²² I do not agree. The employment position of the QBCC Officer was delegated to approve access to documents requested under the RTI Act.²³ Therefore, on a factual basis, I find that the decision under review was made by an appropriately delegated QBCC decision-maker.²⁴
19. As a result of my finding in the preceding paragraph, I am satisfied the circumstances in which a paid application fee is required to be refunded under the RTI Act do not arise in this matter. For completeness, I also note that nothing in the RTI Act or Regulations requires interest to be paid by an agency when refunding a paid application fee.
20. The applicant also requested that QBCC issue a deemed refusal decision to him on external review.²⁵ When a valid application for external review is made to OIC,²⁶ the relevant agency is '*functus officio*' from that point on and has no jurisdiction to continue to deal with the applicant or their access application. For this reason, and noting my factual finding above, the applicant's request for QBCC to issue a further decision notice during the external review process is misconceived.

Evidence considered

21. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).

²⁰ Applicant's email dated 6 April 2024. I note that this email addressed a number of external review matters (including one where the applicant was not the access applicant).

²¹ The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [12] that section 118 of the *Information Privacy Act 2009* (Qld) (**IP Act**) '*provides for the relevant form of review to be merits review*'. Similarly, in *Mokbel v Queensland Police Service* [2023] QCATA 158 at [12] and *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2], Judicial Member DJ McGill SC confirmed that external review under the IP Act is a merits review process. While these decisions concerned access applications made under the IP Act, they are relevant to the external review process under the RTI Act.

²² Applicant's email dated 6 April 2024. In the External Review Application, the applicant submitted that QBCC's decision-maker had '*authored a deliberately fraudulent document that purported that he had made an out of scope decision despite having no authority to make any decision (only authorised to provide documents) and having previously failed to comply with s32*'. I again note that the applicant's 6 April 2024 email addressed a number of external review matters (including one where the applicant was not the access applicant).

²³ I also note section 27A(5) of the *Acts Interpretation Act 1954* (Qld) (**AIA**), which provides that '*The delegate may, in the performance of a delegated function or in the exercise of a delegated power, do anything that is incidental to the delegated function or power*'.

²⁴ On this basis, I am satisfied that there was no deemed refusal under section 46 of the RTI Act, as contended by the applicant.

²⁵ Applicant's email dated 6 April 2024. I again note that this email addressed a number of external review matters (including one where the applicant was not the access applicant).

²⁶ In this matter, OIC confirmed acceptance of the External Review Application in letters sent to both the applicant and QBCC, dated 24 April 2024.

22. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.²⁷ 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 RTI Act.²⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.²⁹
23. The applicant's submissions seek to raise certain concerns which are beyond the jurisdiction of the Information Commissioner and fall outside the scope of this review.³⁰ I have considered the applicant's submissions and have summarised them throughout this decision to the extent they are relevant to the issue for determination.

Issue for determination

24. During the course of the review:

- the applicant was notified³¹ of OIC's interpretation of the various components of the Access Application and the documents (or types of documents) which would be captured by those components³²—while the applicant was invited to provide a submission if he disagreed with that notified interpretation and/or the types of documents which would be captured to the Access Application, he did not do so
- in an effort to resolve the review, QBCC disclosed a small number of documents to the applicant³³
- the applicant was asked³⁴ to confirm if, in respect of Item 1(a), Item 1(b), Item 1(h) and Item 1(i) of the Access Application, he sought to access copies of correspondence/documents which he³⁵ had previously sent to QBCC in respect of the First Prior Application, noting that it was reasonable to expect that the applicant already possessed copies of those documents³⁶—no response was received from the

²⁷ Section 21 of the HR Act.

²⁸ *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]. This approach, in the context of the IP Act and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious* [of the right to seek and receive information] *and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

²⁹ I note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

³⁰ In the External Review Application, the applicant alleged that QBCC's decision-maker had acted 'dishonestly' in processing his access application (however, the applicant provided no information supporting this allegation). The applicant subsequently referenced (in his email dated 29 August 2024) the Information Commissioner's power to review any agency decision made in relation to an access application and decide any matter in relation to the access application that could, under the RTI Act, have been decided by the agency (section 105(1) of the RTI Act). I note that this provision does not empower, or obligate, the Information Commissioner, in a decision issued pursuant to section 110 of the RTI Act, to address or make findings about alleged conduct deficiencies of agency officers in dealing with an access application. Apart from section 113 of the RTI Act (which empowers the Information Commissioner to give certain notifications to an agency at the completion of an external review), OIC's external review jurisdiction does not extend to investigating received complaints about an agency's conduct or processes, or the way it has handled a particular application. For completeness, I note that, I am satisfied that the information before me in this external review does not contain sufficient evidence to give rise to grounds for invoking the disciplinary powers under section 113 of the RTI Act.

³¹ By letter dated 23 December 2024.

³² The 23 December 2024 letter also confirmed that, based on OIC's interpretation of the access Application, no documents would be responsive to Item 1(c) and Item 1(e) of the Access Application. As the applicant did not contest the interpretation of these items, they were not in issue and are not dealt with in this decision.

³³ That is, the documents which were captured by Item 1(d), Item 1(f), Item 1(g) and Item 4 of the Access Application. The applicant did not identify any additional documents he considered would exist and be relevant to these components of the access application. Accordingly, the applicant's requests in Item 1(d), Item 1(f), Item 1(g) and Item 4 were not in issue and are not dealt with in this decision.

³⁴ By letter dated 1 April 2025.

³⁵ Or the other individual whose disclosure consent was attached to the Access Application.

³⁶ Letter dated 1 April 2025.

applicant to indicate he sought access to further copies of such documents on external review;³⁷ and

- as noted in paragraph 12 above, the applicant confirmed he did not agree with OIC's preliminary view that his request to access the Processing Documents was outside the RTI Act.

25. Therefore, the only issue remaining for determination is whether the applicant's request for the Processing Documents³⁸ is outside the RTI Act by virtue of schedule 2, part 2, item 7 of the RTI Act.

Preliminary matter

26. Before considering the issue for determination, it is necessary to firstly address a matter concerning the external review process which the applicant raised in his submissions.

27. The applicant contested the findings in *T71* and submitted that, as a particular OIC officer was the delegated decision-maker in *T71*, that officer was '*reasonably unable to bring a [sic] unbiased mind*' to this review.³⁹

28. Noting the findings made by QCAT in *Stella*, I do not consider that this particular officer would be precluded from being the decision-maker in this matter by reason only of having previously made a decision, in a separate external review, which dealt with schedule 2, part 2, item 7 of the RTI Act. In any event, I am the decision-maker for this decision. There is otherwise no actual, perceived or potential conflict of interest of which I am aware that should preclude me acting as the decision-maker in this matter.⁴⁰

Relevant law

29. Under the RTI Act, an individual has a right to access documents of an agency.⁴¹ Although the RTI Act is to be administered with a pro-disclosure bias,⁴² the right of access is subject to certain limitations. Notably, 'agency' is defined to exclude entities to which the RTI Act does not apply.⁴³ Accordingly, an access application will be outside the scope of the RTI Act if the entity to which the application is made is not an entity to which the RTI Act applies.

30. Section 17 of the RTI Act defines the entities to which the RTI Act does not apply as being the entities mentioned in schedule 2 of the RTI Act.⁴⁴ Relevantly, under schedule 2, part 2, item 7 of the RTI Act, '*a member of, or the holder of an office connected with, a quasi-judicial entity, in relation to the entity's quasi-judicial functions*' is an entity to which the RTI Act does not apply.⁴⁵

31. Where a person purports to make an access application under the RTI Act to an entity, and the entity decides that the application is outside the scope of the RTI Act (because

³⁷ In accordance with the 1 April 2025 letter, the applicant was taken to have excluded documents of this nature from Item 1(a), Item 1(b), Item 1(h) and Item 1(i) of the access application.

³⁸ Being the requests within Item 1(a), Item 1(b), Item 1(h), Item 1(i), Item 2 and Item 3 of the Access Application.

³⁹ Applicant's email dated 29 August 2024.

⁴⁰ To the extent the applicant's concern could be interpreted as raising any issue of apprehended bias, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias-refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

⁴¹ Section 23 of the RTI Act.

⁴² Section 44 of the RTI Act.

⁴³ Section 14(2) of the RTI Act.

⁴⁴ Part 1 of that schedule lists the entities to which the RTI Act does not apply and part 2 mentions the entities to which the RTI Act does not apply *in relation to particular functions*.

⁴⁵ Schedule 5 of the RTI Act defines a quasi-judicial entity as an entity that exercises quasi-judicial functions.

the entity is an entity to which the RTI Act does not apply), the entity is required to give a prescribed written notice to the applicant within 10 business days after the purported application is received.⁴⁶

Findings

32. The applicant has not disputed that the Access Application (in part) sought to access documents related to QBCC's processing of prior access applications which have been, or are currently, the subject of external review.
33. I acknowledge that the applicant has provided detailed reasons for his disagreement with the comments made by Justice Hoeben in *Carmody* about the operation of schedule 2, part 2, item 7 of the RTI Act and how those comments have been subsequently applied by OIC. However, QCAT's decision in *Stella* is a decision of the Appeal Tribunal which, pursuant to section 119 of the RTI Act, hears and determines appeals of OIC's decisions on a question of law. I therefore regard *Stella* as binding on OIC.⁴⁷ I can identify no ground in this review upon which QCAT's decision in *Stella* could be distinguished.⁴⁸ I therefore consider that I am required to follow it.
34. The applicant submitted that QBCC had failed to comply with section 32 of the RTI Act.⁴⁹ I understand the applicant's submission to be that, as a result of this submitted noncompliance, he considers QBCC was not entitled to decide that the Access Application was outside the scope of the RTI Act. For the reasons that follow, I do not accept that any failure to adhere to the timeline nominated in section 32(2) of the RTI Act would prevent me finding that the applicant's request for the Processing Documents is outside the RTI Act.
35. As I have noted above, external review is a merits review process and the issue for determination is whether the applicant's request for the Processing Documents is outside the RTI Act by virtue of schedule 2, part 2, item 7 of the RTI Act. Section 105(1) of the RTI Act also empowers the Information Commissioner (or their delegate) to decide any matter in relation to an access application that would, under the Act, have been decided by an agency. The RTI Act provides no consequence for an agency not providing written notice of its decision under section 32(2) within the referenced 10 business days. I also note that the notice requirements of the equivalent provision in the IP Act (namely, section 52) were considered by Judicial Member McGill in *Stella* and were addressed in the following terms:⁵⁰
- ... the section does not provide that, if the notice is not given within time, an application outside the scope of the Act becomes one inside the scope of the Act. Indeed, the IP Act provides no consequences for the failure to give the notice, within the time limit or at all. The position is simply that, if an entity gets a notice which it considers is outside the scope of the Act, it is supposed to tell the applicant that promptly.*
36. When referring to section 3 of the RTI Act, the applicant submitted that the 'primary object of the RTI Act is "to give a right of access to information in the government's

⁴⁶ Section 32(2) of the RTI Act.

⁴⁷ Applying the doctrine of statutory precedent or *stare decisis* which requires that a lower court must follow the binding precedent of a court higher than it in the same judicial hierarchy: *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) CLR 107 at [11]. See also *TAJ (costs)* [2023] QCAT 133 at [39] for a discussion of the application of the doctrine of precedent where the Appeal Tribunal decision is made by a judicial member of the Tribunal.

⁴⁸ In this regard, I note that the applicant did not provide any submissions about the findings in *Stella*.

⁴⁹ External Review Application.

⁵⁰ *Stella* at [86].

possession...” and that the Act must be applied and interpreted to further the primary object’.⁵¹ The applicant also submitted that:⁵²

any document created by an agency and stored within the Agency is obviously a document of the Agency. Nowhere in the RTI Act is there any attempt to carve out certain types of documents within an Agency as “not documents of the Agency”. It is also arguable that documents collected under a previous RTI represent Public Records of the RTI processing.

37. As noted in paragraphs 29 and 30 above, the right of access under the RTI Act is subject to limitations and those limitations include that certain types of access applications will fall outside the scope of the RTI Act. Accordingly, I do not accept that the principle in section 3 of the RTI Act applies to access requests which Parliament has identified will be outside the scope of the Act. Further, the fact that a document is a public record within the meaning of the *Public Records Act 2023* (Qld) does not, of itself, mean that it can be accessed under the RTI Act. I also consider it apposite to note that, in *Stella*, QCAT has interpreted the relevant provisions contained in both the RTI and IP Acts as operating to provide that requests for access to agency processing documents are outside the Acts.
38. In response to the applicant’s submission that OIC is not a quasi-judicial body,⁵³ I consider it is sufficient to merely note that Judicial Member McGill has confirmed that OIC is a quasi-judicial body and, when conducting external reviews, OIC is performing a quasi-judicial function.⁵⁴
39. The applicant further contended that schedule 2, part 2, item 2 of the RTI Act ‘*proves that the terms “connected with” and “in relation to” should be construed narrowly*’.⁵⁵ I do not agree. There is nothing within schedule 2, part 2, item 2 of the RTI Act which indicates that it applies in any way to narrow the application of schedule 2, part 2, item 7 of the RTI Act. To the extent the applicant referenced the requirements of section 47(2) of the RTI Act in support of his position, I note that this provision appears in Chapter 3, Part 5 of the RTI Act, which deals with decisions concerning an access application made to an agency or Minister. Those provisions do not apply to an access application which is made to an entity to which the RTI Act does not apply. I also note that Judicial Member McGill confirmed in *Stella* that ‘*[t]here is nothing to indicate that the scope of the Items in Schedule 2 to the RTI Act is to be interpreted in a narrow or restrictive way, or with a pro-disclosure bias*’.⁵⁶

⁵¹ Applicant’s email dated 29 August 2024.

⁵² Applicant’s email dated 29 August 2024.

⁵³ In the applicant’s email dated 29 August 2024, he submitted ‘*Without going into full details, it is suffice to say the quasi-judicial entities are still judicial in nature. As the IC only provides a mediation service for Privacy Complaints (with QCAT being the judicial determiner) there is good basis that the IC is not quasi-judicial since if it were, then it would decide the complaints itself. Even the External Review service is directed under s90 of the RTI Act to attempt to resolve Reviews informally. Mediations and informal resolutions are certainly not judicial in nature*’. In that email, he further submitted that: ‘*the OIC Officer conducting the External Review was likely not the Information Commissioner and therefore was highly unlikely to be exercising quasi-judicial functions since the OIC staff are administrative officers. Making an administrative decision does not elevate an administrative officer to being a quasi-judicial officer*’.

⁵⁴ More specifically, in *Stella* at [94], Judicial Member McGill found that ‘*The proposition that the OIC is a quasi-judicial body is supported by authority, and in any case strikes me as obvious enough. If so, it is performing quasi-judicial functions when conducting reviews*’.

⁵⁵ Applicant’s email dated 29 August 2024. In this email, the applicant also referred to section 47(2) of the RTI Act in support of his position and submitted it was ‘*reasonable to conclude that it was Parliament’s intention that provisions that oppose the primary object should always be interpreted narrowly lest otherwise the primary object would be diminished (and not complied with as explicitly required)*’.

⁵⁶ *Stella* at [83]. I also note that, when considering the comments of Justice Hoeben in *Carmody*, Judicial Member McGill stated at [88]: ‘*The effect of that analysis is that Chapter 3 of the IP Act does not apply to information produced by processing a request for access to information under the IP Act. The person making the decision on the earlier application is regarded as excluded from the respondent agency, so information generated or gathered by that person is information outside the scope of the information of the respondent for the purposes of Chapter 3*’. As Chapter 3 of the IP Act is in substantially the same terms as Chapter 3 of the RTI Act, I consider these comments are relevant here.

40. Finally, when challenging Justice Hoeben's comments in *Carmody*, the applicant argued⁵⁷ that the '*normal meaning*' of the words 'member' and 'holder of an office' in schedule 2, part 2, item 7 of the RTI Act are as follows:
- 'member' refers to '*a formal titled (quasi-judicial) Member (similar to a Tribunal Member) and not just any member of any entity*'; and
 - 'holder of an office' is '*also a title based term referring to an official or statutory officer holder (such as the RTI Commissioner) and not simply someone who holds any officer and is referred to as an officer*'.
41. I do not agree with the applicant's interpretation of these words, or that it reflects the normal meaning of these words. The applicant has not pointed to any authority which would support such a narrowed interpretation.⁵⁸ I also note again the observation of Judicial Member McGill referenced in paragraph 39 above.
42. Having carefully considered the information before me (including the Access Application, the decision under review, the parties' submissions and the decision in *Stella*), I am satisfied that the QBCC decision-makers who processed the First, Second and Third Prior Applications were members, or holders of an office, 'connected with' OIC in relation to OIC's quasi-judicial functions.
43. Accordingly, I find that the applicant's request to access the Processing Documents is outside the scope of the RTI Act by virtue of schedule 2, part 2, item 7 of the RTI Act.

DECISION

44. For the reasons explained above, I decide to affirm the decision under review,⁵⁹ as the applicant's request to access the Processing Documents is outside the scope of the RTI Act pursuant to schedule 2, part 2, item 7 of the RTI Act.

Joanne Kummrow
Information Commissioner

Date: 30 April 2025

⁵⁷ Applicant's email dated 29 August 2024.

⁵⁸ For completeness, I also note that the word 'member' is not defined in the RTI Act or the AIA, however, the word 'holds' is relevantly defined in schedule 5 of the RTI Act as follows: **holds**, *in relation to an office, includes performs the duties of the office.*

⁵⁹ Section 110(1)(a) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
14 March 2024	OIC received the External Review Application.
24 April 2024	OIC notified the applicant that the External Review Application had been accepted and invited the applicant to remove parts of the access application. OIC notified QBCC that the External Review Application had been accepted and requested information from QBCC.
10 June 2024	OIC received the requested information from QBCC.
11 June 2024	OIC requested additional information from QBCC, including copies of certain document requests nominated in Item 1 of the Access Application.
29 August 2024	OIC received the applicant's submission.
3 September 2024	OIC provided an update to the applicant.
17 September 2024	At QBCC's request, OIC granted an extension of time for provision of requested information.
30 September 2024	OIC received the requested information from QBCC.
12 November 2024	OIC provided an update to the applicant.
9 December 2024	OIC requested additional information from QBCC, including about the types of information that would be captured by the various components of the Access Application.
13 December 2024	At QBCC's request, OIC granted an extension of time for provision of requested information.
19 December 2024	OIC received the requested information from QBCC. QBCC also agreed to disclose documents located as relevant to item 1(d), Item 1(f), Item 1(d) and Item 4 of the Access Application.
23 December 2024	OIC wrote to the applicant to: <ul style="list-style-type: none"> • identify how the various components of the Access Application had been interpreted and the documents (or types of documents) that would be captured by those components • inform the applicant that QBCC had agreed to disclose documents located as relevant to Item 1(d), Item 1(f), Item 1(g) and Item 4 of the Access Application • invite the applicant to provide a submission if he disagreed with the interpretation of the Access Application components or if he considered further documents would be captured by those components; and • convey a preliminary assessment about Item 1(a), Item 1(b), Item 1(h), Item 1(i), Item 2 and Item 3 of the access application. OIC asked QBCC to send a copy of the documents it had agreed to disclose to the applicant.
8 January 2025	OIC received QBCC's confirmation that documents had been sent to the applicant.

Date	Event
14 February 2025	At the applicant's request, OIC granted an extension of time for the applicant's response.
13 March 2025	At the applicant's request, OIC granted a further extension of time for the applicant's response.
28 March 2025	OIC received the applicant's response which disagreed with the preliminary assessment and requested the issue of a formal decision.
1 April 2025	OIC wrote to the applicant to confirm the matters remaining for consideration; convey a preliminary view to the applicant about those matters; and note the findings in <i>Stella</i> . The applicant was invited to provide any further submission he wished to make by 15 April 2025.