Office of the Information Commissioner
Queensland

Vexatious Applicant Declaration

Applicant:	**Gold Coast Hospital and Health Service**
Respondent:	**'Respondent'**
Application No:	**431004**
Declaration Date:	**6 May 2020**

Contents

DECLARATION

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

I declare, in accordance with section 127 of the *Information Privacy Act 2009* (Qld), that the respondent is a vexatious applicant on the basis that she 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:

- *The respondent is prohibited from making any application for access or internal review under the Information Privacy Act 2009 (Qld) to Gold Coast Hospital and Health Service for a period of 24 months from the date of this declaration; and*
- *Gold Coast Hospital and Health Service is permitted to disclose the respondent's identity to another agency or Minister in connection with the making of this declaration and the discharge of functions and powers under the Information Privacy Act 2009 (Qld).*

I make this declaration pursuant to a delegation from the Information Commissioner dated 3 February 2020 and given under section 139 of the *Information Privacy Act 2009* (Qld).

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Philip Green
Privacy Commissioner
6 May 2020

REASONS FOR DECLARATION

Background

1. Between April 2014 and July 2016, the respondent received medical treatment from various hospital departments of the applicant (**GCHHS**). The respondent was dissatisfied with the medical treatment she received, and with her subsequent dealings and interactions with GCHHS. She has made a series of complaints (both to GCHHS and to relevant regulators) against GCHHS and individual staff members about a variety of matters, including allegations of rape and torture, as well as misuse and falsification of her medical records. Some information, including her health records, has been released to the respondent under GCHHS's administrative access scheme.

2. The respondent has also made numerous applications to GCHHS under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking access to her health records and other documents concerning aspects of her medical treatment by GCHHS, and her related interactions with staff of GCHHS, as well as their interactions with each other. The bulk of her access applications generally request access to all correspondence and emails between named staff members of GCHHS or between specified hospital departments with which the respondent has had interactions, as well as seeking the names of staff who have accessed her health records and the dates of access.[1]

3. GCHHS seeks a declaration under section 127 of the IP Act[2] that the respondent is a vexatious applicant and that:

   - she be prevented from making any application for access or internal review to GCHHS for a period of two years unless she has first received permission from the Office of the Information Commissioner (**OIC**); and
   - GCHHS not be required to process any outstanding access application or internal review application received by GCHHS on or after 24 months from the date of making its application for a vexatious declaration (13 December 2019).

4. Significant procedural steps taken in the course of deciding GCHHS's application are set out in the Appendix to this Declaration.

Relevant law

5. 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 IP 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.

[1] The terms of the access applications are set out in Annexure A to GCHHS's submission dated December 2019 in support of its application for a vexatious declaration.
[2] GCHHS initially sought a declaration that also covered access actions made by the respondent under the *Right to Information Act 2009* (Qld) (**RTI Act**). However, section 114 of the RTI Act establishes a separate process for declaring a person vexatious under the RTI Act and requires that the applicant for a declaration establish that the person has repeatedly engaged in access actions under the RTI Act. As GCHHS was not able to establish that the respondent had repeatedly engaged in RTI Act access actions, it elected not to pursue this aspect of its application.

6. Section 127(8) provides that *'access or amendment action'* means any of the following:

- an access application
- an amendment application
- an internal review application; and
- an external review application.

7. *'Engage'*, for an access or amendment action, means make the access or amendment action.

8. Section 127(8) of the IP Act sets out a non-exhaustive list of circumstances which might constitute an *'abuse of process'* and includes:

- 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.

9. Other grounds for abuse of process established at common law include:

- duplicate proceedings already pending or determined and therefore incapable of serving a legitimate purpose[3]
- the making of unsubstantiated or defamatory allegations in applications;[4] and
- wastage of public resources and funds.[5]

Application of the Human Rights Act

10. In making my decision in this matter, I have had regard to the *Human Rights Act 2019* (Qld)[6] (**HR Act**), particularly the right to seek and receive information as embodied in section 21 of that Act. I acknowledge that the making of a vexatious declaration that places conditions upon, or otherwise restricts, an individual's right to make access applications under the IP Act for a period of time, could be regarded as interfering with the right embodied in section 21 of the HR Act. However, just as is the case where a decision-maker, who observes and applies the relevant law prescribed in the IP Act when deciding access or review applications, is regarded as *'respecting and acting compatibly with'* this right and others prescribed in the HR Act,[7] so too is a decision-maker who applies the law contained in section 127 of the IP Act when deciding whether or not to make a vexatious declaration.

11. In enacting section 127 of the IP Act, Parliament recognised that, in limited and specific circumstances, the right to make an access or amendment action under the IP Act may be interfered with where such an action involves an abuse of process or would be manifestly unreasonable. As required by section 58 of the HR Act, I have considered and am satisfied that, in applying the law contained in section 127 of the IP Act, which contemplates restrictions being placed upon the right to seek and receive information, I am acting compatibly with the right prescribed in section 21 of the HR Act. I have also considered other wider rights contained in the HR Act, such as privacy and health, and do not consider that I am acting incompatibly with them in making the declaration. I note Bell J's observations on the interaction between the Victorian equivalents of

[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 (***Re Cameron***).
[6] Which came into force on 1 January 2020.
[7] *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 [11].

Queensland's RTI/IP Acts and HR Act: *'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'*.[8]

General considerations

12. The requirements of section 127 of the IP Act, and of the equivalent provision in section 114 of the RTI Act, have been considered in three previous decisions of OIC.[9] I have had regard to these decisions.

13. In addition, section 114 of the RTI Act and section 127 of the IP Act are substantially the same as sections 89K and 89L of the *Freedom of Information Act 1982* (Cth). The FOI Guidelines (**Guidelines**) published by the Office of the Australian Information Commissioner (**OAIC**)[10] provide useful guidance on the interpretation of section 127 of the IP Act, as do several declarations made by the OAIC, which I will refer to in my discussion below.

14. As noted in the OAIC's Guidelines:

> *A declaration has the practical effect of preventing a person from exercising an important legal right concerned by the FOI Act. For that reason, a declaration will not be lightly made, and an agency that applies for a declaration must establish a clear and convincing need for a declaration. …*
>
> *…*
>
> *… The power conferred on the Information Commissioner to make a declaration is an important element of the balance in the FOI Act between conferring a right of access to government documents while ensuring that access requests do not interfere unreasonably with agency operations. This is apparent from the terms of section 89L which expresses a principle that the legal right of access should not be abused by conduct that harasses or intimidates agency staff, unreasonably interferes with the operations of agencies, circumvents court-imposed restrictions on document access, or is manifestly unreasonable.*

15. The power to make a declaration is discretionary. In addition to considering the grounds for a declaration specified in section 127 of the IP Act, the Information Commissioner may consider other relevant features of a person's access actions, or, for example, the way in which the agency concerned administers its obligations under the IP Act.

16. In considering whether or not to exercise the discretion, the Information Commissioner is not bound to consider only the limb of section 127(8) that is advanced by the agency. The Commissioner can decide that a different ground has been established.

Evidence considered

17. I have considered the following evidence:

- GCHHS's application and supporting submission;[11] and

[8] *XYZ* at [573].
[9] *University of Queensland and Respondent* (Queensland Information Commissioner, declaration made 27 February 2012) (***UQ and Respondent***); *Cairns and Hinterland Hospital and Health Service and Respondent* (Queensland Information Commissioner, declaration made 26 October 2017) (***CHHHS and Respondent***); *Moreton Bay Regional Council and Respondent* [2020] QICmr 21 (8 April 2020) (declaration refused) (***MBRC and Respondent***).
[10] Part 12 – Vexatious applicant declarations.
[11] Dated December 2019.

- the respondent's submissions in response.[12]

18. It is clear that the respondent does not consider that grounds for declaring her vexatious exist. She considers that the making of the application by GCHHS, and OIC's consideration of it, are yet more examples of what she considers to be acts of victimisation against her by a number of government agencies:

> *You now, harassingly, as another act of victimisation, want me to answer whether I am vexatiously applying for my hospital records after being gang raped, tortured, and continuously harmed by mass numbers of paramedics and doctors and nurses who see my medical records, in revenge for making a complaint about medical harm done to me and others I reported for, and the repetitive rapes and torture of patients who are vulnerable, and the subsequent cover up which uniformly attacks victims including arrest and prosecution for escaping from the hospital naked after being raped again in the hospital in the case of 'X'.*
>
> *You victimised me by release of only four pages of my GCHHS records of my data in the past twelve months before asking me, in a further act of victimisation, to answer for being a vexatious applicant of my medical records which you don't release other than a few pages each year.*[13]

19. The bulk of the respondent's submissions do not specifically address GCHHS's submission about the volume and nature of access actions made by the respondent or the terms of the declaration sought. Rather, they generally seek to repeat her various complaints and allegations against GCHHS. I have referred to the respondent's submissions in my discussion below where they are relevant to the particular issue under consideration.

Grounds relied upon by GCHHS

20. GCHHS contends that the respondent has repeatedly engaged in access actions, and that this repeated engagement constitutes an abuse of process on the following grounds:

- harassment and intimidation of GCHHS staff
- the making of unsubstantiated or defamatory allegations against GCHHS staff
- unreasonable interference with operations of GCHHS; and
- wastage of public resources and funds.

21. GCHHS also submits that relevant background information to its application is as follows:

- the respondent made 20 complaints against GCHHS between May 2019 and August 2019
- the respondent applied three times for access to her health records under GCHHS's administrative access scheme;[14] and
- over 1000 pages have been released to the respondent on an administrative basis, including files relating to her interactions with GCHHS.[15]

Has the respondent repeatedly engaged in access actions?

22. Yes, for the reasons that follow.

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[12] Emails dated 20 February 2020, 21 February 2020, 24 February 2020 (2 emails), 2 March 2020, 5 March 2020 and 6 March 2020.
[13] Email dated 5 March 2020.
[14] The respondent submits that she applied for access to the records multiple times because they were sent to her in a jumbled form and she could not understand them (see the respondent's email dated 20 February 2020).
[15] The respondent disputes that over 1000 pages have been released to her, but does not provide an alternative number except to assert that *'it appears near 7000 pages of my data existed in 2019'* (see the respondent's email dated 21 February 2020).

GCHHS's submissions

23. GCHHS provided evidence that, as at the date of making its application for a vexatious declaration in December 2019, the respondent had made 19 access actions in a period of two years and nine months. These consisted of 11 access applications and eight external review applications. Nine of the access applications were made in a nine month period.[16]

24. GCHHS submitted that the volume of access actions made by the respondent constituted a *'repeated engagement'* within the meaning of section 127(2) of the IP Act, relying on the ordinary dictionary meaning of *'repeated'* as '*to reproduce, to reiterate, to do, make, perform again…'*.[17]

25. GCHHS relied upon OIC's decision in *UQ and Respondent*, as well as decisions of the OAIC, in support of its submission that the volume of access actions engaged in by the respondent constituted a repeated engagement.[18]

26. GCHHS also contended that the terms of the respondent's access requests were substantially the same, and that she had made multiple requests for access to her health records, as well as multiple requests for documents relating to the same health practitioner. In terms of her multiple requests for access to her health records, I understand from GCHHS's submission that the respondent made two access requests under the IP Act (the second of which she withdrew), in addition to the three requests she made under GCHHS's administrative access scheme. While I can understand GCHHS's evident frustration at the respondent's repeated requests for access to her health records, access requests made under an administrative access scheme do not constitute *'access actions'* within the meaning of section 127(8) of the IP Act.

The respondent's submissions

27. As noted above, many of the submissions made by the respondent in her various emails are irrelevant to the issue of whether or not she has repeatedly engaged in access actions. Throughout her emails, the respondent reiterates her grievances, complaints and allegations against GCHHS and its staff, as well as against a number of other agencies, including OIC. She argues that the GCHHS's application to have her declared vexatious is an attempt to *'gag'* her and prevent her from accessing records relevant to establishing and prosecuting her allegations:

> *I stand by all of the complaints I have made about abuses by this particular Hospital and I recommend the hospital file a defamation suit against me if they believe the complaints are untrue.*
>
> *…*
>
> *I would suggest that the Information Commissioner not cause any detriment to me while I have brought these issues before the courts and tribunals and regulators and they are still being investigated or have been upheld.*[19]

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[16] See Annexure A to GCHHS's submission. GCHHS also submitted that the respondent attempted to make more access applications during this period, however, the applications did not meet the requirements for making a valid application.
[17] See paragraph 27 of GCHHS's submission.
[18] *UQ and Respondent* – 65 applications made in total, with 10 lodged in a 12 month period; *Department of Defence and 'W'* [2013] AICmr 2 (***DOD and W***) – 13 access applications made in a period of approximately 18 months; *Commonwealth Ombudsman and 'S'* [2013] AICmr 31 (***CO and S***) – 7 access actions made in 19 months. See also *CHHHS and Respondent* – 16 access applications lodged in a three month period, plus 15 applications for external review.
[19] Email dated 20 February 2020.

28. The respondent also submitted that she had not made an access action to GCHHS since August 2019 and, that in the past 12 months, it had released only four pages to her. She asserted that *'this sudden attempt to characterise me as an abusive user of GCHHS IP application resources now prompts me to consider making a new application to seek justification for this sudden act'*.[20]

29. Many of the respondent's other submissions focused on her reasons for engaging in access actions, rather than disputing the volume of access actions relied upon by GCHHS.

30. The respondent's submissions can be summarised as follows:

    (a) her repeated access actions are caused by GCHHS (and OIC) placing communication restrictions upon her which affects her ability to communicate effectively because of a disability from which she suffers
    (b) decisions by GCHHS to refuse to deal with her applications under section 60 of the IP Act[21] forced her to make multiple subsequent applications to access the same information
    (c) her multiple requests are for multiple incidents that she seeks to have investigated and prosecuted, and which involve her and other *'victims'* of GCHHS for whom she is advocating:

        > *I am a public interest advocate and represent a lot of vulnerable people and I require IP data to substantiate my many PID and complaints, all of which are made in the context and with notification of intended legal proceedings in sex discrimination, race discrimination, disability discrimination, victimisation and matters before the royal commission*[22]

    (d) she suffers from trauma and depression which causes periods of her memory to be blacked out; and
    (e) if information requested has already been released to her in an earlier application, GCHHS could simply have called her to let her know: *'simply responding to a repeat application by indicating the previous release date does not take resources'*.

Discussion

(a) Communication restrictions

31. Regarding contact with GCHHS, I understand that GCHHS initially asked that the respondent refrain from contacting GCHHS staff through social media platforms, such as Facebook, and to confine her contact to appropriate formal and official channels.[23] Subsequently, following complaints from GCHHS staff about the content, tone and language used by the respondent in her telephone interactions with them, which the relevant staff members found abusive, offensive and distressing, GCHHS directed the respondent to communicate with its staff only in writing. However, there is no evidence before me that this direction has somehow resulted in the respondent having to engage in additional access actions that she would not otherwise have had to undertake had she been permitted to telephone staff of GCHHS. An access application under the IP Act is

[20] Email dated 21 February 2020.
[21] Substantial and unreasonable diversion of resources.
[22] Email dated 20 February 2020.
[23] See Annexure B to GCHHS's submission comprising a letter dated 22 March 2018 from the Health Service Chief Executive to the respondent.

required to be made using the approved form in any event, and an application for internal review is required to be made in writing.[24]

32. Similarly, in the case of OIC, the *'communication restrictions'* referred to by the respondent consist of a written direction that the respondent not telephone OIC staff, but confine her contact to letters or emails. As applications for external review are required to be made in writing,[25] I cannot see how the requirement that the respondent only communicate with OIC in writing could have had any impact upon the volume of external review applications she has made.

33. There is therefore no evidence before me to establish that any restriction placed upon the respondent's form of communication with either GCHHS or OIC has resulted in the respondent having to engage in additional access actions that she would not otherwise have undertaken.

(b) Section 60 of the IP Act

34. Under section 60 of the IP Act, an agency is entitled to refuse to deal with an applicant's access application (or 2 or more access applications) if the work involved in dealing with the application, or all of the applications, would substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.

35. GCHHS refused to deal with a number of the respondent's access applications under section 60 of the IP Act on the basis that their scope was unreasonably wide and processing the application would substantially and unreasonably divert GCHHS's resources. A number of these decisions were later affirmed by OIC on external review. The respondent argued that OIC had *'allowed rejection of IP applications until just a few pages at a time can be requested. This means dozens of small applications, where a consecutive application cannot be made until the prior decision is made'*.[26]

36. Firstly, I do not accept that OIC has restricted the respondent to making access applications that cover *'just a few pages'*. Secondly, I do not accept that the fact that an access applicant chooses to break down what has been decided to be an unreasonably broad access application into multiple smaller applications in order to seek access to the same volume of documents, should be regarded as a mitigating factor when considering whether the access applicant has repeatedly engaged in access actions. The relevant consideration under this limb of section 127 of the IP Act is simply the number of access actions engaged in during the relevant period.

37. I am therefore not satisfied that the fact that GCHHS has given the respondent a number of decisions under section 60 of the IP Act (which have been affirmed by OIC on external review) is relevant to a consideration of whether the respondent has repeatedly engaged in access actions. As I have noted above, *'repeated'* is to be given its ordinary dictionary meaning, namely, to do, make or perform again.

(c) Multiple requests for multiple incidents and advocating for others

38. As noted above, the respondent has made a series of serious accusations and allegations against GCHHS and its staff. She alleges that the relevant incidents involve both herself and others, and that she is acting as a public interest advocate for others in making her access applications.

[24] See sections 43(2) and 96 of the IP Act.
[25] See section 101 of the IP Act.
[26] Email dated 20 February 2020.

39. Having reviewed the terms of the access applications made by the respondent,[27] it is clear that she made them in her own name and did not state that she was acting as an agent for any other person. Moreover, the fact that the applications were made and processed under the IP Act necessarily means that the respondent was applying for her own personal information, and not the information of any other person.[28] As such, it is not clear how obtaining access to her own records, and correspondence and communications that concern her and her interactions with staff of GCHHS, would enable the respondent to advocate for others in relation to an incident concerning them. But in any event, this is another irrelevant consideration when assessing whether the respondent has engaged in repeated access actions. The first limb of section 127(2) of the IP Act is concerned only with whether the engagement is repeated.

(d) The respondent's state of health

40. Throughout her emails, the respondent refers to various medical conditions and disabilities from which she suffers. She claims that trauma she has experienced and associated depression cause periods of her memory to be blacked out, and that this is directly related to her interactions with GCHHS as well as the drugs that were administered to her. The respondent complains that these gaps in her memory, combined with the fact that GCHHS and OIC (and a number of other agencies) block her phone calls, compound the detriment to her and *'create a punitive disadvantage and the loss of rights and services on an equal basis'*.[29]

41. There is no evidence before me to suggest that the memory lapses to which the respondent refers have any relevance to the issue of whether she had engaged in repeated access actions. She has not submitted that memory loss has caused her to engage in additional access actions in which she might not otherwise have engaged. With reference to the communication restrictions imposed on the respondent by GCHHS and OIC, I repeat the comments that I made in paragraphs 31-33 above.

(e) Repeat applications do not require resources

42. Again, the respondent's submission is not relevant to a consideration of whether she has repeatedly engaged in access actions. As noted above, an access action includes and means an access application, regardless of the terms of the application, whether it is a repeat application, and how much work is involved in an agency identifying it as a repeat application.

43. Furthermore, despite the respondent's contention that all that was required of GCHHS in respect of such repeat applications was for it to call her and tell her that she had already received access to documents that she was requesting for a second time, I am not aware of the respondent having withdrawn an access application when advised by GCHHS that responsive documents have already been released to her.

44. In addition, the way in which the respondent generally frames her access applications – by often using similar but not identical terms to those used in earlier applications – means the fact that an access application has captured documents already processed in an earlier application is not always clear. An agency will often be required to search for, locate and review responsive documents before being able to assess whether the respondent has accessed any of those documents previously. As such, even if it were

[27] Set out in Annexure A to GCHHS's submission.
[28] See sections 43 and 54 of the IP Act. While the respondent contends that she only seeks enough information to see whether, for example, mandatory reporting of her complaints about the treatment received by others has taken place, such information is nevertheless the personal information of persons other than the respondent, and cannot be accessed under the IP Act.
[29] Email dated 6 March 2020.

a relevant consideration, I do not accept the respondent's contention that responding to a repeat application *'takes no resources'* on the part of the agency.

Finding

45. There is no fixed number of access actions required to establish a pattern of repeated requests. Whether such a pattern exists will depend in part on the nature of the abuse that is said to be involved. If it is asserted that the abuse involves harassing or intimidating staff of the agency, a small number of requests may establish a pattern. If it is asserted that a person has repeatedly made different requests that, in combination, unreasonably interfere with an agency's operations, a higher number of requests may be required to establish a pattern or repeated requests. As noted, GCHHS asserts both grounds.

46. I acknowledge the respondent's submission that she has not made an access action to GCHHS in over six months. GCHHS has also confirmed that it has not received an access action from the respondent since making its application for a vexatious declaration. However, there is no time limit on an agency making an application for a vexatious declaration under section 127 of the IP Act. While the lack of access actions during a certain period may be a relevant factor for a decision-maker to take into account when deciding whether or not to exercise their discretion under section 127 of the IP Act, establishing that access actions have been made within a certain period prior to seeking the declaration is not a statutory requirement.

47. I accept GCHHS's submission that the respondent made 19 access actions in a period of two years and nine months, and that nine were made in a nine month period. I am satisfied that this amounts to a repeated engagement in access actions within the meaning of section 127(2)(a) of the IP Act.

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

48. Yes, for the reasons that follow.

Grounds relied upon by GCHHS

49. GCHHS submitted that the respondent's repeated engagement involves an abuse of process for an access action because her actions involve:

- harassment and intimidation of GCHHS employees;
- the making of unsubstantiated or defamatory allegations against GCHHS staff
- unreasonable interference with the operations of GCHHS; and
- wastage of public resource and funds.

50. I accept that harassment and intimidation of employees, and the making of unsubstantiated or defamatory allegations against employees, may separately amount to an abuse of process, and that GCHHS has raised them as separate grounds. However, for ease of reference, and because the email communications by the respondent that GCHHS puts forward in support of both grounds are the same, I will deal with them together.

51. Similarly, I accept that unreasonable interference with an agency's operations and wastage of public resources and funds may establish separate grounds for finding an abuse of process. However, again, because of the overlap in the submissions made by GCHHS in respect of these two grounds, I will deal with them together.

Harassment and intimidation of GCHHS staff/making unsubstantiated or defamatory allegations

GCHHS's submissions

52. GCHHS made lengthy submissions[30] in support of its position that:

> [The respondent's] *behaviour through her access actions demonstrates a pattern of serious and significant harassment and intimidation of GCHHS staff. Furthermore, it is submitted that* [the respondent] *uses the IP Act and the access application process as a vehicle through which* [she] *can continue to harass and intimidate GCHHS and target specific GCHHS staff* [with] *whom she has had contact.*

53. The terms 'harassing' and 'intimidating' are not defined in the IP Act. GCHHS relied upon the ordinary dictionary meanings of 'harass' ('*to trouble by repeated attacks or to disturb persistently*')[31] and 'intimidate' ('*to force into or deter from some action by inducing fear*').[32] In the OIC decision in *Sheridan*,[33] the terms were given the following meanings:

- acts which persistently trouble, disturb or torment a person are acts of harassment; and
- acts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation.[34]

54. GCHHS submitted that the respondent uses the IP Act process to engage in harassment and intimidation of GCHHS staff by:

- commencing a new access action or responding to an existing access action in a manner that directly harasses and intimidates specific GCHHS staff; and
- using the access actions as a basis for raising additional issues and making harassing and intimidating statements about GCHHS staff not directly related to a specific access action but triggered and facilitated by an access action:

> *In particular, it is GCHHS's submission that* [the respondent] *has used the IP Act as a mechanism to facilitate a campaign of harassment and intimidation by way of persistently and frequently contacting GCHHS staff and regularly threatening and intimidating GCHHS staff in those persistent and frequent communications.*[35]

55. The harassment and intimidation by the respondent are said to take the following form:

- persistent and frequent emails sent to GCHHS: during an 8 month period in 2019, the respondent sent 196 emails to Legal Services and Information Access Services
- these emails were harassing and intimidating because they often focused on particular staff members (especially if they were involved in assisting the respondent with her IP applications), and they frequently contained abusive language, allegations of incompetence, threats of *'consequences'*, including that staff would be *'made to pay'* as well as threats of legal action

[30] See section 4.3 (pages 6-13) of GCHHS's submission.
[31] Macquarie Online Dictionary.
[32] Macquarie Online Dictionary.
[33] *Sheridan and South Burnett Regional Council* (Unreported, Queensland Information Commissioner, 9 April 2009) (***Sheridan***).
[34] Note that the issue in *Sheridan* was whether the act in question amounted to a serious act of harassment or intimidation. Section 127(8) of the IP Act does not require the act of harassment or intimidation to be serious in nature.
[35] Paragraph 39 of GCHHS's submissions.

- responses from the respondent to emails sent to her by GCHHS in connection with her IP applications did not address the relevant issues but instead made further abusive comments about GCHHS staff, in the manner detailed above; and
- the various access actions were substantially seeking access to the same documents, highlighting that the respondent is using the IP Act application process as a vehicle to continually harass and intimidate GCHHS and its staff.

56. GCHHS submitted that the harassing and intimidating behaviour by the respondent could be grouped into three categories:

    (a) Content, tone and language of the respondent's correspondence[36]

57. GCHHS stated that several of its employees who were targeted in the respondent's emails reported feeling distressed and concerned about their safety.

58. Other impacts of the respondent's actions were reported by GCHHS as follows:

    - the two staff members with responsibility for dealing with the majority of the respondent's access actions had reported that the volume of the correspondence, as well as its abusive and threatening tone, and the regular threats of self-harm by the respondent, were causing them significant personal distress; and
    - the threatening nature of the respondent's correspondence caused staff to feel concerned about what personal information of theirs might be available to the respondent, and to take steps to reduce their public profile, including closing or anonymising their social media accounts.

59. Consistent with the decision in *CHHHS and Respondent*, where the Right to Information Commissioner decided it was relevant that the respondent's harassing behaviour had been brought to the attention of police, GCHHS submitted that the Queensland Police Service (**QPS**) had identified the respondent as requiring monitoring by QPS's Fixated Persons Unit.[37]

60. GCHHS also asserted that it had taken steps to confine the respondent's contact with its staff to writing only, and initially such contact was to be directed only to the Patient Liaison Service email inbox. When the respondent's communications continued to escalate, GCHHS then directed her to send all communications to the Legal Services inbox only.[38] GCHHS submitted that the respondent ignored these requests and continued to make phone calls to departments within GCHHS, and continued to engage in harassing and intimidating conduct.

61. Due to the respondent's conduct, GCHHS's Chief Operating Officer sent a letter dated 12 April 2018 to all staff[39] acknowledging the significant distress caused by the respondent's behaviour and reiterating that the Employee Assistance Program was available for counselling and support.

62. GCHHS submitted that, because of the respondent's harassing and intimidating conduct when interacting with staff, it had been forced to put in place measures to limit her contact with staff when processing her IP access applications.

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[36] See paragraphs 44 to 46 of GCHHS's submission.
[37] Queensland Fixated Threat Assessment Centre (**QFTAC**). The QFTAC identifies persons who are fixated on government officials and other public identities and monitors such persons as a means of ensuring that they do not undertake harmful behavior.
[38] See Annexure B to GCHHS's submission comprising a letter dated 22 March 2018 from the Health Service Chief Executive to the respondent.
[39] A copy of the letter is Annexure C to GCHHS's submission.

(b) Unsubstantiated, derogatory, inflammatory or defamatory allegations against GCHHS employees[40]

63. GCHHS provided extracts from a sample of the respondent's emails that it contended made these types of allegations against GCHHS and specific staff members. It submitted that these communications had been made both within and outside of an IP Act process, and some had previously been made outside the IP Act process but were subsequently ventilated and recontested in an IP Act process. Examples of the email extracts as provided by GCHHS were as follows:[41]

- *I do not believe* [GCHHS staff member] *has a licence to practice* (sic) *medicine and neither GCUH or* [a regulator] *would verify this or his overseas history*[42]
- *I will certainly be publishing your actions and name to warn other patients who you obviously choose to put at risk of disability and death*[43]
- *I intend to set up a website and campaign for public knowledge of the epidemic rapes in GCUH and the methods of solitary confinement of patients by doctors to incite suicide*[44]
- [GCHHS staff members], *I truly hope you get put in solitary and get permanent brain damage and are reduced to wanting to die since you think it's ok to laugh about it happening to me … when you become senior, perhaps you will lose your mind a little and endure the dehumanising abuse inflicted on … patients*[45]
- *…I am aware that trafficking images of naked women where your male staff regularly google rape victim patients' images, download, masturbate and republish those images is unethical and disgusting*[46]
- *I now to seek to report* [GCHHS staff member] *as a person of unfit character to work with sick children and as a nurse … QPS informed me* [GCHHS staff member] *is in the police services systems with previous convictions of violent crimes … I have previously withheld complaints as I view her as less culpable due to what I consider her mild mental retardation*[47]
- *GCUH without my consent let a team of trainees rape me with their hands in an unconsented internals*[48]
- *If you fail to process my IP application and release my data, I will file a claim for approx. $500,000*;[49] and
- *Your doctors repeatedly raped me for training at gym clinics, without any pain killers, to feel tumours inside my womb with their entire hands through my vagina so they could feel the anatomy, as if I were a corpse for student doctors, then you left the tumours on my ovaries untreated which caused infertility and are a risk of ovarian cancer which has no warning signs and a likelihood of death within three months.*[50]

64. GCHHS submitted that this correspondence was insulting, offensive, distressing and defamatory, and that the respondent had directly impugned the personal and

[40] See paragraphs 47 to 51 of GCHHS's submission.
[41] See paragraph 48 of GCHHS's submission.
[42] Email dated 2 March 2018 at 6.40pm.
[43] Email dated 5 March 2018 at 8.31am.
[44] Email dated 6 March 2018 at 1.18am.
[45] Email dated 28 March 2018 at 2.46am.
[46] Email dated 4 April 2018 at 1.07pm.
[47] Email dated 4 April 2018 at 1.07pm.
[48] Email dated 20 December 2018 at 5.11pm.
[49] Email dated 7 January 2019 at 6.13pm.
[50] Email dated 11 July 2019 at 10.47am.

professional integrity of GCHHS's staff and clinicians. As this behaviour did not serve any purpose in terms of assisting with or facilitating the processing of the respondent's IP Act access actions,[51] GCHHS argued that it was undertaken for the purpose of harassing and intimidating GCHHS staff and re-ventilating complaints and issues previously made by the respondent and already dealt with, either by GCHHS, or by external regulatory bodies. Accordingly, this behaviour was an abuse of process.

65. In terms of allegations that GCHHS contended were unsubstantiated and/or defamatory, GCHHS relied upon OIC's decision in *Hearl and Mulgrave Shire Council*[52] where it was held that the making of unsubstantiated or defamatory allegations in applications is relevant in demonstrating an abuse of process:

> [The respondent's] *access requests have included unsubstantiated allegations against various GCHHS employees. More specifically, a number of* [the respondent's] *emails contain allegations of* (sic) *GCHHS staff as well as comments of a personal nature against GCHHS employees, including details from their previous employment conditions. …*
>
> *The Information Commissioner held in* Hearl *… that if the allegations made by an access applicant cannot be substantiated by the applicant, then they are '*plainly vexatious and defamatory'. *… GCHHS is of the view that given* [the respondent] *would be unable to put forward any evidence which substantiates these allegations,* [her] *applications are instituted without sufficient grounds, for the purposes of making unsubstantiated or defamatory allegations.*[53]

(c) Threats of litigation, dismissal and public exposure[54]

66. GCHHS provided 15 examples of correspondence received from the respondent that contained threats of various types. These examples included:

- *You are best to come clean with what was done rather than have a fraud charge on top of the medical harm.*
  If there is information that is then found that you prevented from release contrary to the IP law, I'll have a new cause of action and will seek aggravated damages.[55] *…*

- *If you refuse a consult and then do not produce data subject to my IP request, I will file a claim for compensation, anew and separately from other legal action for your detrimental conduct following my complaint to ADCQ and PID. Keep in mind that each act of reprisal causes dozens of other public servants many weeks of work dealing with complaints about you. It costs the Premier and the state is sued for compensation each time you attack me and inflict harm on me, in a situation where you already intentionally caused permanent disability and sustained attacks on me to cause medical harm and torture. I will seek punitive damages.*[56]

- *Each and every time you refuse services, hang up on me, prevent release of my medical information to me, and put my wellbeing in danger, I am going to file an additional claim for restitution.*
  If you fail to process my IP application and release my data, I will file a claim for approx. $500,000 for PID reprisal for my PID of the 28 baby deaths, the multiple rapes of [GCHHS staff member] *and your prosecution of the victim, and deliberate infliction of a disability and infertility on me and victimisation for my sexual assault and torture of a child and mental*

[51] GCHHS submitted that in response to routine requests made to her in connection with processing her IP access applications, the respondent ignored the request but instead used her response as a vehicle to make harassing, intimidating and abusive remarks to GCHHS staff.
[52] (1994) 1 QAR 557.
[53] See paragraphs 93 to 95 of GCHHS's submissions.
[54] See paragraphs 52 to 62 of GCHHS's submission.
[55] Email dated 4 January 2019 at 5.00pm.
[56] Email dated 7 January 2019 at 2.42pm.

patient complaints. I will sue you on the same day your deadline arrives to have my IP emailed to me if you don't release it.[57]

- *If you do not answer this conflict of interest question within 24 hours, I will lodge a maladministration and misconduct complaint about you* [GCHHS staff member]. *I already have a draft of the above complaint ready to send to the Ombudsman and OIC in the case you do not respond and declare your conflict of interest.*[58]

- *If you do not* [provide a pdf by email of everything previously sent] *I may file a victimisation and reprisal claim against* [GCHHS staff member] *months from now or earlier.*[59]

- *Please ensure … it's complied with within two days and notice of intent to sue if you fail to comply again.*[60]

- *Forward to your CEO because if you again treat me in an adverse manner, you will face additional legal proceedings*[61]; and

- *Be forewarned in an email I sent today,* [GCHHS staff member] *has claimed records do not exist where this is implausible and includes records where* [GCHHS staff member] *treated me and I have proof records do exist. Prevent foreseeable losses to me where your lawyers are intending to not carry out searches and to illegally conceal evidence to causes losses to me.*

67. GCHHS contended that, while the respondent's harassing or intimidating behaviour was usually in connection with her access actions, the OAIC had, in any event, decided in *DOD and W* that *'comments by an FOI applicant that go beyond making an FOI request can nevertheless be taken into account in deciding whether there has been an abuse of process'*.[62]

68. GCHHS argued that the respondent's access actions form part of her broader communications concerning her numerous grievances with GCHHS and include statements that are clearly intended to impugn the integrity of staff in language designed to harass, intimidate and threaten. GCHHS submitted that the respondent uses the IP Act application process as a vehicle through which she can continue to raise complaints and issues that are not relevant to the IP Act process and that have already been dealt with. It contended that the respondent's refusal to respond to routine requests designed to progress her IP Act applications, and her refusal to engage or consult with GCHHS in a meaningful manner during the processing of her applications, supported GCHHS's contention that the respondent is not motivated by a genuine desire to access information under the IP Act.

69. GCHHS acknowledged that an access application may legitimately contain commentary or complaints by an access applicant consistent with the objects of the IP Act by facilitating *'scrutiny, comment and review of government activity'*,[63] but that the respondent's conduct could not reasonably be described as such, and appeared to be motivated primarily by the desire to:

    - facilitate the continued ventilating of issues relating to previous complaints dealt with by the Office of the Health Ombudsman; and

[57] Email dated 7 January 2019 at 6.13pm.
[58] Email dated 23 January 2019 at 12.26pm.
[59] Email dated 18 March 2019 at 2.31pm.
[60] Email dated 15 July 2019 at 11.04 am.
[61] Email dated 12 July 2019 at 9.37am.
[62] At [29].
[63] Paragraph 56 of GCHHS's submission.

- seek retribution against GCHHS, and GCHHS staff, for perceived prior injustices in the respondent's interactions with GCHHS and the medical treatment she received, or the way in which her IP Act access actions had been handled.

70. GCHHS relied upon a number of decisions of the OAIC in support of a finding that an access applicant engaging in threatening or abusive behaviour towards staff may amount to harassment or intimidation, and therefore an abuse of process:

- *DOD and W*: the Commissioner found that the access applicant had abused staff in a manner that was insulting, offensive, and directly impugned their personal and professional integrity, and had made demands that bordered on threats
- *CO and S*: the Commissioner found that the access applicant had made repeated requests aimed at procuring the personal information of Ombudsman staff to intimidate and harass them, and that the applicant's allegations of misconduct and threats to report the misconduct to the Australian Public Service Commission had the effect of harassing staff
- *Comcare and Price*:[64] the Commissioner found that the access applicant had made repeated requests involving offensive language that harassed, intimidated and abused staff and could understandably be distressing to them, and in this capacity had engaged in an abuse of process; and
- *Indigenous Business Australia and 'QB'*:[65] the Commissioner found that the access applicant had engaged in a campaign of harassment and intimidation by way of persistently and frequently contacting, threatening and intimidating staff and service providers, and in this capacity had engaged in an abuse of process.

71. In addition, in *CHHHS and Respondent*, the Right to Information Commissioner found that the respondent had engaged in threatening and abusive behaviour towards staff of the agency, which amounted to harassment or intimidation of the agency's employees.

The respondent's submissions

72. As noted, the respondent repeats her many grievances and allegations against GCHHS and its staff in her submissions. In response to GCHHS's submission that her interactions with GCHHS staff in connection with her access actions are of a harassing and intimidatory nature, or that she makes unsubstantiated and/or defamatory allegations in her correspondence, the respondent stated:

> [GCHHS] *provided no evidence of its allegations other than what appears to be cherry picked quotes showing no context, and the quotes appear to come from correspondence sent to agencies other than themselves. The quotes are given in a context to impute outrageous allegations. GCHHS admitted to the rampant rapes of patients in their care, and all other PIDs from me were upheld by the PCCC. I am seeking damages for the abuse outlined in the allegations. These damages claims were upheld by an independent statutory agency.*[66]

73. The respondent demanded that she be provided with the name of the external lawyer who had prepared the vexatious declaration application so that she could file a complaint against them with the Legal Services Commission for dishonest conduct.

74. As regards her referral to QFTAC, the respondent stated:

[64] [2014] AICmr 24 (28 February 2014).
[65] [2019] AICmr 14 (29 April 2019).
[66] Email dated 6 March 2020.

> *The act of referring me to fixated persons units or making a complaint about me does not corroborate allegations against me and on the contrary the persons referring me to the fixated persons unit have been sued.*[67]

75. The respondent contended that the reason that GCHHS had 'warned' its staff not to respond to contact from her was not because she caused them distress, but for the *'purpose of a criminal's right against self-incrimination'*.[68]

76. Lastly, the respondent argued that the trauma she has experienced and her various disabilities must be taken into account when assessing the tone and content of her communications with GCHHS:

> *A trauma informed approach is required to cater for disability now for me under DD Act and SD Act. This is where you consider the tone and reasonable response a victim would have towards their sexual assault perpetrator and torture perpetrators, and those that try to undermine redress by blackening the victim's name.*[69]
>
> *I would consider some offensive language as a response to torture, rape, relentless wrong prosecutions leaving me with lifelong societal isolation and poverty* [to] *be a sign of a gentle and reasonable person.*[70]

Discussion

77. The OAIC's Guideline states:

> *12.23 The occurrence of harassment or intimidation must be approached objectively. The issue to be resolved is whether a person has engaged in behaviour that could reasonably be expected on at least some occasions to have the effect, for example, of tormenting, threatening or disturbing agency employees. An agency will be expected to explain or provide evidence of the impact that a person's access actions have had on agency employees, though this evidence must be considered in context with other matters. …*
>
> *12.24 Harassment and intimidation may be established by a variety of circumstances that include:*
>
> - *the content, tone and language of a person's correspondence with an agency, especially if language is used that is insulting, offensive or abusive*
> - *unsubstantiated, derogatory and inflammatory allegations against agency staff*
> - *requests that are targeted at personal information of agency employees*
> - *requests that are designed to intimidate agency staff and force them to capitulate on another issue*
> - *requests of a repetitive nature that are apparently made with the intention of annoying or harassing agency staff*
> - *a person's refusal or failure to alter dubious conduct after being requested by an agency to do so.*
>
> *12.25 Those circumstances, if present in an individual case, must nevertheless be assessed objectively in a broader FOI context. It is not contrary to the requirements or spirit of the FOI Act that an FOI request will contain additional commentary or complaints by the FOI applicant. These may provide context for a request, or be compatible with the stated objects of the FOI Act of facilitating scrutiny, comment and review of government activity.*

[67] Email dated 20 February 2020.
[68] Email dated 24 February 2020.
[69] Email dated 6 March 2020. The respondent's references to the 'DD Act' and the 'SD Act" are to the *Disability Discrimination Act 1992* (Cth) and *Sex Discrimination Act 1984* (Cth).
[70] Email dated 24 February 2020.

78. I acknowledge that some examples of the respondent's emails provided by GCHHS in its submission appear to involve emails directed at other agencies, but which the respondent copied to GCHHS. I have not included those examples in the extracts I have set out above. While the tenor and content of the respondent's communications with other agencies may strictly not be relevant to a consideration of whether the respondent has engaged in harassing and intimidating conduct vis-à-vis the staff of GCHHS, I would simply observe that, by copying multiple agencies in to emails which contain the type of abusive and threatening language as noted in the examples set out above, it would be unsurprising to find that staff of those agencies who receive the emails, whether or not they are the primary recipient of the email, may nonetheless feel a heightened sense of anxiety or distress. Furthermore, some of those emails that are directed to other agencies but copied to GCHHS repeat the allegations made by the respondent against GCHHS staff.

79. In deciding whether a ground has been established under section 127(2) of the IP Act, the Information Commissioner cannot consider contact between an agency and a person that is not part of an access action. However, a broader pattern of conduct between a person and an agency may nevertheless be relevant in deciding whether or not to exercise the discretion under section 127(1) to grant the declaration. As GCHHS submitted, comments by an access applicant that go beyond making an IP Act request can be taken into account in deciding whether there has been an abuse of process.[71] The respondent's correspondence with GCHHS requests access to documents under the IP Act, but often ranges more broadly and includes complaints and allegations against GCHHS, and sometimes against individual employees.

80. I have considered objectively whether the respondent has engaged in behaviour that could reasonably be expected to have the effect of harassing or intimidating GCHHS employees. As it is the conduct which must be shown to involve an abuse of the process, it is not necessary that an intent to harass or intimidate be shown. Having regard to the examples of correspondence provided by GCHHS and set out above, I accept GCHHS's submission that:

- communications from the respondent often contain insulting and offensive language which impugns the professional reputation and integrity of staff and which they find insulting and distressing
- the respondent has made unsubstantiated, derogatory, inflammatory or defamatory allegations against staff; and
- communications from the respondent often contains threats of litigation, dismissal or public exposure.

81. I acknowledge that an IP access application may reasonably contain additional commentary or complaints by the access applicant. However, I consider that the language and content of the respondent's communications with GCHHS go far beyond what could be considered to be reasonable and within the spirit of the IP Act in terms of facilitating scrutiny, comment and review of the government's handling of personal information. Viewed objectively, I accept that staff would feel distressed and harassed by such communications.

82. There is nothing before me to establish that any of the very serious allegations made by the respondent against GCHHS, and against particular staff members, such as those of rape and torture, have been substantiated through any independent investigation or legal process. I am not aware, for example, as alleged by the respondent, that GCHHS has

[71] See paragraph 67.

admitted to the *'rampant rapes of patients in its care'*, nor that the Parliamentary Crime and Corruption Commission has upheld any complaints made by the respondent.

83. I accept that the threatening tone of the respondent's communications has the effect of intimidating staff of GCHHS to try to force them, through the fear of consequences, to accede to the respondent's demands. GCHHS has provided numerous examples of threats contained in the respondent's communications.

84. I have not taken account of GCHHS's submission regarding the relevance of the respondent's referral by QPS to QFTAC. In *CHHHS and Respondent*, the Right to Information Commissioner found that it was relevant, in establishing that the respondent had engaged in conduct that was harassing or intimidatory, that the agency had formally complained to police about the respondent's threatening behaviour and his alleged stalking of one of its staff members. In the circumstances of this case, however, where GCHHS has simply submitted that the respondent has been referred to the FPU, without further detail, its relevance to establishing the harassment or intimidation of GCHHS's staff is not established.

85. I have considered the other arguments raised by the respondent in support of her position as set out above at paragraphs 72-76 above. I do not find these arguments compelling in terms of mitigating the respondent's conduct. The respondent in effect submits that her behaviour must be viewed in light of her disabilities and the trauma she has suffered, and that when it is viewed as such, it cannot be considered unreasonable. However, as I have noted above, the question of harassment or intimidation must be viewed objectively, and it is irrelevant whether or not a respondent intends their behaviour to be of a harassing or intimidating nature, or how they consider their behaviour should be viewed. I acknowledge the respondent's submissions about her state of physical and mental health, and that she considers that GCHHS is to blame for trauma she believes she has suffered. However, viewed objectively, I am satisfied that her interactions with GCHHS are of such a nature as to amount to harassment and intimidation of GCHHS staff.

Finding

86. Based on the information before me, I am satisfied that the circumstances I have discussed above establish that access actions made by the respondent involved an abuse of process because they harassed or intimidated staff members of GCHHS.

Unreasonable interference with agency operations/wastage of public resources and funds[72]

87. I will consider whether the respondent's repeated engagement in access actions involves an abuse of process on the basis that the repeated engagement has unreasonably interfered[73] with GCHHS's operations. As part of that consideration, I will take account of GCHHS's related submissions that the repeated engagement also involves a wastage of public resources and funds.

[72] Paragraphs 63 to 92 of GCHHS's submission.

[73] 'Unreasonable' is relevantly defined as meaning '*exceeding the bounds of reason; immoderate; exorbitant*'. 'Interfere' is defined as '*to interpose or intervene for a particular purpose*' (Macquarie Dictionary, 7th edition). I note that the use of the phrase *'unreasonably interfering'* indicates a degree of interference with agency operations is permissible, before it will be regarded as unreasonable.

88. The OAIC Guidelines[74] list various factors relevant to assessing this issue, which I consider are relevant when considering the application of section 127(2)(b)(ii) of the IP Act:

- *the total number of a person's access actions to the agency in a specific period, and in particular, whether a high number of access actions has led to a substantial or prolonged processing burden on the agency or a burden that is excessive and disproportionate to a reasonable exercise by an applicant of the right to engage in access actions*

- *the impact of the person's access actions on* [IP] *administration in the agency, and in particular, whether a substantial workload impact has arisen from the nature of a person's access actions, such as multiple* [IP] *requests that are poorly-framed or for documents that do not exist, requests for documents that have already been provided or to which access was refused, or requests that are difficult to discern and distinguish from other complaints a person has against the agency. It is nevertheless important to bear in mind that an individual, who may lack both expertise in dealing with government and a close knowledge of an agency's records management system, may make access requests that are poorly framed, overlapping or cause inconvenience to an agency*

- *the impact of the person's access actions on other work in the agency, and in particular, whether specialist or senior staff have to be redeployed from other tasks to deal with* [IP] *requests, or the requests have caused distress to staff or raised security concerns that required separate action*

- *whether the agency has used other provisions under the* [IP] *Act to lessen the impact of the person's access actions on its operations …*

- *the size of the agency and the resources that it can reasonably allocate to* [IP] *processing*

- *whether the person has cooperated reasonably with the agency to enable efficient* [IP] *processing, including whether the person's access actions portray an immoderate prolongation of a separate grievance the person has against the agency, or the continued pursuit of a matter that has already been settled through proceedings in another dispute resolution forum*
  …
- *whether deficiencies in an agency's* [IP] *processing or general administration have contributed to or might explain a person's access actions...*

GCHHS's submissions

89. The relevant factors relied upon by GCHHS to establish that the respondent's access actions represent an unreasonable interference with the operations of GCHHS are:

(a) the number of access actions relative to the total access requests received by GCHHS
(b) the impact on IP administration and on the performance by GCHHS of its statutory functions caused by the nature of the respondent's access actions
(c) many of the respondent's applications seek access to the same or similar documents
(d) the unclear nature of many of the respondent's requests and her failure to reasonably cooperate and consult with GCHHS to enable processing of her IP access applications
(e) the respondent's use of the IP process to make complaints and air grievances that have already been dealt with; and

[74] Paragraph [12.27].

(f) the respondent's access actions are not capable of serving a legitimate purpose and dealing with them therefore involves a wastage of public resources and funds.

(a) Number of access actions relative to total access requests received by GCHHS

90. GCHHS submitted that the respondent made 19 access actions between 22 November 2016 and 16 August 2019, including eight external review applications. Of the seven of those external review applications that had been decided at the time of GCHHS making its vexatious declaration application, the respondent had appealed six to the Queensland Civil and Administrative Tribunal (**QCAT**).

91. I acknowledge that an agency's work in respect of an access application continues where the applicant appeals the decision to OIC and then to QCAT, and an agency may in fact expend considerable time and resources in participating in these appeals. I will discuss GCHHS's submissions regarding the work involved in dealing with the respondent's access actions further below.

92. GCHHS did not state how many access actions it had received in total during the relevant period. Hence, a relative comparison of the number made by the respondent against the total during the period is not possible.[75]

(b) The impact on IP administration/performance of statutory functions

93. GCHHS relevantly contended that:

- GCHHS is responsible for the delivery of public health services to the Gold Coast region
- its Legal Services and Information Access Services teams have responsibility for all legal matters within GCHHS, including disciplinary and professional competence matters, and play a vital role in supporting the effective delivery of GCHHS's statutory functions
- of the 10 staff employed in GCHHS's Legal Services and Information Access Services team, two officers are responsible for dealing with all RTI and IP matters
- both officers have been required to deal with the respondent's access actions and the correspondence generated by the respondent in connection with those actions
- a number of legal officers have also had to be diverted from their ordinary duties in order to assist with the respondent's matters;
- this diversion has been necessary in order to meet the statutory timeframes for processing RTI or IP requests made by other applicants, and has impacted upon the resources available to the Legal Services team to deal with important legal matters in an efficient and effective manner
- GCHHS has also retained external lawyers to assist it to manage the respondent's IP requests to try to lessen the impact upon staff and its available internal resources
- given the sensitivity and complexity of the respondent's various IP requests and the volume of associated complaints and correspondence, as well as the harassing and intimidating nature of much of her correspondence, it is necessary for the respondent's IP matters to be managed by experienced senior officers, and to allocate the work across a number of those officers so as to limit the negative impact on any one officer;

[75] I note that a relative comparison of the number of access actions made by an applicant during a period versus the total received by an agency for that same period is not always helpful in establishing that an individual's repeated engagement amounts to an abuse of process. If, for example, an agency receives only four access actions in a year, but three of them are made by the same individual, then relatively, that individual is a high user of the agency's resources. However, this small number of applications in total would not represent an excessive processing burden on the agency.

- the access actions have required escalation to senior legal officers and executive officers on many occasions; and
- it estimated that dealing with the respondent's access actions over an 8 month period in 2019 involved in excess of 300 hours (or 0.25 FTE) of work by Legal Services staff, which did not include time spent:
  - by other staff participating in consultation processes or in assisting to identify or collate documents;
  - dealing with the respondent's various requests, complaints and general correspondence outside of the IP Act process; or
  - time spent by external lawyers engaged by GCHHS to advise on and assist with the respondent's IP matters.

94. GCHHS submitted that the commitment of this volume of resources (including both staff time, external legal resources, and money) is excessive and disproportionate to any legitimate exercise of the respondent's rights under the IP Act and has significantly impacted GCHHS's ability to perform its IP Act and other important public health statutory functions in a timely, efficient and effective manner.

(c) Requests substantially the same

95. GCHHS contended that the respondent has received copies of her medical records on at least four separate occasions, but continued to make repeated requests, on almost precisely the same terms, for all correspondence sent to or from a particular practitioner in the Rheumatology department.[76] She also made repeated requests for the identity of those staff members who had accessed her health records.

(d) Requests that are difficult to discern/failure to cooperate to enable processing

96. GCHHS submitted that a number of requests were broad or unclear (or both) in scope and that the respondent refused to cooperate when GCHHS attempted to consult with her to assist her to clarify or narrow her requests, through either formal (under section 60 of the IP Act) or informal consultation processes. In a number of instances, the respondent either failed to respond at all, or responded in a combative or threatening manner that indicated her unwillingness to engage in meaningful consultation.

97. GCHHS provided numerous examples of responses by the respondent to attempts by GCHHS to consult with her. Some are as follows:

- *I will not narrow the scope*

  Once I later gain access to the documents proving you covered up rapes, torture and inflicted injuries on me, I will then file additional claims of restitution so you are in fact diverting much more resources and hundreds of thousands of dollars toward defending multiple litigation proceedings that will result immediately from your intended decision sent now.

  Your resources are going to be diverted defending the first lawsuit against you for the refusal to supply my medical information in the application. The hourly rate of the legal team is going to divert GCHHS resources a lot more than having an IP staff release my IP to me. I will then continue to file IP applications simultaneously to court actions that arise from this current application and each subsequent reprisal and refusal from you.[77]

[76] See paragraph 31 of GCHHS's submission and the terms of IP2367, IP3744, IP3784 and IP 3825 as set out in Annexure A.
[77] Email dated 10 January 2019 at 3.02am.

- *I am seeking a new application for any records this officer came across that the failure to disclose may be dangerous to me.*

  Since I have made so many applications that were ignored, would you accept a new application via email and put it in the proscribed [sic] *form yourself for me please, and also accept my previous proof of identity?*[78]

- *Dear GCHHS Medical negligence lawyer concealing your name to carry out perversion of the court of justice. The consultation with me ended and so did your extension period once I responded stating I will not narrow the scope, your extension time was cut off. Send the refusal decision immediately so I can put it to review and claim reprisal and victimisation in the legal proceedings triggered by your harassing treatment of my IP application …*

  The longer you delay AND obstruct release of my critical medical information, the more applications and legal proceedings I have to institute against you and the more work you create for several other government agencies who have to investigate the claims and complaints.[79]

- *I already told you I won't narrow the scope. Confirm receipt of my 11-1-19 IP application and start the clock … I don't want a consultation for this application. I want the decision ASAP.*[80]

- *For 3705 you stated that for the date range 1/1/11 to the end date of that application which was around December 2018 where I requested all emails about me, that as a conservative estimate, that the volume of responsive documents is approximately 1272. Could you send me a snapshot or print out of that preliminary search in order to enable me to specify the particular emails of relevance to me please and would you extend the search to the current date please?*

  Could you please also send me a list of staff who have looked up my medical records so I can select specific individuals and request their communications about me please?[81]

- *Do not send me hundreds of pages of paperwork. Get all the information you need by phone. I will record.*[82]

- *Please also add to this application any document which shows the full name of the person who has emailed me about this application, and please include in the application all emails sent to or from other persons about me which include the author who has communicated with me to process the IP application.*

  Please collect emails and letters to or from the 8 doctors and nurses named. …

  You have narrowed the following sections in this manner… This is unacceptable.

  Do not narrow this final point.[83]

- *… Refuse it* [the scope of the respondent's IP application] *and you'll be sued*.[84]

- *No consultation will be accepted.*

[78] Email dated 11 January 2019 at 9.37am.
[79] Email dated 15 January 2019 at 10.51am.
[80] Email dated 15 January 2019 at 4.17pm.
[81] Email dated 20 June 2019 at 11.06am.
[82] Email dated 11 July 2019 at 10.47am.
[83] Email dated 12 July 2019 at 9.37am.
[84] Email dated 15 July 2019 at 10.43am.

> *Please also include all current and prior warnings about me and include each person who created and authorised them.*
>
> *Provide full names of each person who created any of the records about me for the purposes of seeking compensation.*[85]

(e) Using the IP process to make complaints and air grievances that have already been dealt with

98. GCHHS submitted that the respondent has used correspondence generated in connection with her IP applications to ventilate grievances and pursue matters which have already been dealt with through other administrative processes, such as review by a regulator to whom the respondent has complained.

99. Prior to lodging her IP access applications, the respondent had submitted five complaints to a regulator, three of which the regulator decided to take no further action on, with the other two referred back to GCHHS to deal with, pursuant to the regulator's oversight.

100. In respect of the two complaints referred back to GCHHS, the Chief Executive sent the respondent correspondence outlining the investigation of all issues that she had raised, and stating that GCHHS had made reasonable attempts to facilitate the respondent's access to documents outside of the IP Act process.

101. GCHHS asserted that despite these actions by both it and the regulator, the respondent continued to raise the same issues:

> *The correspondence from* [the respondent] *confirms* [the respondent] *continues to use the IP process improperly and vexatiously by using it as a vehicle to raise and ventilate matters by way of making allegations and harassing and intimidating statements about GCHHS staff relating to the circumstances surrounding complaints raised with* [a regulator]. [The respondent] *continues to use the IP framework as a vehicle to engage in making complaints and airing her grievances for issues that have been raised and resolved in the appropriate forum.*[86]

(f) Wastage of public resources and funds

102. Relying on the submissions it had made in relation to items (a) to (e), GCHHS submitted that the respondent's repeated engagement with GCHHS amounted to an abuse of process because the work required to deal with her access actions involved a waste of valuable public resources and funds.

The respondent's submissions

103. Relevant to these issues, the respondent submitted that:

- GCHHS has a $2b budget
- applying for health records does not use an agency's resources to any significant extent
- she has not made an IP Act access action application to GCHHS for some months
- GCHHS does not consult in good faith and, by refusing calls, the respondent is *'kept in the dark'* about where her information is stored, so that applications become *'a guessing game'*
- her applications have very narrow scopes

[85] Email dated 12 August 2019 at 5.00pm.
[86] Paragraph 90 of GCHHS's submission.

- repetitive applications are caused by communication restrictions placed upon her
- *'this application attempts to deflect from the extraordinary and systemic breaches of the IP Act whereby after so many attempts at receiving my personal information, it would take 100 years to receive at the current rate of four documents per year*[87]
- GCHHS hired external lawyers to obstruct her and delay her proving her allegations
- she is a public interest advocate for other victims
- traumatised people are *'resource intensive customers and are not as easy to deal with as a charming, calm abuser who is not traumatised'*;[88] and
- tribunals do not have full discovery or discovery at all and human rights bodies and PID accepting bodies require applicants and claimants to collect hospital records via the IP Act and the RTI Act.

Discussion

104. As noted above, I do not consider that GCHHS has satisfactorily established that the number of IP access actions engaged in by the respondent is excessive, whether relative to the total number for the relevant period, or at all. However, as the factors discussed at paragraph 88 above indicate, the volume of access actions is not the only matter to consider when assessing whether an individual's access actions and their pattern of behaviour unreasonably interfere with an agency's operations.

105. I accept GCHHS's submission that it has had to divert legal staff to deal with the respondent's access actions and related correspondence, and that this has impacted upon the legal work usually performed by those officers, thereby interfering with GCHHS's operations. While GCHHS is undoubtedly a large agency with a substantial workforce, I am not satisfied that an agency's size is necessarily an accurate measure of resources available to it to deal with access actions under the IP Act or RTI Act.[89] I accept GCHHS's contention that, because of the complex and sensitive nature of the respondent's matters, as well as the harassing, intimidating and threatening nature of some of her correspondence, it has only a small number of senior legal and information access officers who are familiar with the background to the matters and who possess the experience, knowledge and skills necessary to enable them to deal with the access actions. GCHHS has stated that it has been forced to engage external lawyers to assist it to deal with the respondent's matters given the impact that they have had on staff, both in terms of workload and staff wellbeing.

106. GCHHS estimates that during an eight month period in 2019, its Legal Services team dedicated over 300 hours to dealing with the respondent's IP Act matters, which did not include a significant number of additional hours spent by staff outside the Legal Services team on consultation and document retrieval tasks, and by external lawyers. I am satisfied that the respondent's access actions have had a significant impact on the operational work of GCHHS and that the burden on the Legal Services and Information Access teams is excessive and disproportionate to a reasonable exercise by the respondent of her right to engage in access actions under the IP Act.

107. I am also satisfied, from a review of extracts from the respondent's correspondence supplied by GCHHS and set out above, that the respondent often refuses to cooperate in a reasonable manner when contacted by GCHHS to consult about the scope of her access applications. She responds with demands and new access requests, and threatens consequences if a decision on the original scope is not received. This prevents efficient processing of her applications and increases the processing burden on GCHHS.

[87] Email dated 6 March 2020.
[88] Email dated 24 February 2020.
[89] See the discussion at paragraphs 87-90 in *Services Australia and 'RS'* (Freedom of Information) [2020] AICmr 6.

108. GCHHS submits that the respondent is using the IP Act process to continue to agitate a number of grievances and complaints against GCHHS and its staff that have already been examined and dealt with, either by GCHHS or by the relevant regulator. While I have no doubt the respondent remains aggrieved by these matters, I am satisfied that she is using the IP Act process to continue to agitate them. Her IP access applications are repetitive and seek access to the same or substantially the same documents. She also continues to repeat her serious and unsubstantiated allegations against specific GCHHS staff members in her IP Act correspondence, not only with GCHHS, but also with OIC and other government agencies. In *Australian Securities and Investments Commission and Sweeney*,[90] the former Australian Information Commissioner stated:

> *Caution is needed in evaluating the public interest dimension of a person's FOI requests. Even so, the inescapable impression in Mr Sweeney's case is that many of his requests are aimed at re-agitating a grievance of long-standing that has been acknowledged and investigated by ASIC and other agencies, albeit not to his satisfaction. It is inappropriate that the FOI Act should become the platform to support the immoderate prolongation of a personal grievance. The impact and inconvenience of Mr Sweeney's requests upon ASIC operations is disproportionate to his campaign for 'justice' in relation to his own affairs and more widely.*

109. I make the same finding in respect of the respondent in this case. I have discussed, and rejected, at paragraphs 38-39 above, the respondent's claim that she makes her IP access applications in order to be a public interest advocate for others. I am satisfied that her access actions are made in pursuit of the continued ventilation of grievances or complaints against GCHHS which are unsubstantiated and/or which have been resolved and/or exhausted.

110. I have considered GCHHS's attempts to lessen the impact of the respondent's access actions on its other operations, including release of information under its administrative access scheme, and its use of section 60 of the IP Act to refuse to deal with a number of the respondent's applications. This practical refusal power under section 60 applies to a single IP request (or two or more similar requests) that will have an unreasonable workload impact on an agency. The vexatious applicant declaration power, however, is ordinarily focused on whether the pattern of an applicant's behaviour may be interfering unreasonably with an agency's operations.

111. On the information presented by GCHHS, it is apparent that the impact of the respondent's access actions on GCHHS's operations has not been substantially lessened by the steps taken by GCHHS.

112. As regards the associated wastage of public resources and funds involved in dealing with the respondent's access actions, the Right to Information Commissioner found in *CHHHS and Respondent* that an abuse of process was established where many of the access applications made by the respondent were incapable of serving a legitimate purpose and processing them would involve a wastage of public resources and funds.[91]

113. Based on the discussion I have set out above regarding,

- the repetitive nature of the respondent's IP access applications
- her use of the IP Act process to continue to ventilate and agitate grievances and complaints that have already been examined and dealt with
- her use of the IP Act process to intimidate and harass staff
- her refusal to cooperate in the processing of her applications; and

[90] [2013] AICmr 62.
[91] See *Re Cameron* at 220.

- the additional resources that GCHHS submits that it has been required to divert and devote to dealing with the respondent's matters,

I am satisfied that dealing with the respondent's access actions involves a wastage of public resources and funds.

114. All resources funded from the public purse to assist in the delivery of government services must be used prudently and efficiently, and this is particularly true of the funding provided for public health services, which represents a significant impost on taxpayers. Despite the respondent's submissions to the contrary, I consider that the time, resources and attendant cost of dealing with her IP access actions and related correspondence and complaints are excessive and unjustified.

Finding

115. Based on the information before me and for the above reasons, I am satisfied that the respondent's access actions are an abuse of process for the access action because they unreasonably interfere with GCHHS's operations and involve an associated wastage of public resources and funds.

Conclusion

116. Based on the material before me, 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 GCHHS's application and was given an opportunity to make submissions in response. I therefore make the declaration in the terms set out above.

117. While the declaration sought by GCHHS involved the respondent seeking the Information Commissioner's written permission before making any further access actions, I do not consider that the imposition of this condition is necessary given that the respondent is not currently residing in Queensland and is not engaging with GCHHS in terms of receiving medical treatment. It is therefore reasonable to expect that GCHHS has not generated any additional health records relating to the respondent since the date of the respondent's last access action.

118. I am satisfied that a declaration for a term of 24 months is appropriate in the circumstances where the respondent has been making access actions to GCHHS since 2016 in connection with the same or similar issues.

119. I make the declaration as a delegate of the Information Commissioner, under section 139 of the IP Act.

Philip Green
Privacy Commissioner
Date: 6 May 2020

APPENDIX

Significant procedural steps

Date	Event
13 December 2019	Application for a Declaration received from GCHHS
20 February 2020	Email to the respondent attaching a copy of the Application Email in response received from the respondent
21 February 2020	Email from the respondent requesting that redactions be removed from Application
24 February 2020	Two emails received from the respondent
2 March 2020	Email from the respondent expressly consenting to GCHHS disclosing her personal information as contained in the Application
4 March 2020	Email from GCHHS attaching an unredacted copy of the Application
5 March 2020	Email received from the respondent
6 March 2020	Email to respondent attaching an unredacted copy of the Application Email received from the respondent