



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Frecklington, MP and Queensland Treasury [2020] QICmr 51 (18 September 2020)</i></b>
<b>Application Number:</b>	<b>315387</b>
<b>Applicant:</b>	<b>Mrs Deborah Frecklington MP, Leader of the Opposition</b>
<b>Respondent:</b>	<b>Queensland Treasury</b>
<b>Decision Date:</b>	<b>18 September 2020</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - application for communications 'from' entity - communications from persons other than nominated entity deleted as irrelevant - whether deleted information was irrelevant to the terms of the access application - section 73 of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Treasury (**QT**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to communications '*...from Together Union to...*' QT officers.
2. QT located 14 pages of information, comprising emails from Together Union to QT, and emails sent by QT officers. QT released the former,<sup>2</sup> but deleted the latter (ie, emails sent by QT officers) on the basis they comprised irrelevant information under section 73(2) of the RTI Act.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to delete information as irrelevant.
4. I affirm QT's decision. Information it has redacted as irrelevant may be deleted on that basis.

#### Background

5. Significant procedural steps in the review are set out in the Appendix.

#### Reviewable decision

6. The decision under review is QT's decision dated 8 May 2020.

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<sup>1</sup> Application dated 11 March 2020.

<sup>2</sup> Subject to redaction to a small amount of information, access to which was refused on the ground it comprises personal information disclosure of which would, on balance, be contrary to the public interest: section 47(3)(b) of the RTI Act. The application does not contest QT's decision to refuse access to this information.

## Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>3</sup> particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that, in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>4</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act 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*'.<sup>5</sup>

## Information in issue

9. The information in issue comprises portions of information deleted as irrelevant from 14 pages located by QT in response to the applicant's access application.

## Issue for determination

10. The issue for determination is whether information may be deleted under section 73(2) of the RTI Act.

## Relevant law

11. Section 73 of the RTI Act relevantly provides:

**73 Deletion of irrelevant information**

- (1) *This section applies if giving access to a document will disclose to the applicant information the agency or Minister reasonably considers is not relevant to the access application for the document.*
- (2) *The agency or Minister may delete the irrelevant information from a copy of the document and give access to the document by giving access to a copy of the document with the irrelevant information deleted.*

...

12. Section 73 is not a ground for refusal of access,<sup>6</sup> but a mechanism to allow irrelevant information to be deleted from documents which are otherwise identified for release to an applicant.
13. In deciding whether information is irrelevant, it is necessary to consider whether the information is pertinent to the terms of the access application.<sup>7</sup>

## Discussion

14. A general approach to situations of the kind arising in this review was canvassed by Information Commissioner Albietz in *Robbins and Brisbane North Regional Health*

<sup>3</sup> Which came into force on 1 January 2020.

<sup>4</sup> *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].

<sup>5</sup> **XYZ**, at [573].

<sup>6</sup> All of which are stated in section 47 of the RTI Act.

<sup>7</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

*Authority*<sup>8</sup> (**Robbins**). In that case, an applicant had specifically applied for access<sup>9</sup> to correspondence from certain individuals to an agency. On external review, the applicant contended that the access application also encompassed correspondence from a further party to the relevant agency. Commissioner Albietz rejected this argument:

16. ...*In Re Cannon and Australian Quality Egg Farms Limited (Information Commissioner Qld, Decision No. 94009, 30 May 1994, unreported), at paragraph 10, I indicated that the interpretation of an FOI access application is not necessarily to be approached in the same manner as the interpretation of a statute or legal document, and in cases where the terms of an FOI access application are ambiguous it will rarely be appropriate to apply legal construction techniques in preference to consulting with the author of the words to clarify the author's intended meaning and agree upon more precise wording for the terms of the FOI access application. In this case, however, on any reasonable construction of Dr Robbins' FOI access application, it cannot be interpreted as applying to correspondence from Dr Trenfield to the NH&MRC. Dr Robbins specifically requested copies of correspondence from Dr Pope and Dr Campbell to the NH&MRC. There was no ambiguity in Dr Robbins' FOI access application that required clarification in this respect.*
15. While not addressing a specific statutory basis for deleting irrelevant information, the above observations can be usefully applied to questions of relevance arising under section 73(2) of the RTI Act. In this case, as in *Robbins*, the terms of the applicant's access application are not attended by any ambiguity: they clearly and explicitly request access to communications 'from Together Union'. Information of this kind has been released to the applicant.
16. The information in issue, however, is not 'from' Together Union, but from officers of QT. This information therefore:
- falls outside the terms of the access application; and
  - is not pertinent – not relevant – to that access application.
17. It was reasonable for QT to regard the information in issue as not relevant to the applicant's access application. Accordingly, that information may therefore be deleted as irrelevant, under section 73(2) of the RTI Act.<sup>10</sup>

## DECISION

18. I affirm the decision under review, insofar as it decided to delete information as irrelevant under section 73(2) of the RTI Act.
19. I have made this decision under section 110(1)(a) of the RTI Act, as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Louisa Lynch**  
**Right to Information Commissioner**

**Date: 18 September 2020**

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<sup>8</sup> (1994) 2 QAR 30.

<sup>9</sup> Under the repealed *Freedom of Information Act 1992* (Qld).

<sup>10</sup> OIC explained this conclusion to the applicant by letter dated 6 August 2020; the applicant made no submissions in reply, other than to request a formal decision (email dated 6 August 2020). OIC's 20 August 2020 invitation to the applicant to make submissions was not taken up.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
8 May 2020	OIC received the application for external review.
13 May 2020	OIC notified the applicant that the external review application had been received, and requested procedural documents from QT.
14 May 2020	QT provided the requested documents.
5 June 2020	OIC notified the applicant and QT that the external review application had been accepted, and requested further information from QT.
19 June 2020	QT provided the requested information.
6 August 2020	OIC wrote to the applicant conveying the preliminary view that QT's deletion of the information in issue as irrelevant was reasonable.  The applicant requested a formal decision.
20 August 2020	OIC wrote to the applicant, inviting submissions.
2 September 2020	OIC advised QT a decision was pending.