



## Decision and Reasons for Decision

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**Citation:** *Y78 and Department of Child Safety, Seniors and Disability Services [2023] QICmr 31 (28 June 2023)*

**Application Number:** 316655

**Applicant:** Y78

**Respondent:** Department of Child Safety, Seniors and Disability Services

**Decision Date:** 28 June 2023

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - information concerning a child known to the applicant - whether disclosure is prohibited by sections 186A(1) and/or 187(2) of the *Child Protection Act 1999* (Qld) - sections 67(1) of the *Information Privacy Act 2009* (Qld) and 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - information concerning a child known to the applicant - whether information is commercially available - sections 67(1) of the *Information Privacy Act 2009* (Qld) and 47(3)(f) and 53(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - duplicate documents and information - whether deleted information is irrelevant to the terms of the access application - section 88 of the *Information Privacy Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Children, Youth Justice and Multicultural Affairs (**Department**)<sup>2</sup> under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents containing references to them within certain files.<sup>3</sup>
2. The Department located 427 pages and decided to:<sup>4</sup>
  - release 123 pages and parts of 193 pages;<sup>5</sup> and

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<sup>1</sup> Access application dated 1 December 2021.

<sup>2</sup> Following a machinery of government change on 18 May 2023, the agency currently responsible for this external review is the Department of Child Safety, Seniors and Disability Services.

<sup>3</sup> The applicant identified files C21-1391, C20-2006, C19-2264, M19-2904 and M21-1463.

<sup>4</sup> Decision dated 1 April 2022.

- refuse access to 111 pages and parts of the 193 pages on the grounds the information comprises exempt information; information the disclosure of which would, on balance, be contrary to the public interest to disclose; or documents to which other access is available.
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.<sup>6</sup> On external review, the Department agreed to release some additional information to the applicant.
  4. For the reasons set out below, I affirm the Department's decision and find that access to the information remaining in issue may be refused on the grounds that it comprises exempt information or information to which other access is available, or it may be deleted on the basis that it is irrelevant information.

## Background

5. Significant procedural steps in this external review are set out in the Appendix.
6. During the external review, the applicant made submissions to OIC which largely raised issues that are beyond OIC's external review jurisdiction, such as the applicant's dissatisfaction with the Department and grave, ongoing concerns for the safety of the child known to them.<sup>7</sup> OIC has advised the applicant of the limits of OIC's jurisdiction, including that OIC cannot investigate complaints about the conduct of agencies.<sup>8</sup> In making this decision, I have considered the applicant's submissions to the extent they are relevant to the issues for determination in the context of the information remaining in issue.

## Reviewable decision

7. The decision under review is the Department's decision dated 1 April 2022.

## Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including the footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information, and the protection of families and children.<sup>9</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' those rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>10</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between similar pieces of Victorian legislation<sup>11</sup> that '*it is perfectly compatible with the scope of that positive right in the*

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<sup>5</sup> Note – The Department deleted information it considered to be irrelevant from some of these pages; however, it did not take these deletions into account when calculating the number of pages released in full or part.

<sup>6</sup> Email dated 10 April 2022.

<sup>7</sup> See submissions via emails and telephone calls noted in the Appendix to this decision..

<sup>8</sup> Letter dated 24 August 2022 and emails dated 9 December 2022 and 6 March 2023.

<sup>9</sup> Sections 21(2) and 26 of the HR Act.

<sup>10</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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from this position).

<sup>11</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

*Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*.<sup>12</sup>

### Information in issue

10. During the external review, the Department agreed to release some additional information to the applicant. The applicant also accepted<sup>13</sup> OIC's preliminary view<sup>14</sup> that:

- some information could be refused;<sup>15</sup> and
- the Department had conducted sufficient searches to locate information relevant to the access application, which the applicant had initially raised concerns about.<sup>16</sup>

11. The information remaining in issue is therefore limited to:

- **Category A Information**<sup>17</sup> – names, identifying information or other information about the personal affairs of individuals other than the applicant
- **Category B Information**<sup>18</sup> – court documents relating to proceedings in which the applicant was a party; and
- **Category C Information**<sup>19</sup> – information which is irrelevant to the scope of the access application.

### Issues for determination

12. In this review, the issues for determination are:

- whether access to the Category A Information may be refused on the ground that its disclosure is prohibited by sections 186A(1) and/or 187(2) of the *Child Protection Act 1999* (Qld) (**CP Act**), and it is therefore exempt information<sup>20</sup>
- whether access to the Category B Information may be refused on the ground that other access is available;<sup>21</sup> and
- whether the Category C Information may be deleted on the ground that it is irrelevant to the scope of the access application.<sup>22</sup>

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<sup>12</sup> XYZ at [573].

<sup>13</sup> During a telephone call with OIC on 26 August 2022, and later confirmed by the applicant in an email dated 26 August 2022 and reiterated in OIC's email to the applicant dated 2 September 2022.

<sup>14</sup> Conveyed by letter dated 24 August 2022.

<sup>15</sup> This information comprised legal advice and requests for legal advice, as well as mobile numbers and other non-routine personal work information of departmental staff.

<sup>16</sup> Email dated 10 April 2022, in which the applicant stated that '*Files M19-2904 and M21-1463 were not received from the RTI agency*'.

<sup>17</sup> Pages 54-62, 64, 67, 94-96, 100, 102-103, 107-121, 181-192, 194, 196-197 and 207 and parts of pages 1-2, 4-6, 8-16, 18-27, 29-31, 33, 36-37, 41, 43, 45, 47, 51, 53, 69-70, 72, 74-80, 82-83, 86, 89, 92-93, 97-99, 101, 104-106, 127, 129, 133-134, 136, 138-139, 142-143, 145, 148, 150, 153-154, 157-159, 165, 173-180, 193, 195, 198-199, 204, 206, 208-209, 211-219, 222-225 and 227 in File 01; parts of pages 1-3, 6, 9 and 11 in File 02; and pages 51-55, 140, 143-144 and 159-174 and parts of pages 1-2, 4-5, 8-12, 16, 18-19, 21-22, 25, 29, 41, 49, 57, 60, 64, 67-69, 72-73, 75, 77, 79-80, 82-84, 88, 94-100, 102-109, 130-131, 133-139, 141-142, 145-146, 157-158, 179, 182-184 and 189 in File 03.

<sup>18</sup> Pages 111-127 of 189 in File 03.

<sup>19</sup> Parts of pages 25, 51, 73, 78-79, 105, 122, 124-125, 127, 128, 130-131, 135-136, 143-144, 151-152, 168 and 200-201 of 227 in File 01; and parts of pages 35, 64-65, 68, 71, 73-74, 78-79, 86, 89, 110, 136-138 and 147-157 in File 03.

<sup>20</sup> Under section 67(1) of the IP Act and sections 47(3)(a), 48 and schedule 3, section 12(1) of the RTI Act.

<sup>21</sup> Under section 67(1) of the IP Act and sections 47(3)(f) and 53 of the RTI Act.

<sup>22</sup> Under section 88 of the IP Act.

## Category A Information

### Relevant law

13. An individual has a right to access documents of an agency to the extent they contain the individual's personal information.<sup>23</sup> However, this right is subject to some limitations under the IP Act and RTI Act.<sup>24</sup>
14. Relevantly, an agency may refuse access to a document to the extent the document comprises exempt information.<sup>25</sup> Exempt information includes information the disclosure of which is prohibited by a number of provisions listed in schedule 3, section 12(1) of the RTI Act, such as sections 186 to 188 of the CP Act.<sup>26</sup>
15. Section 186A(1) of the CP Act prohibits the disclosure of the identity of a notifier, or information from which the identity of the notifier could be deduced, to another person.<sup>27</sup> For section 186A(1) to apply, the following elements must be satisfied:
  - a person has notified a specified person<sup>28</sup> of harm or suspected harm to a child or unborn child
  - release of the information could disclose the identity of the notifier, or information from which their identity could be deduced; and
  - none of the exceptions in section 186A(2) apply.
16. Section 187(2) of the CP Act prohibits the disclosure of information about another person's affairs<sup>29</sup> obtained by specified individuals or entities involved in the administration of the CP Act.<sup>30</sup> For section 187(2) to apply, the following elements must be satisfied:
  - the information was received by a person listed in section 187(1) performing functions under or in relation to the administration of the CP Act
  - the information is about another person's affairs; and
  - none of the exceptions in section 187(3) or (4) apply.
17. However, information does not qualify as exempt information under schedule 3, section 12(1) of the RTI Act if the exception in schedule 3, section 12(2) of the RTI Act applies: *'if it is only personal information of the applicant'*.

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<sup>23</sup> Section 40(1)(a) of the IP Act. *Personal information* is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

<sup>24</sup> Section 67(1) of the IP Act sets out that an agency may refuse access to a document in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

<sup>25</sup> Section 47(3)(a) of the RTI Act.

<sup>26</sup> Section 48 of the RTI Act.

<sup>27</sup> At the time of the Department's decision on 1 April 2022, the applicable law regarding notifiers was set out in the then version of section 186 of the CP Act. Following amendments to the CP Act which commenced on 31 October 2022, the applicable law is now set out in sections 186 to 186C of the CP Act. In conducting merits review, OIC is generally required to have regard to the relevant facts and circumstances as they stand at the date of its decision, and ordinarily applies the law in force as at the date of its decision—see *Costello and Secretary, Department of Transport* (1979) 2 ALD 934 at [943], *Woodyatt and Minister for Corrective Services* (1995) 2 QAR 383 at [35] and [58] and *Palmer and Townsville City Council* [2019] QICmr 43 at [21]. Accordingly, this decision considers the currently applicable provisions of the CP Act.

<sup>28</sup> That is, the chief executive, an authorised officer, a police officer, a doctor or a nurse – see section 186 of the CP Act.

<sup>29</sup> The term 'person's affairs' is not defined in the CP Act or the *Acts Interpretation Act 1954* (Qld). *Macquarie Dictionary* (online at 26 June 2023) 'affair/s' (matters of interest or concern) (a private or personal concern), adopted in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30].

<sup>30</sup> As listed in section 187(1)(a) of the CP Act.

## Findings

18. Section 186A(1) prohibits the disclosure of a notifier *to another person*. The applicant's submissions indicate that it is their belief that they are the only notifier – and therefore that disclosure to the applicant would not be disclosure to another person. As the IP Act prohibits me from disclosing information in issue in these reasons,<sup>31</sup> I am unable to directly respond to this submission. However, having carefully considered the Category A Information, I am satisfied that *some* parts of it identify a person/s who made a notification/s under the CP Act. Accordingly, I am satisfied that these parts of the Category A Information are subject to the prohibition on disclosure in section 186A(1) of the CP Act and qualify as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).
19. In any event, I am satisfied that the entirety of the Category A Information comprises information about the 'affairs' of individuals other than the applicant – that is, matters of private or personal interest or concern to them. These individuals may be known to the applicant; however, this does not impact on my assessment that this information comprises the personal affairs of these other individuals. Further, I am satisfied that this information was received or obtained by departmental officers who were performing functions under or in relation to the administration of the CP Act, and note that public service employees are among the persons to whom section 187 of the CP Act applies.<sup>32</sup> Accordingly, I am satisfied that the Category A Information is subject to the prohibition on disclosure in section 187(2) of the CP Act and qualifies as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).
20. Sections 186A(2) and 187(3) and (4) of the CP Act contain a number of exceptions to the prohibitions on disclosure of information given or received under the CP Act. Of relevance to this review, section 187(4)(a) provides that access may be given to another person to the extent that the information is about the other person. Additionally, schedule 3, section 12(2) of the RTI Act provides that information is not exempt information under schedule 3, section 12(1) if the information is only personal information of the applicant. Where information is not about the applicant, or where the information is about the applicant but is not solely about the applicant,<sup>33</sup> or where an applicant's personal information cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
21. I have carefully considered the Category A Information and am satisfied that all of it is about individuals other than the applicant. I note that frequently, the Category A Information is also about the applicant, but this information about the applicant is intertwined with the information of the other individuals. I therefore find that the Category A Information is not solely about the applicant or only the personal information of the applicant. I am therefore satisfied that the exceptions in section 187(4)(a) of the CP Act and schedule 3, section 12(2) of the RTI Act do not apply to the Category A Information because it is not only about the applicant.

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<sup>31</sup> Section 121(3) of the IP Act.

<sup>32</sup> Section 187(1)(a)(i) of the CP Act.

<sup>33</sup> In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) of the CP Act applies to shared information about the applicant and other persons. She observed at paragraph 26: '*The [CP Act] exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the [CP Act] exception will not apply.*' See also the note to section 187(4) of the CP Act, which states '[f]or the disclosure of information that is about the person and a third party, see section 188C'. Section 188C of the CP Act provides that the chief executive may disclose information that is about a person and '*also about someone else*' to the person, except in certain specified circumstances.

22. The applicant submitted that the Category A Information should be released to them, as the Department has released similar information to them previously. I am unaware of whether or not this is the case. Regardless, while the Department has discretion to give access to information despite it qualifying as exempt information,<sup>34</sup> the Information Commissioner, and I as her delegate, do not.<sup>35</sup>
23. The applicant also proposed that the Category A Information be released to them with all names redacted. However, this proposal is not feasible, given the content and context of the Category A Information. The identity of a notifier or notifiers could still reasonably be deduced, and the identity of persons other than the applicant could still reasonably be ascertained and connected with matters of private or personal interest or concern to them.
24. The applicant's submissions detail their grave concerns for the child and convey genuine distress based on their understanding of the circumstances and departmental actions. While I acknowledge these submissions and the depth of feeling with which they have been conveyed, they do not raise matters I am able to take into consideration. The types of information set out in schedule 3 of the RTI Act are exempt information – that is, information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.<sup>36</sup> Once I am satisfied that the information qualifies as exempt information, there is no scope for me to take the matters raised by the applicant into account.
25. I consider the requirements of sections 186A(1) and/or 187(2) of the CP Act are met and no exceptions in the CP Act or schedule 3, section 12(2) of the RTI Act apply. I therefore find that the Category A Information is exempt information under schedule 3, section 12(1) of the RTI Act and access to it may be refused on this ground.

### **Category B Information**

#### **Relevant law**

26. An agency may also refuse access to a document because other access to the document is available as mentioned in section 53 of the RTI Act.<sup>37</sup>
27. Relevantly, section 53 of the RTI Act provides:

*For section 47(3)(f), other access is available to a document if –*

- (a) the applicant can reasonably access the document under another Act, or under arrangements made by an agency, whether or not the access is subject to a fee or charge; or*
- ...*
- (d) the document is commercially available.*

#### **Findings**

28. As set out in the Department's decision,<sup>38</sup> the Category B Information comprises:

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<sup>34</sup> Section 48(3) of the RTI Act.

<sup>35</sup> Section 118(2) of the IP Act.

<sup>36</sup> Section 48(2) of the RTI Act.

<sup>37</sup> Section 47(3)(f) of the RTI Act.

<sup>38</sup> Dated 1 April 2022.

*17 pages of court documents relating to proceedings to which [the applicant was] a party... [the applicant] may approach the relevant court registry directly to obtain a copy of relevant documents from the court file.*

29. Having carefully reviewed the material before OIC, I am satisfied that the Category B Information is a document filed in court proceedings to which the applicant was a party. The details on the first page of the document include the relevant court's name, registry and location, and name the applicant as a party to the proceedings. Also, a court seal is visible on all pages of the document. Given this information, I anticipate that a copy of this document is already in the applicant's possession. Regardless, I consider it reasonable to conclude that the applicant would be entitled to access the Category B Information by seeking a copy from the relevant court registry.
30. The relevant court is not established under a Queensland Act, and its acts, rules and regulations are not Queensland instruments. Therefore, the applicant cannot '*reasonably access the document ... under arrangements made by an agency*', as the relevant court is not an agency for the purpose of the IP Act and RTI Act.<sup>39</sup> Further, the applicant cannot '*reasonably access the document under another Act*', as that reference to another Act only encompasses Queensland Acts.<sup>40</sup> Given this, section 53(a) of the RTI Act does not apply.
31. However, I am satisfied that the Category B Information is available for purchase, should the applicant request a copy from the court registry and pay the fees prescribed for the registry's production of the file and the making of copies of each page of the document. I am therefore satisfied that the Category B Information is '*commercially available*' to the applicant for the purpose of section 53(d) of the RTI Act.<sup>41</sup>
32. Accordingly, I find that access to the Category B Information may be refused on the ground that other access is available.

### **Category C Information**

#### **Relevant law**

33. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to the terms of an access application. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>42</sup>

#### **Findings**

34. Prior to the external review, the Department advised the applicant that, unless the applicant advised otherwise, it would proceed on the basis that the applicant was not interested in accessing duplicate documents or information.<sup>43</sup> It is understood that the

<sup>39</sup> Sections 17 of the IP Act and 14 of the RTI Act.

<sup>40</sup> Noting section 6 of the *Acts Interpretation Act 1954* (Qld) and Applegarth J's comments regarding '*under an Act*' made in relation to that phrase as it appears in section 16(1)(a)(ii) of the RTI Act in *Davis v City North Infrastructure* [2011] QSC 285 at [24].

<sup>41</sup> See also *CN18HL and Department of Child Safety, Youth and Women* [2018] QICmr 34 at [30]-[31].

<sup>42</sup> *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [15] citing O80PCE and *Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>43</sup> Department's letter dated 9 December 2021.

applicant did not respond to the Department to confirm that they did, in fact, seek access to such documents and information. Given these circumstances, I consider that duplicate documents and information were excluded from the scope of the access application at this time.

35. I have carefully considered each of the portions of information that comprise the Category C Information. In each instance, I have identified that this information duplicates information that has been considered elsewhere among the 427 pages located by the Department in response to the access application.
36. Based on the scope of the application and given that the Category C Information comprises duplicate information which falls outside this scope, I find that the Category C Information can be deleted from the copies of the documents released to the applicant under section 88 of the IP Act.

## **DECISION**

37. For the reasons set out above, I affirm the Department's decision and find that:
  - access to the Category A Information may be refused on the ground that it comprises exempt information the disclosure of which is prohibited by the CP Act<sup>44</sup>
  - access to the Category B Information may be refused on the ground that other access is available;<sup>45</sup> and
  - the Category C Information may be deleted on the basis that it is not relevant to the access application.<sup>46</sup>
38. I have made this decision as a delegate of the Information Commissioner under section 139 of the IP Act.

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**A Rickard**  
**Assistant Information Commissioner**

**Date: 28 June 2023**

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<sup>44</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the RTI Act.

<sup>45</sup> Under section 67(1) of the IP Act and sections 47(3)(f) and 53(d) of the RTI Act.

<sup>46</sup> Under section 88(2) of the IP Act.



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

<b>Date</b>	<b>Event</b>
10 April 2022	OIC received an email from the applicant seeking external review.
11 April 2022	OIC requested preliminary documents from the Department.
19 April 2022	OIC received preliminary documents from the Department.
21 April 2022	The applicant provided submissions to OIC verbally.
17 May 2022	The applicant provided submissions to OIC verbally.
31 May 2022	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue from the Department.
7 June 2022	The applicant provided submissions to OIC verbally.
14 June 2022	OIC received the information in issue from the Department.
12 July 2022	The applicant provided submissions to OIC verbally.
22 July 2022	The applicant provided submissions to OIC verbally.
7 August 2022	The applicant provided written submissions to OIC.
17 August 2022	OIC conveyed a preliminary view to the Department.
17 August 2022	The applicant provided submissions to OIC verbally.
24 August 2022	OIC conveyed a preliminary view to the applicant.
26 August 2022	The applicant provided submissions to OIC verbally, accepting OIC's preliminary view in relation to some of the information in issue. The applicant provided further written submissions to OIC.
31 August 2022	The Department requested an extension of time to respond to OIC's preliminary view.
1 September 2022	OIC granted the Department an extension of time to respond to OIC's preliminary view.
2 September 2022	OIC emailed the applicant to confirm the information remaining in issue.
30 September 2022	The Department provided written submissions to OIC.
18 October 2022	The applicant provided submissions to OIC verbally.
4 December 2022	The applicant provided written submissions to OIC.
8 December 2022	OIC conveyed a second preliminary view to the Department. The applicant provided submissions to OIC verbally.
21 December 2022	The Department provided written submissions to OIC and confirmed it was prepared to release further information to the applicant.

Date	Event
4 January 2023	OIC requested the Department release the further information to the applicant. OIC conveyed a second preliminary view to the applicant.
5 January 2023	The applicant provided submissions to OIC verbally.
9 January 2023	OIC received confirmation from the Department that the further information had been released to the applicant.
31 January 2023	The applicant provided written submissions to OIC.
7 February 2023	The applicant provided submissions to OIC verbally. The applicant provided further written submissions to OIC.
6 March 2023	OIC confirmed its preliminary view to the applicant.