



Decision and Reasons for Decision

Citation:	<i>59BZEW and Department of Environment and Science [2018] QICmr 36 (17 August 2018)</i>
Application Number:	313764
Applicant:	59BZEW
Respondent:	Department of Environment and Science
Decision Date:	17 August 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - where the agency had previously decided to refuse access to the requested documents - whether the later application, on its face, discloses any reasonable basis for again seeking access - section 43 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of National Parks, Sport and Racing² (**Department**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to certain documents about the Crime and Corruption Commission (**CCC**)³ investigation into the applicant's complaint about commercial tour operators and the Department.
2. The Department decided⁴ to refuse to deal⁵ with the access application on the basis that the applicant had previously applied to the Department for the same documents and the application did not, on its face, disclose any reasonable basis for again seeking access to the documents.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.

¹ Access application dated 15 December 2017.

² Machinery of government changes on 12 December 2017 transferred relevant responsibility from the Department of National Parks, Sport and Racing (**DNPSR**) to the Department of Environment and Science (**DES**). Accordingly, existing *Right to Information Act 2009 (Qld)* (**RTI Act**) and *Information Privacy Act 2009 (Qld)* (**IP Act**) applications and reviews involving certain applications made to the DNPSR before the machinery of government changes now rest with DES. For ease of reference, I will simply refer to the 'Department'.

³ The applicant applied for access to certain Crime and Misconduct Commission documents. On 1 July 2014, the governing legislation of the Crime and Misconduct Commission (**CMC**) changed from *the Crime and Misconduct Act 2001 (Qld)* to the *Crime and Corruption Act 2001 (Qld)*. The name of the CMC changed on this date to the Crime and Corruption Commission (**CCC**). For ease of reference, I will simply refer to the 'CCC'.

⁴ Decision dated 13 February 2018.

⁵ Section 43(3)(b)(iii) of the RTI Act.

4. For the reasons set out below, I affirm the Department's decision to refuse to deal with the application, as the requested documents were the subject of a previous application under the RTI Act and this later access application does not, on its face, disclose any reasonable basis for again seeking access.

Background

5. Significant procedural steps relating to the application and external review are set out in the Appendix.

Reviewable decision

6. The decision under review is the Department's decision dated 13 February 2018.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Issue for determination

8. The issue for determination is whether the Department may refuse to deal with the access application under section 43 of the RTI Act, on the basis that the applicant has previously sought access to the same information under the RTI Act.

Relevant Law

9. Under section 43 of the RTI Act, an agency may refuse to deal with an access application in certain circumstances, including relevantly, where:
 - (i) an applicant makes an access application to an agency, and then a subsequent access application to the same agency seeking access to one or more of the same documents⁶
 - (ii) the agency refused to deal with the first application;⁷ and
 - (iii) the later application does not, on its face, disclose any reasonable basis for again seeking access to the document(s).⁸

Findings

Does the later application seek access to one or more of the same documents sought under a previous application?

10. Yes, for the following reasons.
11. In an access application received by the Department on 27 July 2017 (the **First Application**), the applicant sought access to a number of particular documents, including initial, draft, and final reports about a CCC investigation into a complaint made by the applicant about commercial tour operators and the Department between 1 February 2009 and 28 February 2010.

⁶ Section 43(1) of the RTI Act.

⁷ Section 43(3)(b)(iv) of the RTI Act.

⁸ Section 43(1)(b) of the RTI Act.

12. The access application that is the subject of this review was received by the Department on 15 December 2017 (the **Later Application**). The Later Application sought access to the same documents from the same Department as the First Application.⁹ The applicant acknowledges that the scope of the Later Application is for the 'exact same information' as the First Application.¹⁰
13. I am satisfied that the Later Application seeks access to the same documents sought under the First Application as both applications relate to identical documents made to the same Department regarding a CCC investigation into the applicant's complaint about commercial tour operators and the Department between 1 February 2009 and 28 February 2010 (**Requested Information**).

Was the Department's decision on the First Application to refuse to deal with the first application under section 40 of the RTI Act?

14. Yes, for the reasons that follow.
15. The Department's decision¹¹ on the First Application was to refuse to deal with the application¹² on the basis that all of the Requested Information consisted of matter relating to the CCC investigation and was therefore considered exempt pursuant to Schedule 3, section 10(4) of the RTI Act (**CCC exemption**).
16. I am satisfied that the Department's decision in relation to the First Application was to refuse to deal with the application under section 40 and Schedule 3, section 10(4) of the RTI Act.

Does the Later Application, on its face, disclose any reasonable basis for again seeking access to the Requested Information?

17. No, for the following reasons.
18. The Later Application did not refer to the First Application. The Later Application restated the scope and timeframes from the First Application.
19. There is nothing *on the face of* the Later Application which discloses a reasonable basis for the applicant to again seek access to the Requested Information. On external review, the applicant submitted:

These documents are absolutely in the public's interest; the CMC decided it was important enough to have an investigation so they should be disclosed.

Furthermore, the documents that I have accessed through the Freedom of Information show that [another tour company] under declared the number of visitors going into [tourist attraction] over a 10 year period...

*Also I have copies of documents showing not one, but thousands of breaches of the EPA Act that have never been prosecuted...*¹³

⁹ The Department contacted the applicant by telephone on 3 January 2018 to clarify the wording of the scope of the Later Application. The applicant confirmed the revised wording of the scope of the Later Application in an email to the Department dated 4 January 2018. Although the wording of the scope of the Later Application was revised, the documents sought by the applicant remained the same.

¹⁰ Submission received by OIC on 24 April 2018.

¹¹ Dated 8 September 2017.

¹² Under section 40 of the RTI Act.

¹³ External review application dated 15 February 2018.

*Although it is fair to say that the scope of the documents seeks the exact same information this is for an extremely important reason. This reason is justice.*¹⁴

20. The applicant also submitted:

..there was a gap in the law in the original decision which no one has considered...the documents were considered exempt information....In law we are always taught there is always an exception to the rule.

[The applicant] was the sole person and the first person to bring this issue to the attention of the Department and OIC, thus he is connected with the outcome of the document... Therefore, it is a false statement to say that the document was not about [the applicant]...

Since the investigation was finished by the CMC many years ago, the only dispute is the ambiguity of the word about. This could in fact be a mistake of law.

...

Another factor that is imperative to consider is that [the applicant] was interviewed on two occasions. His information from two different occasions were used in [the investigator's] reports, on top of countless other pieces of information, so how is it fair to say that the information is not about, connected with or in relation to [the applicant]?...¹⁵

21. In these submissions, the applicant is seeking to better explain why there was a reasonable basis for making the Later Application. However, the terms of section 43(1)(b) of the RTI Act are clear – a reasonable basis for making a later application must be disclosed on the face of the access application itself.
22. Nevertheless, to the extent that the applicant's submissions relate to the public interest, or his contention that there was an error of law by the decision-maker on the First Application,¹⁶ the issue for determination is whether the Department was entitled to rely on section 43 of the RTI Act to *refuse to deal* with the Later Application. For this purpose, I am not required to consider the reasoning in the Department's decision relating to the First Application. On that basis, these submissions are not relevant to the issue for determination in this external review.
23. I also note that the applicant had the opportunity to apply for internal or external review of the Department's decision on the First Application in relation to concerns raised in the applicant's submissions, but acknowledges that he did not do this.¹⁷ During external review, the applicant advised that since having received the decision on his First Application, he has been made aware that there is an appeals process through the Queensland Civil and Administrative Tribunal.¹⁸ On the information before me, I am satisfied that the applicant was made aware of his review rights at the time of receiving the Department's decision on the First Application,¹⁹ but did not exercise those rights. I am not satisfied that seeking to re-enliven review rights is a reasonable basis for the applicant to again seek access to the Requested Information.
24. Nothing in the Later Application or the applicant's submissions on external review persuades me that there is a reasonable basis to again seek access to the Requested Information.

¹⁴ Submission received by OIC on 24 April 2018.

¹⁵ Submission received by OIC on 24 April 2018.

¹⁶ Submission received by OIC on 24 April 2018.

¹⁷ In the telephone discussion with OIC on 27 March 2018.

¹⁸ In the telephone discussion with OIC on 22 March 2018.

¹⁹ Dated 8 September 2017.

DECISION

25. On the basis set out above, I am satisfied that the Later Application seeks access to documents sought under the First Application. Accordingly, I affirm the Department's decision to refuse to deal with the access application to the extent it seeks access to the Requested Information under section 43(3)(b)(iv) of the RTI Act.
26. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Shanley
Acting Assistant Information Commissioner

Date: 17 August 2018

APPENDIX**Significant procedural steps**

Date	Event
20 February 2018	OIC received the external review application dated 15 February 2018.
21 February 2018	OIC notified the applicant and the Department it had received the external review application. OIC requested relevant procedural documents from the Department.
28 February 2018	OIC received the requested information from the Department.
22 March 2018	OIC provided the applicant with an update on the status of the review by telephone, and the applicant made oral submissions. OIC made enquiries of the Department about a previous application by the applicant, and the Department responded to these enquiries by telephone.
23 March 2018	OIC notified the Department that the external review had been accepted. OIC also notified the applicant that the external review had been accepted and conveyed a preliminary view to the applicant and invited him to make submissions in response.
27 March 2018	The applicant provided oral submissions in response to the preliminary view.
28 March 2018	The applicant requested documents from OIC and sought an extension to respond to OIC's preliminary view.
4 April 2018	OIC advised the applicant that the requested documents could not be provided and granted the applicant an extension until 24 April 2018 to provide submissions in support of his case.
24 April 2018	OIC received further submissions from the applicant in response to OIC's preliminary view.
10 May 2018	OIC requested from the Department additional information about the previous application by the applicant and related decision by the Department.
15 May 2018	OIC received the requested information from the Department.
23 May 2018	OIC provided the applicant with an update on the status of the review.