Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***L65 and Queensland Police Service* [2024] QICmr 14 (17 April 2024)**
Application Number:	**317743**
Applicant:	**L65**
Respondent:	**Queensland Police Service**
Decision Date:	**17 April 2024**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATIONS - SUBSTANTIAL AND UNREASONABLE DIVERSION OF RESOURCES - documents relating to the applicant and industrial matters with the agency - whether dealing with the access applications would substantially and unreasonably divert agency resources from their use in performing its functions - sections 60 and 61 of the *Information Privacy Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied[1] to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**), for access to various documents created between 13 April 2022 and 21 May 2023 about; Queensland Industrial Relations Commission (**QIRC**) matters involving the applicant; investigations of contraventions of the 'Police Commissioners Direction No 12' and 'Police Commissioners Direction No 14' involving the applicant (**Investigations**); show cause and suspension proceedings and processes that were pursued against the applicant by the Queensland Police Service and any anticipated proceedings or processes of that nature (**Show Cause Processes**); and, all statements, reports and emails from a named Superintendent and the applicant's supervisor (also named) relating to the QIRC dispute, the investigation and all show cause and suspension proceedings and processes (**First Access Application**).

2. The applicant made a second application[2] for the same documents for the time period 4 October 2021 to 12 April 2022 (**Second Access Application**).

3. QPS notified[3] the applicant, under section 61 of the IP Act, that it intended to refuse to deal with the applicant's First Access Application and Second Access Application

[1] First Access Application dated 21 May 2023 and received by QPS on 22 May 2023 which became compliant on 9 June 2023.
[2] Second Access Application dated 3 August 2023 and received by QPS on the same date which became complaint on 24 August 2023.

(which I will refer to collectively in this decision as the **Access Applications**) under section 60 of the IP Act on the basis that the work involved in dealing with the Access Applications would, if carried out, substantially and unreasonably divert the resources of QPS from their use by the agency in performance of its functions. QPS invited the applicant to either confirm or narrow the scope of the Access Applications.

4. The applicant confirmed the scope of the Access Applications, advising QPS that she intended to proceed with the Access Applications in their current form.[4] On 28 November 2023[5] QPS decided to refuse to deal with the applicant's Access Applications under section 60 of the IP Act.

5. The applicant applied to this office,[6] the Office of the Information Commissioner (**OIC**) for external review of the QPS decision.

6. For the reasons outlined below, I affirm the QPS decision and find that QPS may refuse to deal with the Access Applications pursuant to section 60(1)(a) of the IP Act, on the ground that the work involved in dealing with the applications would, if carried out, substantially and unreasonably divert the resources of QPS from their use by the agency in performance of its functions.

Background

7. On 7 September 2021, pursuant to s 4.9 of the *Police Service Administration Act 1990*, the Commissioner of the QPS issued the *Instrument of Commissioner's Direction No. 12* concerning the mandatory COVID-19 vaccination and mask requirements for police officers and certain staff members ('Direction No. 12'). The applicant applied for an exemption against the mandatory requirement that she receive the required COVID-19 vaccination. By email dated 14 October 2021, the applicant was advised that the exemption was not granted. Various industrial proceedings ensued in QIRC commencing with an appeal filed on 2 November 2021 against the QPS decision to refuse the exemption.[7]

8. The applicant made the First Access Application to obtain documents created in relation to the QIRC proceedings, Investigations and Show Cause Processes but shortly after making the First Access Application realised the time frame for the scope of the application needed to be larger.[8] The applicant sought to expand the scope time frame of the First Access Application with QPS but QPS refused to do so.[9] Consequently, the applicant lodged the Second Access Application for the same documents but for the period of time leading up to the commencement date of the First Access Application time frame.

9. Significant procedural steps relating to the external review are set out in the Appendix.

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[3] By letter from the Right to Information and Subpoena Unit (**Right to Information and Privacy Unit**) of QPS dated 13 November 2023 and emailed on that same date.
[4] Email to QPS dated 26 November 2023.
[5] QPS sought from the applicant and were granted a number of extensions of time within which to make its decision on the Access Applications and the decision was made within the extended time.
[6] 22 December 2023.
[7] The information in this paragraph was sourced from a published decision of the QIRC involving the applicant and the QPS. I have not included the case citation here in order to protect the applicant's privacy.
[8] As noted by the applicant in her email to QPS dated 30 June 2023.
[9] Email from the applicant to QPS dated 30 June 2023 and emails from QPS to the applicant dated 25 July 2023 and 3 August 2023.

Reviewable decision

10. The decision under review is QPS's decision dated 28 November 2023 refusing to deal with the applicant's Access Applications on the ground that the work involved in dealing with the applications would, if carried out, substantially and unreasonably divert the resources of QPS from their use by the agency in performance of its functions.

Evidence considered

11. Evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and the Appendix).

12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.[10] I consider a decision maker will be *'respecting'* and *'acting compatibly with'* that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.[11] I have acted in this way in making this decision.[12] I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:[13] *'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'.[14]

Issue for determination

13. The issue for determination is whether QPS can refuse to deal with the Access Applications under section 60 of the IP Act on the basis that dealing with them would substantially and unreasonably divert QPS's resources from the performance of its functions.

Relevant law

14. Parliament intends that an agency receiving an access application will deal with that application unless dealing with the application would, on balance, be contrary to the public interest.[15]

15. Relevantly, in circumstances where an agency is dealing with 2 or more access applications from the same applicant, section 60(1) of the IP Act permits an agency to refuse to deal with all the access applications if the agency considers the work involved in dealing with them would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.

16. Of equal relevance, section 60(1) of the IP Act also applies in circumstances where an agency is dealing with only one access application and the work involved in dealing with the one application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.

17. The phrase *'substantially and unreasonably'* is not defined in either the IP Act, its companion, the *Right to Information Act 2009* (Qld) (**RTI Act**) or the *Acts Interpretation*

[10] Section 21 of the HR Act.
[11] *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].
[12] In accordance with section 58(1) of the HR Act.
[13] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[14] *XYZ* at [573].
[15] Section 58 of the IP Act.

Act 1954 (Qld). It is therefore appropriate to consider the ordinary meaning of these words.[16] The dictionary definitions[17] of those terms relevantly provide:

> *'substantial'* means *'of ample or considerable amount, quantity, size, etc.'*
> *'unreasonable'* means *'exceeding the bounds of reason; immoderate; exorbitant.'*

18. In deciding whether dealing with an application would substantially and unreasonably divert an agency's resources from the performance of its functions, the IP Act requires a decision-maker to have regard to the resources that would be used for:[18]

- identifying, locating, or collating the documents
- making copies, or edited copies of any documents
- deciding whether to give, refuse, or defer access to any documents, including resources that would be used to examine any documents or conducting third party consultations; and
- notifying any final decision on the application.

19. The question of whether the impact on an agency's resources would be 'substantial' is a question of fact. In previous decisions, the Information Commissioner has held that relevant factors to consider include:[19]

- the agency's resources and size[20]
- the other functions of the agency;[21] and
- whether and to what extent processing the application will take longer than the legislated processing period of 25 business days.[22]

20. In determining whether the work involved in dealing with an application is unreasonable, it is not necessary to show that the extent of the unreasonableness is overwhelming.[23] Rather, it is necessary to weigh up the considerations for and against, and form a balanced judgement of reasonableness, based on objective evidence.[24] Factors that have been taken into account in considering this question include:[25]

- whether the terms of the request offer a sufficiently precise description to permit the agency, as a practical matter, to locate the documents sought
- the public interest in disclosure of documents
- whether the request is a reasonably manageable one, giving due but not conclusive, regard to the size of the agency and the extent of its resources usually available for dealing with access applications
- the agency's estimate of the number of documents affected by the request, and by extension the number of pages and the amount of officer time
- the reasonableness or otherwise of the agency's initial assessment and whether the applicant has taken a cooperative approach in rescoping the application
- the timelines binding on the agency

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[16] Section 14B of the *Acts Interpretation Act 1954* (Qld).
[17] Macquarie Dictionary Online www.macquariedictionary.com.au
[18] Section 60(2) of the IP Act.
[19] This is not an exhaustive list.
[20] *Middleton and Building Services Authority* (Unreported, Queensland Information Commissioner, 24 December 2010) at [34]-[37].
[21] *60CDYY and Department of Education and Training* [2017] QICmr 52A (7 November 2017) at [18].
[22] *ROM212 and Queensland Fire and Emergency Services* [2016] QICmr 35 (9 September 2016) at [40].
[23] *F60XCX and Department of the Premier and Cabinet* [2016] QICmr 41 (13 October 2016) at [90].
[24] *ROM212 and Queensland Fire and Emergency Services* [2016] QICmr 35 (9 September 2016) at [42], adopting *Smeaton v Victorian WorkCover Authority (General)* [2012] VCAT 1550 (***Smeaton***) at [30].
[25] *Smeaton* at [39].

- the degree of certainty that can be attached to the estimate that is made as to the documents affected and hours to be consumed; and in that regard, importantly whether there is a real possibility that processing time may exceed to some degree the estimate first made; and
- whether the applicant is a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications.

21. The power to refuse to deal with applications under section 60 of the IP Act can only be exercised if the preconditions set out by section 61 of the IP Act have been met. Section 61 sets out the procedural steps that an agency must take before deciding to refuse to deal with applications on this basis, being to:

- give the applicant written notice[26]
- give the applicant a reasonable opportunity to consult with the agency;[27] and
- as far as reasonably practicable, give the applicant any information that would help the making of an application or applications in a form that would remove the ground for refusal.[28]

22. The written notice must:[29]

- state an intention to refuse to deal with the application or applications
- advise that, for the prescribed consultation period[30] for the notice, the applicant may consult with the agency with a view to making the applications in a form that would remove the ground for refusal; and
- state the effect of sections 61(2) to (6) of the IP Act, which is as follows:
  - following any consultation, the applicant may give the agency written notice either confirming or narrowing the applications
  - if the applications are narrowed, section 60 applies in relation to the changed applications, but the procedural steps in section 61 do not apply to them; and
  - if the applicant fails to consult[31] after being given the notice, the applicant is taken to have withdrawn the applications at the end of the prescribed consultation period.

Findings

Requirement to consult

23. As noted in paragraph 3 above, QPS gave notice to the applicant of its intention to refuse to deal with the Access Applications (**Notice**). The Notice stated QPS's intention to refuse to deal with the Access Applications under section 60 of the IP Act and advised the applicant that she had until a specified date[32] to consult with a view to making the applications in a form that would remove this ground as a basis for refusing to deal with the Access Applications. The Notice also stated that the applicant may give written notice confirming or narrowing the scope of the Access Applications and, if she did not respond, she would be taken to have withdrawn her applications. Considering

[26] Section 61(1)(a) of the IP Act.
[27] Section 61(1)(b) of the IP Act.
[28] Section 61(1)(c) of the IP Act.
[29] Section 61(1)(a) of the IP Act.
[30] Under section 61(6) of the IP Act, the '*prescribed consultation period*' for a written notice under section 61(1)(a) is 10 business days after the date of the notice, or the longer period agreed by the agency and the applicant (whether before or after the end of the 10 business days).
[31] Under section 61(5) of the IP Act, failure to consult includes the applicant not giving written notice either confirming or narrowing the application under section 61(2) of the IP Act.
[32] Being 27 November 2023.

the content of the Notice, I am satisfied that the Notice complied with the requirements of the IP Act.

24. QPS's Notice explained that the applicant could change her Access Applications to make them manageable by reducing the scope of the applications to particular documents rather than a broad request for all documents in relation to the QIRC matters, the Investigations and the Show Cause Processes. The Notice also stated that in reducing the scope of the Access Applications in this way the applicant could make subsequent future applications to QPS for other information.

25. Based on the above, I find that QPS, as far as was reasonably practicable, gave the applicant information that would help them to make the Access Applications in a form that removed the ground for refusal and complied with the prerequisite requirements of section 61 of the IP Act prior to deciding under section 60 of the IP Act to refuse to deal with the applicant's Access Applications.

26. In response to the Notice, the applicant stated (**Notice Response**):[33]

> *'Your suggestion to narrow the scope of my request presents a challenge, as the nature of my inquiry inherently requires a broad range of documents. These documents, which include recordings, reports, emails, interview notes, and diary notes, are crucial for a complete and accurate representation of the events and actions taken… Given the complexity and significance of the information sought, I believe my request, in its current scope, is justified. I acknowledge the strain on resources, but I also emphasize the importance of this information in addressing the serious concerns I have raised. In light of this, I respectfully request that my applications be processed as submitted. I am open to discussing any feasible solutions or compromises that might assist in expediting the process without compromising the breadth of information necessary for my case. I look forward to your understanding and cooperation on this matter. Please do not hesitate to contact me if a discussion would be helpful.'*

27. No further communication was entered into and QPS issued[34] its decision to refuse to deal with the applicant's Access Applications. I note the applicant expressed concern in her external review application[35] that the decision was issued 'very quickly' after her Notice Response, however, I consider that the applicant was very clear in the Notice Response that she required the entire scope of the Access Applications to be processed and, therefore, it was not necessary for QPS to engage further on the issue. Additionally, QPS had reached its position regarding the work involved in processing the Access Applications prior to issuing the Notice and the quick turnaround between the applicant's Notice Response and the QPS decision reflected that and is not unreasonable.

What work would be required to process the access application?

28. QPS stated in its Notice that processing the Access Applications would be a substantial and unreasonable diversion of its resources because:

    - 3455 pages[36] plus audio recordings (**Responsive Documents**) were located as a result of searches undertaken for documents responsive to the First Access Application.

[33] Email to QPS dated 26 November 2023.
[34] By letter dated, and emailed on, 28 November 2023.
[35] 22 December 2023.
[36] I note that QPS used the term "documents" in its Notice. I have assumed this is a reference to pages which is a more conservative categorisation.

- Processing the Responsive Documents might reveal the existence of further documents, resulting in further searches having to be undertaken.
- It estimated that it would take between 173 hours (at 3 minutes per page) and 287 hours (at 5 minutes per page) to consider the Responsive Documents.
- The Responsive Documents relate to matters involving Ethical Standards Command and QPS Legal Service which are complex and may be subject to a number of exemption provisions under the IP Act and its companion legislation, the RTI Act.
- The amount of time estimated to process the documents (as noted in the first dot point above) did not take into account the time that had already been taken to search for and consolidate the Responsive Documents and otherwise deal with the First Access Application. Nor did it take into account any further internal enquiries or third party consultation (if required), nor any time involved in processing the Second Access Application.

29. Additionally, QPS stated in its Notice that the Right to Information and Privacy Unit of QPS was processing a high volume of access applications, with each decision maker processing in excess of 50 applications.

30. I note that the QPS's estimate for processing the Responsive Documents does not include the audio files (based on a calculation of the number of pages stated to exclude the audio files and the amount of time estimated for processing). As the number of audio files involved, their content and their length, is unknown, it is not possible to place a precise number on the amount of time that would be required to process the audio files. However, I am satisfied that an additional amount of time would be required to process the audio files. Consequently, I consider that there is a real possibility that the processing time will exceed the estimate provided by QPS.

31. I also note from the material before me that QPS consulted the applicant by email,[37] about whether she would be prepared to allow QPS to remove duplicate emails from any documents located in response to the First Access Application, in an endeavour to reduce the number of pages to be considered. The applicant advised by email on the same day that she consented to such removal. While the removal of duplicate emails from the documents to be considered would, on its face, seem to reduce the amount of time required to process the documents located, I consider the impact is minimal. This is because the email chains would still need to be carefully reviewed and then individual emails cross checked to ensure that only true duplicates are removed from the documents. I am aware from the work of this office that this process is time consuming and in my opinion the time taken to remove duplicates would likely come close to the time that would otherwise be taken to consider them as part of the collective 3455 pages. Consequently, I am satisfied the removal of duplicate emails as agreed would have little impact on the QPS's time estimates for processing.

32. I accept QPS's estimate of the time that would be required to process the Responsive Documents for the First Access Application. Given the subject matter of the Responsive Documents I am satisfied that there would be some complexity involved in their consideration and consequently, I consider it is reasonable to conclude that the upper range of the processing time estimated by QPS would be the more likely time required.

33. As previously observed, the time estimated by QPS for processing the First Access Application does not include: the time to make the decision about access; the time taken to locate and collate the Responsive Documents; the time that may be required

[37] On 30 June 2023.

to conduct further searches and consider additional documents; nor, the time required to process the audio files. Consequently, the estimate provided by QPS is likely conservative and the total length of time to process the First Access Application would likely be greater than the 287 hour estimate.

34. As noted at paragraph 1 above, the First Access Application was for documents between 13 April 2022 and 21 May 2023 – approximately a 13 month time frame. The Second Access Application sought the same documents from the 6 months prior to the First Access Application. I also note that the QIRC processes that are a large part of the applicant's access applications commenced on 2 November 2021. The number of Responsive Documents located in response to the First Access Application was 3455 pages plus audio recordings. I consider, in light of the terms of the Access Applications and the commencement date of the QIRC proceedings brought by the applicant, that it is reasonable to assume that there would be a proportionate number of pages for the reduced time frame of the Second Access Application to the number located in response to the First Access Application (potentially around 1000 pages). Noting my conclusion above that the processing of the Responsive Documents for the First Access Application on their own would likely take more than 287 hours to process, I consider that processing the Second Access Application would likely add at least 101 hours to that time (4 hours to locate and collate the pages, 83 hours to consider the pages, 4 hours to make the decision about access and possibly an additional 10 hours for consultation). Consequently, the time to complete the work in dealing with the two applications can reasonably be estimated to be in excess of 387 hours. I find that this equates to one person working solely on the two access applications for *at least* approximately 10 weeks (based on a 7.25 hour working day and a five day working week).

Would the impact on QPS's functions be substantial and unreasonable?

35. Yes, for the reasons that follow.

36. Factors to be taken into consideration when determining whether the diversion of resources is a substantial and unreasonable one include the agency's resources and size, and its functions other than processing IP Act and RTI Act access applications.

37. I recognise that QPS is a large public sector organisation, employing approximately 17,500 people.[38] However, there are finite resources available to QPS for activities that do not involve front line policing. As noted in the QPS Notice, the Right to Information and Privacy Unit of QPS was processing a high volume of access applications, with each decision maker processing in excess of 50 applications. I understand that the Right to Information and Privacy Unit of QPS currently has 15 staff, who's administrative and decision making roles vary, and 496 matters on hand.[39] While a workforce of, in excess of, 17,000 people, would on its face suggest a surfeit of staff available to process information access applications, I consider that such a conclusion is too simplistic. The division of the QPS workforce is heavily skewed toward its core function of frontline policing,[40] and I consider that to divert staff from that role would not be in the public interest and would be a substantial and unreasonable impost on QPS. Additionally, given the number of staff in the Right to Information and Privacy Unit, it is too resource intensive to dedicate one staff member to the processing of the applicant's Access Applications exclusively for at least 10 weeks and not

[38] 17,534 people as at 30 June 2023, as set out at page 62 of The State of Queensland, *Queensland Police Service Annual Report 2022-2023* (https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/annual-report-2022-2023, accessed 3 April 2024) (**QPS Annual Report 2022-2023**).
[39] Email from QPS dated 9 April 2024.
[40] QPS Annual Report 2022-2023, page 62.

appropriate to take a staff member from front line policing or another administrative area (which would likely have equivalent resource constraints) to undertake the task. Additionally, given the information before me regarding the number of applications currently being processed by the Right to Information and Privacy Unit of QPS, the diversion of one officer for 10 weeks to work solely on the applicant's Access Applications would result in a large number of other applications not being actioned during the 10 week timeframe and this would unfairly disadvantage other applicants.

38. I also note in this regard that the applicant was given the opportunity to reduce the scope of the terms of the Access Applications both by QPS in the Notice and by me on external review[41], and on both occasions chose not to do so. This fact is a matter to take into consideration when determining whether it would be reasonable to require QPS to process the Access Applications.

39. The applicant submitted[42] that:

> *You suggest that I narrow my request further – and make additional requests after one is completed. Due to the timeframes in getting information previously, I cannot see how this is fair and reasonable to me as it only benefits the QPS as they can continue to prolong any requested information then refuse again, as they have previous done. If I have to wait 12 months per request and then inevitably, have to review after every single request – this will take years and is wholly unfair on me.* (sic)

40. While I appreciate the applicant's concerns regarding timeliness, the issue at hand is the reasonableness in the use of government resources rather than fairness to the applicant per se. Additionally, there is nothing before me to substantiate the applicant's assertion that QPS would prolong the process. While it may make the process more onerous for the applicant, given that smaller more manageable applications could be made successively and likely achieve the access she requires, I consider it is unreasonable to require QPS to process the larger scope of the Access Applications due to the associated impact on their resources. Additionally, I note that the applicant stated she is particularly interested in accessing information for use in further legal proceedings.[43] The information access regime established by the IP Act and RTI Act is not designed to be an adjunct to court processes[44] and there are other avenues available to the applicant to access some of that information. This does not mean that an applicant cannot elect to pursue access under the IP Act and RTI Act. However, in doing so, an applicant must accept the qualifications upon access and limitations imposed by those Acts, including the ground to refuse to deal with an application or applications if to do so would result in a substantial and unreasonable diversion of agency resources. Consequently, I am not persuaded by the applicant's submissions that the impost on QPS resources in processing the Access Applications would not be substantial and unreasonable.

41. Also as noted at paragraphs 19 and 20 above, another factor to consider in determining whether processing one or more access applications would amount to a substantial and unreasonable diversion of an agency's resources is whether and to what extent processing the application will take longer than the legislated processing period. Under section 22 of the IP Act, the usual time allowed for processing an application is 25 business days.[45] Whilst this period can be extended in certain

[41] By letter dated 27 February 2024.
[42] Submission received by email 11 March 2024.
[43] External Review application 22 December 2023.
[44] *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24]. See also: *Endeavour Foundation and Department of Communities, Child Safety and Disability Service; 32SGRU (Third Party)* [2017] QICmr 37 (31 August 2017) at [28].
[45] Which typically equates to 5 weeks, depending on the relevant public holiday dates which are not 'business days'.

circumstances, it is relevant to have regard to this timeframe when considering whether the time involved in processing a single access application will have a substantial impact on an agency's resources. In this regard I note that the estimated time to process the Access Applications is 10 weeks (minimum) which does not take account of the time spent already by QPS nor any of the variables noted previously in this decision. This time frame is much longer than the time frame envisaged by the legislation. This, in my opinion is a considerable drain on the available resources of QPS and would amount to a substantial and unreasonable diversion of QPS resources from their use by QPS in the performance of its functions.

42. The phrase '*substantial and unreasonable*' '*admits of no ready or precise measure*'[46] and it '*is not possible to specify an indicative number of hours of processing time that would constitute*'[47] a substantial and unreasonable diversion of resources. I note that the circumstances of this matter differ to those previously considered by this office as regards QPS and whether processing an application would amount to a substantial and unreasonable diversion of resources in that, this matter involves a significantly larger number of pages and a much longer processing timeframe than have been considered in past decisions involving QPS on this issue.[48] I consider that this matter can be distinguished on its facts from previous decisions of the OIC in which far fewer pages and much smaller estimates of processing time were considered not to amount to a substantial and unreasonable diversion of QPS resources.

43. Before concluding this decision, I note the applicant expressed concern, both in submissions on external review[49] and to the QPS when it was processing the First Access Application, about QPS's refusal to expand the scope of the First Access Application by time frame which resulted in having to make the Second Access Application to cover the additional time frame. There are two issues that arise from this concern. Firstly, whether QPS should have allowed the expansion of the time frame of the First Access Application and secondly, the effect of requiring the applicant to make the Second Access Application. The first of these issues is not something that I can address in this external review, for the reason explained below, and the Second Access Application ultimately does not affect the outcome of this decision, which I have also explained below.

44. As regards QPS's decision not to allow the expansion of the terms of the First Access Application, I make the following observation for the sake of completeness and addressing the applicant's concern on this point (and this observation does not comprise my reasons for this decision as the decision not to expand the scope of the First Access Application is, in the circumstances of this matter, not within my jurisdiction to review)[50] - while it may have been a less bureaucratic approach to allow the expansion of the terms of the First Access Application, QPS were nonetheless entitled not to alter the terms of that application and require a second application by virtue of sections 43 and 65 of the IP Act.

45. As to the second issue, I understand from the applicant's submissions that she is concerned that QPS' refusal to expand the scope of the First Access Application and requirement that the applicant make the Second Access Application has resulted in the

[46] *Cianfrano v Director General, Premier's Department* [2006] NSWADT 137 at [44].
[47] *NX and Australian Trade and Investments Commission* [2018] AICmr 18 at [28].
[48] See *Seal and Queensland Police Service* (Unreported, Queensland Information Commissioner, 29 June 2007) which considered a substantially similar provision of the repealed *Freedom of Information Act 1992* (Qld); and *G46 and Queensland Police Service* [2020] QICmr 11 (24 February 2020).
[49] Email to QPS on 25 July 2023; Notice Response dated 26 November 2023; External Review Application dated 22 December 2023 and submission to OIC dated 11 March 2024.
[50] Schedule 5 of the IP Act defines the decisions that may be reviewed by the Information Commissioner on external review. A decision to refuse to expand the scope of an initial access application in the circumstances of this matter is not one of them.

claim that processing both applications would result in a substantial and unreasonable diversion of the resources of QPS. However, the Second Access Application is not the determinative factor on this point. As noted at paragraphs 15 and 16 above, section 60 of the IP Act envisages that an agency may refuse to deal with either one access application or two or more access applications where the work involved in processing the application or applications would result in a substantial and unreasonable diversion of the agency's resources from their use by the agency in the performance of its functions. Consequently, whether QPS had agreed to expand the scope on the first application or whether two applications are in issue is moot. The processing of one or two applications does not change the conclusion that the time to process the documents involved would result in a substantial and unreasonable diversion of QPS's resources. The number of pages to be processed and the time taken to do so, would not change to any significant degree, whether they were the result of one application or two. I do acknowledge that there may have been some 'economies of scale' to be achieved in processing only one application for the expanded time frame; such as, for example, one request for documents being made to the relevant business unit/units rather than two; or only one decision being issued to the applicant rather than two. However, realistically, these time savings are minimal in the overall scheme of the calculations in this matter.

46. In conclusion, taking into account the likely number of pages responsive to the terms of the Access Applications, the estimated amount of time required to process those pages and the impost on QPS resources, I find that the work involved in dealing with the Access Applications, would, if carried out, substantially and unreasonably divert the resources of QPS from their use by the agency in the performance of its functions.

DECISION

47. For the reasons set out above, I affirm QPS's decision and find that dealing with the Access Applications would result in a substantial and unreasonable diversion of QPS's resources from the performance of its functions and therefore QPS may refuse to deal with the Access Applications under section 60 of the IP Act.

48. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

V Corby
Assistant Information Commissioner

Date: 17 April 2024

APPENDIX

Significant procedural steps

Date	Event
22 December 2023	OIC received the applicant's application for external review.
22 December 2023	OIC notified the QPS and the applicant that the application for external review had been received and requested procedural documents from QPS.
4 February 2024	OIC received the requested documents from QPS.
15 February 2024	OIC notified QPS and the applicant that the application for external review had been accepted.
27 February 2024	OIC conveyed a written preliminary view to the applicant by email.
11 March 2024	OIC received a submission from the applicant by email.
9 April 2024	OIC sought a submission from QPS.
9 April 2024	OIC received a submission from QPS by email.