

Office of the Information Commissioner  
Queensland's *Webinar*

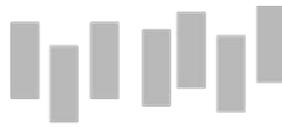
# Welcome...

**Topic:** Substantial and unreasonable diversion of resources

**Presenters:** Sharron Campbell & Kathryn Taylor  
Information and Assistance  
Office of the Information Commissioner

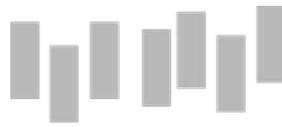
**Duration:** One hour

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(07) 3234 7373 or [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au)



## Substantial and unreasonable diversion of resources

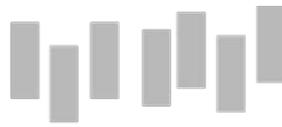
- What is it?** A ground on which you can refuse to deal with an application.
- What does it mean?** That it is beyond your agency's resources to process an application because doing so would have a substantial and unreasonable impact on your agency's functions.
- What do you have to do?** Give the applicant a chance to reshape their application so that it will not be beyond the resources to process.



## **Substantial and unreasonable diversion of resources**

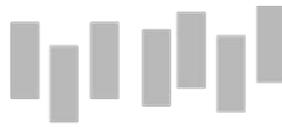
### **Take into account the resources required to process, including to:**

- Identify, locate and collate the documents
- Make the decision to give, refuse or defer access, including resources to be used examining the documents
- Consult with any third parties
- Make a copy or edited copy, of any documents
- Notify of any final decision



## Substantial and unreasonable diversion of resources

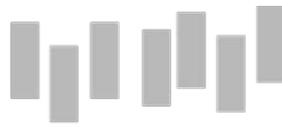
- Give the applicant a written notice of your intention to refuse to deal
- Provide them with information that would help them remove the ground of refusal
- Allow them ten business days (can be extended if you both agree) from the date of notice to consult with your agency
- They will either confirm or narrow their application (or ignore the notice, which means the application is withdrawn)
- Decide whether the application is still beyond the resources to process
- If yes, issue a prescribed written notice (including review rights)



## Scenario 1

In deciding whether to refuse to deal with an application on the basis that it would be a substantial and unreasonable diversion of resources, which of the following factors are you required to disregard?

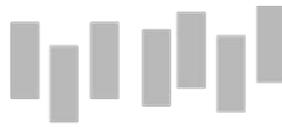
- a. The irrelevant factors in schedule 4 of the RTI Act
- b. The type of information contained in the documents
- c. The applicant's reasons for applying for access
- d. The number of previous applications the applicant has made



## Scenario 1 - answers

**C** – Section 41(3) requires the agency disregard any reasons the applicant gives for applying for access or any belief held by the agency about the applicant's reasons for applying for access.

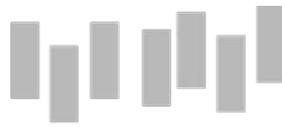
You would not take any of the other things into account, but you are only required to disregard the above.



## Scenario 2

Your agency receives an access application which you estimate will take approximately 1500 hours (or 25 working days full time) to process.

- a) Your agency is relatively small and has 2 officers in the RTI Unit. Your agency received 80 RTI/IP applications last year. Do you think section 41 applies?

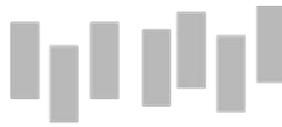


## Scenario 2(a) - answers

**Yes.** Dedicating one officer to complete this application will result in a substantial and unreasonable diversion of agency resources.

It is not possible to complete the application within the statutory timeframe and doing so would mean that other applications would not be able to be completed.

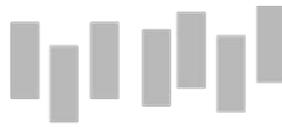
As a small agency it is also unlikely that there are resources available across the agency that could be utilised to process the applications (without then having an impact in other areas of the agency)



## Scenario 2

Your agency receives an access application which you estimate will take approximately 1500 hours (or 25 working days full time) to process.

- b) Your agency is a large department and has 40 decision makers. You received 500 RTI/IP applications last year. Do you think section 41 applies?

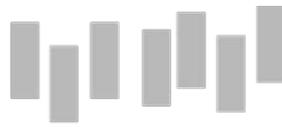


## Scenario 2(b) – answer

### It could go either way

*Perhaps the application may result in a **substantial** diversion of resources (25 business days full time) but would it be an **unreasonable diversion** of agency resources with that many decision makers?*

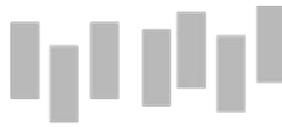
*It may be necessary to request a further specified period from the applicant.*



## Scenario 3

You have received an application and you consider that dealing with it would substantially and unreasonably divert your agency's resources so you issued the applicant a notice of intention to refuse to deal. The applicant has confirmed their scope and said that they are willing to allow you as much additional time to process the application as you need.

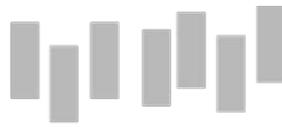
Can you refuse to deal with the application?



## Scenario 3

**Yes.** Section 41 of the RTI Act may still apply even if the applicant would agree to a further specific period.

*Remember the pro-disclosure bias and spirit of the Act. If it is reasonable to ask the applicant for further time so that the application can be dealt with then that may be a good solution in some circumstances.*

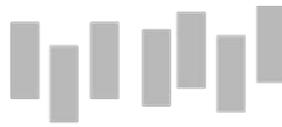


## Scenario 4

You receive an application for *'all permits issued in Queensland for fireworks displays between 20 December 2012 and 5 January 2013'*.

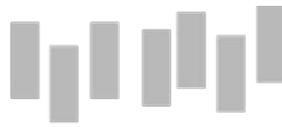
Your agency is responsible for issuing the permits. The applications for firework permits and permits issued are made directly to one of your agency's 17 regional offices around the State and are filed by the name of the applicant (as opposed to the date). Neither the application or the permits are held in electronic form and each regional office retains its own fireworks records.

a) Do you think section 41 applies?



## Scenario 4 (a) - answer

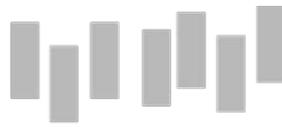
**Yes.** *It would require a manual search and perusal of every firework permit issued by every regional office to determine which permits were issued for those particular dates.*



## Scenario 4 (b)

You decide to issue a notice of intention to refuse to deal. The applicant responds and says that they are actually only interested in a few specific companies but didn't want to get in trouble for asking. They narrow their application to specifically request documents about 5 companies issued permits during that time period.

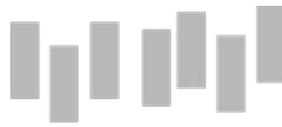
Would you process the revised application or refuse to deal with it?



## Scenario 4 (b) – answer

**Process it.** *The applicant has reduced the scope which would enable a more streamlined search of the regional offices.*

*While it may still take some time to search through the records it should be a faster process as each folder would not need to be reviewed for the particular dates.*

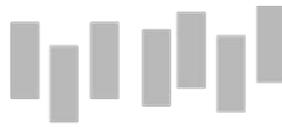


## Scenario 5

You receive an application stating *'I request documents that the agency holds which are relevant to myself and my property including, but not limited to, memos, emails, faxes, staff notebooks, file notes, photographs'*

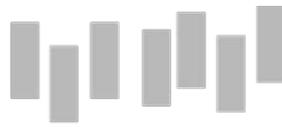
The applicant has had extended contact with your agency over the past 15 years about various matters including a lengthy dispute relating to the possible resumption of part of the applicant's property, complaints about their dogs, submissions they have made regarding the proposed development near their property, pet registration, library records and matters relating to rates and water bills.

You think that dealing with this application may result in a substantial and unreasonable diversion of your agency resources.



## Scenario 5 (cont)

a) What initial steps would you take to deal with this situation?

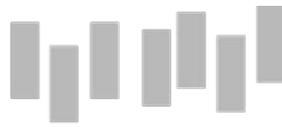


## Scenario 5 (a) – answers

Contact the applicant; seek to clarify the scope of their application to see if they can be more specific.

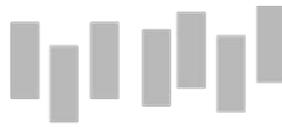
***Don't spend too long contacting the applicant informally as the processing period is still running. Explain that you consider that dealing with their application will substantially and unreasonably divert agency resources.***

If the applicant does not respond quickly then issue a notice of intention to refuse to deal and follow up with a telephone call to explain what the notice means and what steps they can take. Help the applicant.



## Scenario 5 (cont)

b) You send the applicant a notice of intention to refuse to deal with the application under section 42 of the RTI Act. What information or suggestions could you give the applicant to assist them in removing the ground for refusal?



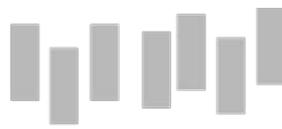
## **Scenario 5 (b) – answers**

*Specify particular date periods*

*Specify particular incidents or events that they are interested in*

*Remove standard Council matters that the applicant could access administratively such as pet registration, library records and rates and water bills*

*Remove documents that the applicant provided to Council or has received from Council (such as letters and emails)*

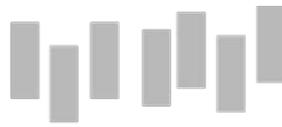


## Scenario 6

Your agency is responsible for monitoring and auditing food safety compliance of local businesses. At the end of each financial year your agency prepares a summary table of all businesses that have been subject to food safety audits in that year. The summary table includes the name of the business audited, the final outcome of the audit (pass/fail) and a brief note of any concerns identified and actions required to be taken by the audited businesses. This information is not available on the agency's website or through other administrative means.

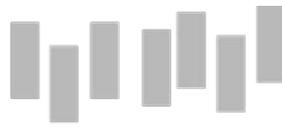
The applicant has applied for *'the names of the businesses that failed food safety audits in the last 2 financial years and the details of the failure'*. You have located 20 pages responsive to the application, setting out the names of 200 businesses which have failed the audit. You consider it is not contrary to the public interest to disclose the information however you need to consult with the businesses under section 37 of the RTI Act.

**Do you think section 41 of the RTI Act applies?**



## Scenario 6 – answers

**Yes.** Even though there are not significant *numbers* of documents it will still take a significant amount of time to conduct third party consultations.



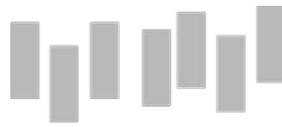
## Scenario 7

You work for the Ministry of Magic. You have received an application from Harry Potter for *'all documents (including interviews, photographs and investigation reports) relating to the investigation into my use of underage magic in August 1995 which resulted in my temporary expulsion from Hogwarts.'*

You have identified that there are over 7700 documents and 15 hours of filmed interviews and audio recordings that are responsive to the scope of the request. Additionally, you consider that there may be up to 12 third parties that will need to be consulted. You estimate that it will take a minimum of 180 hours to process the application.

You have considered section 41 of the RTI Act and decide that dealing with the application would be a substantial and unreasonable diversion of resources.

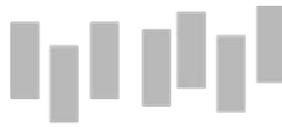
- a) List the key points of what you would include in a notice of intention to refuse to deal with this application under section 42 of the RTI Act.



## Scenario 7 (a) - answers

Key points of what you would include in a notice of intention to refuse to deal:

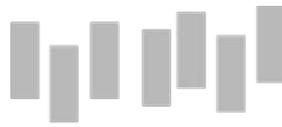
- Not yet made a decision on the application
- As it stands, application would be a substantial and unreasonable diversion of resources
- Give the reasons
- Suggest options to reduce the resources required
- Set out the date a response is required by
- Set out what happens if they don't respond
- Give them a phone number and invite them to contact you.



## Scenario 7(b) (cont)

Mr Potter responds in writing within the prescribed consultation period and states that after reviewing the schedule of relevant documents he is happy to remove the actual audio/visual footage but otherwise leaves his scope unchanged.

- i) What do you need to do now?
- ii) Do you think the ground for refusal has been removed? Outline what steps you would take next based on your answer.



## Scenario 7(b) – answer

**If yes – decide ground for refusal has been removed** – *Process the application. The processing period begins after the prescribed consultation period has ended (10 business days or longer if agreed).*

**If no – decide ground for refusal has not been removed** – *Issue a decision notice compliant with section 54 and section 191 of the RTI Act refusing to deal with the application under section 41.*