



Decision and Reasons for Decision

Citation:	<i>R99 and Queensland Police Service [2023] QICmr 45 (5 September 2023)</i>
Application Number:	317407
Applicant:	R99
Respondent:	Queensland Police Service
Decision Date:	5 September 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - NONCOMPLIANT APPLICATION - APPLICATION REQUIREMENTS - whether the application gives sufficient information concerning the documents sought - whether the agency is entitled to decide the application does not comply with all relevant application requirements - sections 43(2)(b) and 53 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to 'any and all documents related to [the applicant] not yet in [the applicant's] possession from D.O.B until 18/5/23. Seeking: any and all. Search within: d.o.b till 18/5/23. Other details: Q.P 9/s, Video, photos and all documents related to myself.'²
2. The applicant provided a certified copy of his Industry Authority Card as evidence of his identity.
3. In a letter dated 22 June 2023, QPS consulted with the applicant about the evidence of identity he had provided, and also asked the applicant to clarify the documents to which he sought access. QPS informed the applicant that, in its current state, the application was noncompliant under sections 43(2) and 43(3) of the IP Act. As the requisite processing period under the IP Act ended on 22 June 2023, QPS sought an extension of 12 business days to afford the applicant time to make his application compliant.
4. By email on 22 June 2023, the applicant refused the extension sought by QPS. However, in subsequent emails to QPS, he provided the following additional information about the documents he sought to access:

¹ Application dated 18 May 2023.

² As stated in QPS's letter to the applicant dated 22 June 2023.

Videos .all
Qp.9(s)
Copy T.O.Ns .
[name of location] Traffic issues referral as to prosecution. Transcripts.
Plus as per request.
Images .
LICENCE images data set.
Drivers Authority details plus the police check that is within the application. Licence details.
Traffic history ,list (16 plus Tickets).
A copy health directive order [name of location] 2020.
Transcript of U.H.F / etc /phone conversation between officer / and other/s .
[name of location].³

And:

Documents related to 6/5/2010 .
A.F.P. and Q.P communications of ALL matters including PROMIS/NPRS related to A F.P /Q.P
intercourse .
Plus where claim by Q.p as to a [name of location] address.⁴

5. As a result of the applicant's refusal of QPS's request for an extension of time, QPS was deemed to have refused access to the documents sought by the applicant under section 66(1) of the IP Act. QPS issued a notice to this effect on 28 June 2023 under section 66(2) of the IP Act.
6. By email on 28 June 2023, the applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's deemed decision.
7. For the reasons explained below, I set aside the decision under review. In substitution for it, I find that the access application does not comply with the relevant application requirement set out in section 43(2)(b) of the IP Act and that QPS was therefore entitled to refuse to deal with the application under section 53(6) of the IP Act. Given my finding about section 43(2)(b) of the IP Act, it is not necessary for me to make a finding about whether the applicant has complied with section 43(3) of the RTI Act (evidence of identity).

Reviewable decision

8. The decision under review is QPS's deemed refusal of access.

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the emails sent by the applicant during the course of the review to the extent that they contain any information relevant to the issues for determination in this review.⁵
10. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁶ 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

³ By email on 23 June 2023.

⁴ By email on 25 June 2023.

⁵ The applicant has a number of external reviews with OIC. His emails sometimes refer to issues that are relevant to other of his applications.

⁶ Section 21(2) of the HR Act.

prescribed in the *Right to Information Act 2009* (Qld) (**RTI Act**) and the IP Act.⁷ 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 equivalent pieces of Victorian legislation:⁸ *‘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.’*⁹

Issue for determination

11. The issue for determination is whether the access application complies with the application requirement contained in section 43(2)(b) of the IP Act.

Relevant law

12. In making an access application for documents under section 43(1) of the IP Act, an applicant must comply with the application requirements set out in sections 43(2) and 43(3) of the IP Act.
13. Section 43(2)(b) of the IP Act provides that the access application must give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents.
14. Where a person purports to make an access application that does not comply with all relevant application requirements,¹⁰ the agency must:¹¹
 - make reasonable efforts to contact the person within 15 business days after the purported application is received
 - inform the person how the application does not comply with the relevant application requirement; and
 - give the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements.
15. If, after giving the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements, the agency then decides that the application does not comply with all such requirements, the agency must give the applicant prescribed written notice of the decision.¹²
16. Pursuant to section 118(1)(b) of the IP Act, the Information Commissioner has the power to decide any matter in relation to an access application that could have been decided by an agency under the IP Act.

Findings

17. In its letter to the applicant dated 22 June 2023, QPS relevantly stated as follows:

An applicant must write their application so that an agency can tell which documents the applicant is seeking. The onus is on the applicant to identify the documents they want to access, not the agency.

⁷ *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].

⁸ *Freedom of Information Act 1982* (Vic) and *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁹ *XYZ* at [573].

¹⁰ See section 53(7) of the IP Act.

¹¹ Sections 53(2) and (3) of the IP Act.

¹² Section 53(6) of the IP Act.

If the scope requires the decision maker to choose what documents the applicant should receive, or to undertake detailed investigation or analysis to identify the documents the applicant wants to access, the application is not compliant.

18. As this letter to the applicant was sent on the last day of the processing period, QPS sought an extension of time to consult with the applicant about making his application compliant.¹³ While the applicant refused the request, he did provide additional information about his application in subsequent emails to QPS.
19. After considering the terms of the access application and the additional information provided by the applicant to QPS (as set out in paragraph 4 above), OIC expressed the following preliminary view¹⁴ to the applicant:¹⁵

As I understand it, this application was made to obtain any documents QPS may hold falling within the scope of your earlier application¹⁶ but [which] have not been located.¹⁷ While this course of action may be open to you, it is incumbent upon you to explain, with a reasonable level of specificity, the documents that you believe exist but have not yet been considered, so that QPS can identify them. Referring broadly to any documents not yet in your possession (even where categories of documents have been provided) does not allow QPS to do this. It is therefore my preliminary view that the application does not satisfy the requirement to give sufficient information concerning the documents sought to enable QPS to identify them.

20. I have reviewed the emails that the applicant has sent to OIC following the communication of this preliminary view.¹⁸ However, I have been unable to identify any information contained in those emails that is relevant to the preliminary view and to the issue for determination in this review.
21. Having considered the terms of the applicant's access application, including the additional information that he provided to QPS and that is set out in paragraph 4 above, I am not satisfied that the applicant has provided sufficient information concerning the documents he seeks to enable an officer of QPS to identify those documents. As noted in OIC's preliminary view letter, the applicant has not, for example, applied for all documents about him that post-date his earlier access application. Rather, he seeks access to documents that QPS did not locate when processing his earlier application and that he does not possess. I note the categories of documents that the applicant has listed, however, seeking access to documents not already in his possession, even taking account of those categories, does not sufficiently identify the additional responsive documents that the applicant apparently believes exist, but which have not been located and considered by QPS.
22. Accordingly, I am not satisfied that the access application complies with the application requirement contained in section 43(2)(b) of the IP Act.

DECISION

23. For the reasons set out above, I set aside the decision under review. In substitution for it, I find that QPS was entitled to refuse to deal with the access application under

¹³ The IP Act provides for a processing period of 25 business days. Under section 55(1) of the IP Act, an agency may ask an applicant for a further specified period to consider the application.

¹⁴ A preliminary view is not a decision but a process used by OIC to promote resolution of reviews and provide parties with procedural fairness. If an applicant provides further relevant information in support of their case, it is considered before any final decision is made.

¹⁵ In a letter dated 19 July 2023.

¹⁶ Which, at the relevant time, was under review by OIC.

¹⁷ As distinct from, for example, an application for all documents post-dating an earlier application.

¹⁸ Emails of 24 July 2023, 28 July 2023, 9 August 2023, 17 August 2023, 21 August 2023 and 1 September 2023.

section 53(6) of the IP Act on the basis that it does not comply with the relevant application requirement set out in section 43(2)(b) of the IP Act.

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

Rachel Moss
Principal Review Officer

Date: 5 September 2023

APPENDIX

Significant procedural steps

Date	Event
28 June 2023	OIC received the application for external review
1 July 2023	OIC received the preliminary documents from QPS
19 July 2023	OIC expressed a preliminary view to the applicant
24 July 2023	OIC received two emails from the applicant
28 July 2023	OIC received an extension of time request from the applicant
1 August 2023	OIC granted the applicant an extension of time to 25 August 2023
9 August, 17 August, 21 August and 1 September 2023	OIC received emails from the applicant