



Decision and Reasons for Decision

Citation:	<i>U29 and Queensland Police Service [2025] QICmr 15 (25 March 2025)</i>
Application Number:	318252
Applicant:	U29
Respondent:	Queensland Police Service
Decision Date:	25 March 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for complaint statement - whether to refuse to deal with the application - whether document has been the subject of a previous application - whether the applicant has a reasonable basis for applying again - sections 62(3)(b)(i) and 62(3)(b)(iii) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied under the *Information Privacy Act 2009* (Qld) (**IP Act**)¹ to the Queensland Police Service (**QPS**) for the complaint statement of another named individual.
2. QPS refused to deal with the application on the basis the access application purportedly made under the IP Act should have been made under the *Right to Information Act 2009* (Qld) (**RTI Act**),² as the application was for a document that did not contain the applicant's personal information.
3. The applicant applied to the Information Commissioner (**OIC**) for external review.³
4. For the reasons set out below, I vary QPS's decision and refuse to deal with the application on the basis the applicant has previously applied for access to the same document.

Background

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

¹ On 20 August 2024.

² Section 54(5)(b) of the IP Act.

³ On 29 September 2024.

6. On external review, I conveyed my preliminary view to both parties⁴ that QPS was not entitled to refuse to deal with the application under section 54 of the IP Act, as the requested document did contain the applicant's personal information.⁵ For this reason, the access application *could* be made under the IP Act.
7. As QPS provided information which indicated that the applicant had previously applied for the same document (**complaint statement**) in an earlier access application, I also explained my preliminary view that an alternate ground to refuse to deal with the access application was enlivened.
8. QPS accepted my preliminary view that the applicant had made a previous application for the same document and that there did not appear to be a reasonable basis to again seek access.⁶ The applicant did not make specific submissions in response to my preliminary view, however, advised that she would like the external review to continue.⁷

Reviewable decision

9. The reviewable decision is QPS's decision dated 19 September 2024.

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken into account the applicant's submissions⁸ to the extent they are relevant to the issue for determination in this review.
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁹ 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 and RTI Act.¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹¹

Issue for determination

12. The IP Act empowers the Information Commissioner to make any decision in respect of an access application that could have been made by the agency.¹² As such, in making a decision on external review, the Information Commissioner¹³ may rely on provisions in the IP Act and RTI Act which are different to those relied upon by the agency in the decision under review.

⁴ Letters dated 8 November 2024.

⁵ Section 12 of the IP Act defines *personal information* as '*information or an opinion, including whether 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.*'

⁶ By email dated 8 November 2024.

⁷ By email dated 20 November 2024.

⁸ Including the external review application received 29 September 2024 and email dated 20 November 2024.

⁹ Section 21(2) of the HR Act.

¹⁰ *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]. The Information Commissioner's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position [23].

¹¹ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*... 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.*'

¹² Section 118(1)(b) of the IP Act. This provision reflects the merits review process that is conducted on external review.

¹³ Or delegate.

13. As outlined above, QPS accepted my preliminary view that it was not entitled to refuse to deal with the application under section 54 of the IP Act. Therefore, the application of that provision is not considered in these reasons for decision.¹⁴
14. The applicant did not accept my preliminary view that an alternative ground to refuse to deal with the access application arises. As such, the issue for determination in this review is whether there are grounds to refuse to deal with the application on the basis that the document has been the subject of a previous application made to QPS by the applicant.

Relevant law

15. Under the IP Act, an individual has a right to be given access to government held documents containing their personal information.¹⁵ This right is subject to certain limitations including grounds to refuse to deal with an application.¹⁶
16. An agency (or the Information Commissioner, on external review)¹⁷ may refuse to deal with an access application where:¹⁸
 - a) an applicant makes an access application under the IP Act¹⁹ to an agency²⁰ and is given notice of decision regarding access to the document sought²¹ (**criteria a**)²²
 - b) the applicant then makes a later access application to the same agency seeking access to the same document (**criteria b**);²³ and
 - c) the later access application does not, on its face, disclose any reasonable basis for again seeking access to the document (**criteria c**).²⁴

Applicant submissions

17. The applicant submits in the external review application:²⁵

I have previously had possession of this statement; however I have misplaced this somewhere. This document is an important part of a legal proceeding and is something I urgently require.

Findings

The previous application

18. By application dated 2 April 2024, the applicant applied under the IP Act for witness statements against them, made to QPS between February 2022 to April 2024

¹⁴ This issue has been found in the applicant's favour and is not contested by the applicant.

¹⁵ Section 40 of the IP Act.

¹⁶ Section 58(2) of the IP Act.

¹⁷ Section 118(1) of the IP Act.

¹⁸ Section 62 of the IP Act.

¹⁹ Or the RTI Act.

²⁰ Section 62(1)(a) of the IP Act.

²¹ Under sections 67 and 68 of the IP Act.

²² Sections 62(3)(b)(i) and 62(3)(b)(iii) of the IP Act.

²³ Section 62(1)(b) of the IP Act.

²⁴ Section 62(1)(b) of the IP Act.

²⁵ On 29 September 2024.

(**First Application**). QPS decided to refuse access to two full pages,²⁶ and parts of 14 pages (**First Decision**).²⁷ This satisfies criteria a.

19. The applicant made a later application dated 20 August 2024 (which is the subject of this review) for a '*Complainant statement from [named individual] from 24-02-2022*' with a date range of January 2022 to November 2022 (**Later Application**).
20. I have reviewed documents relevant to the First Application²⁸ and am satisfied that the complaint statement requested in the Later Application was captured by the terms of the First Application.²⁹ The complaint statement requested in the Later Application is contained in the two pages which QPS refused access to in the First Decision.³⁰
21. The information detailed in the preceding paragraph satisfies criteria b.

A reasonable basis for again applying

22. It is Parliament's intention that the IP Act be administered with a pro-disclosure bias in deciding to deal with applications.³¹ To that end, the ground for refusing to deal with an access application on the basis of a previous application for the same document is to be relied on in limited circumstances, where it would not be in the public interest to deal with the access application.³²
23. While the provision requires a reasonable basis to be disclosed '*on the face*' of the application, in conducting merits review OIC stands in the shoes of the original decision maker³³ and can consider information made available through the course of the review. A technical interpretation of the requirement '*on the face*' of the access application, without considering any later information of a reasonable basis, would be inconsistent with merits review. While the Later Application does not refer to the First Application, nor state any reason for the repeated access application, I have also taken the applicant's submissions on external review into account to determine whether there was a reasonable basis for applying for the complaint statement in the Later Application.
24. Relevantly, the applicant explained that she has previously had possession of the complaint statement through a legal proceeding, but it has been misplaced. The applicant also explained the basis for seeking this document is to obtain legal advice regarding the pursuit of remedies.³⁴ I am cognisant that the applicant has identified difficulties in obtaining the complaint statement through alternative access channels and I perceive the applicant to be genuine in her intended use for this document.
25. However, when evaluating whether the applicant has identified a reasonable basis for seeking the complaint statement, I note that the misplaced copy was not provided by QPS in the First Decision. Rather, QPS refused access to the complaint statement.
26. Should the applicant contest QPS's decision in the First Application, the IP Act provides that a person affected by a reviewable decision may apply to have the decision reviewed

²⁶ While QPS's decision detailed that access was refused in full to two pages, the documents provided to the applicant released the header and footer of the document, with the substantive information on the page redacted.

²⁷ Decision dated 21 May 2024.

²⁸ Specifically including the access application form, documents responsive to the application, and the First Decision.

²⁹ Noting the overlapping date ranges and subject matter.

³⁰ QPS advised it had no objection to OIC confirming to the applicant that the complaint statement appeared within the two pages to which access was refused in the First Decision (telephone call on 29 October 2024).

³¹ Section 58(1) of the IP Act.

³² Section 58(2) of the IP Act.

³³ *Palmer and Townsville City Council* [2019] QICmr 43 (3 October 2019) at [21]-[40].

³⁴ External review application and further information provided by the applicant to OIC during telephone calls on 1 October 2024 and 21 November 2024.

by the agency (internal review)³⁵ or the Information Commissioner (external review).³⁶ These review rights were conveyed to the applicant in the First Decision. The information before me does not indicate that the applicant has taken either of the review options available to her. Instead, the applicant has made the Later Application, again seeking access to the complaint statement.

27. Should an applicant be aggrieved by an agency decision on their entitlement to access documents, the correct course of action is to utilise the review rights within the right to information process. Seeking to challenge the outcome of the First Application is not a reasonable basis for reapplying to access the same document in a Later Application.
28. This is particularly the case where the access right under the IP Act comprises a stand-alone mechanism for enabling public access to government-held information.³⁷ As a publicly funded process, the legislature acknowledges that repeated access applications for the same documents, without a reasonable basis for applying again, would place unreasonable demand on an agency, and by extension, OIC. Such repeated applications would dissipate scarce public resources, impact efficiencies and could be a frustration of the process.
29. While not identified by the applicant, I have also considered whether there is any information before me (such as a change in legal position or circumstance) to indicate that a reconsideration of access to the same document may result in an alternative outcome regarding the applicant's access to the complaint statement. I have not identified any other circumstance that raises a reasonable basis for the Later Application.
30. QPS has considered the applicant's entitlement to access the requested document in the First Application. While the applicant has explained a genuine need for the complaint statement to support other processes, the First Decision refused access to the complaint statement and the misplaced copy was obtained through other legal proceedings. In this case, I consider that the applicant has not provided a reasonable basis for making the Later Application.
31. On the information before me, I do not consider there is any reasonable basis for the applicant again seeking access to the complaint statement in the Later Application. Criteria c is satisfied.

DECISION

32. For the reasons set out above, I vary QPS's decision and refuse to deal with the application under section 62 of the IP Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Brianna Luhrs
Principal Review Officer

Date: 25 March 2025

³⁵ Section 94(1) of the IP Act.

³⁶ Section 99 of the IP Act.

³⁷ See *Endeavour Foundation and Department of Communities, Child Safety and Disability Service; 32SGRU (Third Party)* [2017] QICmr 37 at [28] citing with approval the comments of the Information Commissioner in *Phylard and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

Appendix

Significant procedural steps

Date	Event
29 September 2024	OIC received application for external review.
30 September 2024	OIC requested preliminary documents from QPS.
1 October 2024	OIC telephoned applicant to discuss application for external review.
4 October 2024	OIC received correspondence from applicant.
10 October 2024	OIC received the preliminary documents from QPS.
29 October 2024	OIC received further documents from QPS.
8 November 2024	OIC informed applicant and QPS that the external review was accepted. OIC also conveyed a preliminary view to both parties, and invited submissions. OIC received a response from QPS accepting OIC's preliminary view.
20 November 2024	OIC received a response from the applicant advising she would like the review to continue.
21 November 2024	OIC updated QPS and requested information in issue and the original access application from the First Application. OIC received the requested documents from QPS. OIC telephoned the applicant to discuss the external review.
17 January 2025	OIC contacted QPS to confirm the external review would be finalised by formal decision.
18 February 2025	OIC contacted applicant to confirm external review would be finalised by formal decision.