



## Decision and Reasons for Decision

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Citation:	<i>U62 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development [2025] QICmr 13 (21 March 2025)</i>
Application Number:	317678
Applicant:	U62
Respondent:	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development
Decision Date:	21 March 2025
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - HEALTHCARE INFORMATION - applicant seeks independent medical examination report - whether disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(d) and 51 of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - whether information may be deleted on the basis it is irrelevant to the scope of the application - section 88(2) of the <i>Information Privacy Act 2009</i> (Qld)</b></p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Resources<sup>2</sup> (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for documents regarding their employment.<sup>3</sup>
2. The Department located 483<sup>4</sup> pages and decided<sup>5</sup> to refuse access to 15 pages and parts of four pages on the basis that disclosure might be prejudicial to the applicant's physical or mental health or wellbeing.<sup>6</sup> The decision was made by the Director-General

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<sup>1</sup> Access application dated 9 March 2023.

<sup>2</sup> As a result of recent machinery of government changes and pursuant to *Administrative Arrangements Order (No. 3) 2024* the relevant agency in this review is now the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development.

<sup>3</sup> The applicant and the Department agreed on the terms of the application on 19 July 2023.

<sup>4</sup> The Department considered 214 pages to be within the scope of this application. The Department deleted 269 pages on the basis that these pages were irrelevant to the application.

<sup>5</sup> Decision dated 25 October 2023.

<sup>6</sup> Under section 67(1) of the IP Act and sections 47(3)(d) and 51 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

of the Department, as the principal officer.<sup>7</sup> The Department also deleted information<sup>8</sup> on the basis it was irrelevant to the application.<sup>9</sup>

3. The applicant applied<sup>10</sup> to the Information Commissioner for external review of the Department's decision to refuse or delete information and raised concerns that the Department had not located all requested documents.<sup>11</sup>
4. During the external review, the Department released a small amount of additional information from the original documents.<sup>12</sup> The Department also located and released 291 additional pages, with information deleted as irrelevant (**Additional Documents**).<sup>13</sup>
5. The applicant remained dissatisfied with the information disclosed and continued to seek access to unredacted copies of the located documents.
6. For the reasons set out below, I vary the decision of the Department and find that:
  - access to 15 pages<sup>14</sup> and parts of one page<sup>15</sup> may be refused under section 67(1) of the IP Act and section 47(3)(d) of the *Right to Information Act 2009* (Qld) (**RTI Act**); and.
  - the applicant is not entitled to access the information<sup>16</sup> deleted under section 88(2) of the IP Act.

### Reviewable decision

7. The decision under review is the Department's decision dated 25 October 2023.

### Evidence considered

8. Significant procedural steps relating to the external review are set out in the Appendix.
9. Where possible, the evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). However, the Information Commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to the public interest information.<sup>17</sup> Therefore, I am unable to discuss in detail the contents of the independent medical reports as doing so would be contrary to the public interest as it would pose a similar risk of prejudice to the applicant's physical or mental health or wellbeing as disclosure of the documents.

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<sup>7</sup> Section 50(5) of the IP Act.

<sup>8</sup> Within the 214 pages considered in the Department's decision, a further 67 pages were deleted as irrelevant and information appearing on 131 part pages was deleted as irrelevant. Three of these part pages contain both information identified as irrelevant and information which was refused as potentially prejudicial to the applicant's physical or mental health or wellbeing.

<sup>9</sup> While the access application was decided under the IP Act, the Department relied on section 73 of the RTI Act to delete information as irrelevant.

<sup>10</sup> Access application dated 23 November 2023.

<sup>11</sup> The applicant was allowed a longer period within which to apply for external review under section 101(1)(d) of the IP Act.

<sup>12</sup> Information on page nine of File A and pages one, four and 11 of File C was released to the applicant. A small amount of information remained refused or deleted on these pages. The Department also released a two page email chain in part, which it had identified as irrelevant, as it was a duplicate '10 duplicate pages from File A - 250p KM Edit-3' but which OIC considered was relevant to the terms of the applicant and therefore should be disclosed.

<sup>13</sup> Section 88(2) of the IP Act.

<sup>14</sup> Pages 21-35 of File C.

<sup>15</sup> Page 11 of File C.

<sup>16</sup> 472 pages and 194 part pages. The applicant does not contest the deletion of information appearing on two part pages identified as File H. As such, this information is not in issue and has not been considered further in this decision.

<sup>17</sup> Section 121(3) of the IP Act; section 51(2) of the RTI Act provides that Parliament considers it would, on balance, *be contrary to the public interest* to give access to a document to the extent it comprises relevant healthcare information of the applicant if the disclosure of the information might be prejudicial to the physical or mental health or wellbeing of the applicant. [my emphasis]

10. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>18</sup> 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 RTI Act and the IP Act.<sup>19</sup> 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:<sup>20</sup> '*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.*'<sup>21</sup>
11. The applicant also raised concerns about the Department's conduct in relation to their employment processes.<sup>22</sup> In making my decision in this external review, I have considered the applicant's submissions to the extent they are relevant to the issues for determination in the context of the information in issue.

### Information in issue

12. The information in issue in this review is an independent medical examination report and supplementary report, as well as a comment discussing the medical recommendation of the doctor (**Healthcare Information**).
13. Information appearing on 472 pages and 194 part pages has been deleted as irrelevant to the application (**Deleted Information**).

### Issues for determination

14. The applicant initially sought external review regarding the sufficiency of the Department's searches. During the review, the Information Commissioner<sup>23</sup> directed that the Department undertake further searches to identify responsive documents. As a result of these further searches, the Department located and released the Additional Documents to the applicant, subject to the removal of the Deleted Information.
15. On 23 January 2025, I conveyed a preliminary view to the applicant that the Department had taken all reasonable steps to locate the requested documents, and any further documents may be refused on the basis they are nonexistent or unlocatable.<sup>24</sup> The applicant did not raise any further concerns regarding the sufficiency of the Department's searches, and as such, this issue is taken to have been informally resolved, and is therefore not dealt with in these reasons for decision.
16. However, the applicant maintains concerns about the refusal or deletion of information from the released documents.<sup>25</sup>

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<sup>18</sup> Section 21(2) of the HR Act.

<sup>19</sup> *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].

<sup>20</sup> *Freedom of Information Act 1982* (Vic) and *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>21</sup> *XYZ* at [573]. This approach, in the context of the IP Act and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious* [of the right to seek and receive information] *and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

<sup>22</sup> External review application dated 23 November 2023, and submission dated 29 October 2024.

<sup>23</sup> Or their delegate.

<sup>24</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>25</sup> External review application dated 23 November 2023 and submissions dated 28 October 2024 and 29 October 2024.

17. As such, the remaining issues for determination are whether:

- access to the Healthcare Information may be refused on the ground that disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant; and
- the Deleted Information is irrelevant to the application.

## Healthcare Information

### Relevant law

18. Under the IP Act, an applicant has a right to be given access to documents of an agency to the extent those documents contain the individual's personal information.<sup>26</sup> However, this right is subject to other provisions of the IP Act, including the grounds on which an agency may refuse access to documents. Under section 67(1) of the IP Act, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access under section 47 of the RTI Act, had the document been the subject of an access application under the RTI Act.
19. Access to '*relevant healthcare information*' may be refused under the RTI Act if disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant.<sup>27</sup>
20. '*Relevant healthcare information*' is defined as '*healthcare information given by a healthcare professional*'.<sup>28</sup> A '*healthcare professional*' is a person who carries on, and is entitled to carry on, an occupation involving the provision of care for a person's physical or mental health or wellbeing, including, for example:<sup>29</sup>
- a doctor, including a psychiatrist
  - a psychologist
  - a social worker; or
  - a registered nurse.
21. '*Appropriately qualified*', in relation to a healthcare professional, means having the qualifications and experience appropriate to assess relevant healthcare information.<sup>30</sup>
22. The Information Commissioner has the power to decide any matter in relation to an access application that could have been decided by an agency.<sup>31</sup>

### Findings

23. The applicant underwent an independent medical examination in the course of their employment with the Department. The independent medical examination was completed by a medical practitioner, registered in the speciality of occupational and environmental medicine.<sup>32</sup>
24. As set out at paragraph 12, the Healthcare Information is the independent medical examination report and supplementary report authored by the examining medical

<sup>26</sup> Section 40(1)(a) of the IP Act.

<sup>27</sup> Section 67(1) of the IP Act and sections 47(3)(d) and 51 of the RTI Act.

<sup>28</sup> See definition in schedule 5 of the RTI Act.

<sup>29</sup> See definition in schedule 5 of the RTI Act.

<sup>30</sup> See definition in schedule 5 of the IP Act.

<sup>31</sup> Section 118(1)(b) of the IP Act.

<sup>32</sup> According to details obtained from the Australian Health Practitioner Regulation Agency's Registry of Practitioners, available at <https://www.ahpra.gov.au/Registration/Registers-of-Practitioners.aspx>, accessed on 3 March 2025.

practitioner, as well as a comment discussing the medical recommendation. I am satisfied that this information meets the definition of healthcare information given by a healthcare professional. For this reason, this information is *relevant healthcare information*.

25. Based on an interview and examination with the applicant, as well as the records made available by the Department, the examining doctor provided their medical opinion to the Department that disclosure of the Healthcare Information might have a negative impact on the applicant's health and wellbeing. The decision-maker at the Department (the Director-General) made the healthcare decision based on the opinion of, and following consultation with the examining doctor. The Department also decided that access to the Healthcare Information may be given instead to an appropriately qualified healthcare professional nominated by the applicant under section 92(2) of the IP Act.
26. The applicant disputes that disclosure would have any prejudicial effect to their physical or mental health or wellbeing, given the time that has passed since the examination and their right to access their medical information held by the Department.<sup>33</sup> I acknowledge the applicant's submissions regarding the veracity of the independent medical reports and concerns that the reports are 'untrue'. I also understand that the applicant is aggrieved by the outcome of the independent medical examination<sup>34</sup> and seeks access to this information to understand the contents of the report.<sup>35</sup>
27. While the applicant's reasons for seeking access to the Healthcare Information are understandable and raise public interest considerations, the adequacy of the medical assessment is not an issue that I have jurisdiction to assess or make a finding about under the IP Act. Further, there is no scope for me to consider public interest arguments in the context of making a healthcare decision under section 47(3)(d) of the RTI Act. This is because Parliament has determined that the release of healthcare information, where disclosure might be prejudicial to the applicant's health or wellbeing, is contrary to the public interest and access may be refused on this basis.<sup>36</sup>
28. I must, however, consider whether the anticipated prejudice from the disclosure of the Healthcare Information to the applicant's health or wellbeing, is real, and tangible as opposed to a fanciful, remote or far-fetched possibly. Having considered the evidence available to me, including the applicant's submissions, the medical opinion of the examining doctor and the content of the Healthcare Information, I am not satisfied that the applicant has provided sufficient evidence to contradict the opinion of an appropriately qualified healthcare professional that access to the information may be prejudicial to the applicant's mental health and wellbeing.<sup>37</sup> For this reason, I prefer the evidence provided by the Department in finding that there is a real and tangible risk that disclosing the Healthcare Information might prejudice the applicant's health or wellbeing.
29. Accordingly, for the reasons set out above, I find that the Healthcare Information may be refused under section 67(1) of the IP Act and section 47(3)(d) of the RTI Act.
30. As an alternative to access, a direction<sup>38</sup> was made by the Department that the Healthcare Information could be disclosed to the applicant through an appropriately qualified healthcare professional nominated by the applicant and approved by the Department. The applicant has not nominated a medical practitioner or pursued this

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<sup>33</sup> Submission dated 29 October 2024.

<sup>34</sup> External review application dated 23 November 2023.

<sup>35</sup> Submission dated 28 October 2024.

<sup>36</sup> *88OQAO and Wide Bay Hospital and Health Service* [2019] QICmr 14 (1 May 2019) at [18]; cited in *D45 and Wide Bay Hospital and Health Service* [2021] QICmr 63 (30 November 2021) at [20].

<sup>37</sup> Noting the nature of the applicant's submissions as outlined at paragraph 26.

<sup>38</sup> Decision dated 25 October 2023.

alternative access avenue either in the first instance with the Department, or on external review. As such, I have not addressed this issue further in this decision. Should the applicant seek to pursue this avenue in the future, it is a matter for discussion between the applicant and the Department.

## Deleted Information

### Relevant law

31. Section 88 of the IP Act permits an agency to delete information that is not relevant to an access application from a document before giving access to a copy of the document. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.<sup>39</sup> In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>40</sup>

### Findings

32. During the processing of the access application, the applicant excluded<sup>41</sup> the following:
- *all attachments, duplicate documents and documents in relation to the department seeking or receiving legal advice.*
  - *...all documents sent to or from [the applicant's email address].*
  - *...third party personal information, specifically: mobile phone numbers; signatures; information regarding public sector employee leave, flexible work arrangements, travel arrangements and other unrelated work priorities and the name and email addresses of private sector employees.*
33. The Department decided to delete 269 pages on the basis this information was duplicated, and therefore irrelevant to the application. Having considered this information, I considered two pages were not an exact duplicate.<sup>42</sup> In the course of the review, the Department released these two pages to the applicant, subject to the deletion of a small amount of information.
34. Having carefully considered the remainder of the Deleted Information and the terms of the access application, I am satisfied that the Deleted Information is the information excluded from the application by the applicant. On this basis, I find that the Deleted Information may be removed<sup>43</sup> from the disclosed documents as it is irrelevant to the application.

## DECISION

35. I vary the decision of the Department and find that:
- access to the Healthcare Information may be refused under section 67(1) of the IP Act and section 47(3)(d) of the RTI Act; and
  - the applicant is not entitled to access the Deleted Information.

<sup>39</sup> *Wyeth and Queensland Police Service* [2015] QICmr 26 at [12].

<sup>40</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>41</sup> Applicant email dated 19 July 2023.

<sup>42</sup> Pages 6 and 7 of '10 duplicate pages from File A - 250p KM Edit-3'.

<sup>43</sup> Under section 88 of the IP Act.

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

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**V Corby**  
**Assistant Information Commissioner**

**Date: 21 March 2025**

## APPENDIX

### Significant procedural steps

Date	Event
23 November 2023	OIC received the external review application. OIC requested preliminary documents from the Department.
24 November 2023	OIC received preliminary documents from the Department
22 December 2023	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue and submissions addressing the grounds of refusal and the search conducted.
11 January 2024	OIC received the requested information from the Department.
20 March 2024	OIC received emails from the applicant about the review and OIC responded to the applicant.
22 May 2024	OIC conveyed a preliminary view to the Department regarding the refused information. OIC requested that the Department provide a further search submission.
9 July 2024	OIC received an email from the applicant about the review.
12 July 2024	OIC responded to the applicant's query about the review.
1 August 2024	OIC wrote to the Director-General of the Department requesting a response to the preliminary view dated 22 May 2024.
9 August 2024	OIC discussed the review in a telephone call with the Department.
19 August 2024	OIC discussed the review in a telephone call with the Department.
22 August 2024	OIC received the Department's response to preliminary view.
10 September 2024	OIC received an email from the applicant about the review.
11 September 2024	OIC responded to the applicant's query about the review.
27 September 2024	OIC conveyed preliminary view to the Department regarding the deletion of information from the additional documents located on review. OIC provided an update to the applicant that additional documents had been located.
24 October 2024	OIC received the Department's response to preliminary view dated 27 September 2024. OIC conveyed a preliminary view to applicant regarding the refused and deleted information. OIC requested that the Department release the Additional Documents to the applicant.
28 October 2024	OIC received a submission from the applicant.
29 October 2024	OIC sent an email to the applicant addressing questions about the review process. OIC received a submission from applicant.
12 November 2024	OIC received an email from the applicant about the review.



Date	Event
13 November 2024	OIC sent an email to the applicant acknowledging the applicant's submission and explaining the review process. OIC requested the Department undertake further searches.
14 November 2024	OIC discussed the review with the Department in a telephone call.
18 November 2024	OIC requested the Department undertake further searches.
27 November 2024	OIC discussed the review with the Department in a telephone call.
13 December 2024	OIC received records of the Department's further searches, and the further documents located on review.
19 December 2024	OIC requested the Department undertake further searches and provide an unobscured copy of the further documents located on review. OIC sent an email to the applicant advising of the further documents located on review.
14 January 2025	OIC received the Department's search records. OIC discussed the review with the Department in a telephone call.
16 January 2025	OIC request further search information from the Department.
21 January 2025	OIC received an unobscured copy of the further documents located on review.
23 January 2025	OIC received the Department's further search response. OIC requested the Department release the further documents located on review to the applicant. OIC conveyed a preliminary view to the applicant regarding the sufficiency of the Department's searches, and the deleted information in the released documents.