Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Application Number: **310537**

Applicant: **Mathews**

Respondent: **University of Queensland**

Decision Date: **5 December 2011**

Catchwords: **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL TO DEAL WITH ACCESS APPLICATION – EFFECT ON AGENCY'S FUNCTIONS – applicant sought access to all documents concerning the applicant – agency refused to deal with the application under section 60 of the *Information Privacy Act 2009* (Qld) – whether the work involved in dealing with the application would, if carried out, substantially and unreasonably divert resources of the agency from their use by the agency in performing its functions**

Contents

REASONS FOR DECISION

Summary

1. For the reasons set out below, I am satisfied that the University of Queensland (**UQ**) may refuse to deal with the applicant's application for documents under section 60 of the *Information Privacy Act 2009* (Qld) (**IP Act**) on the basis that dealing with the application would substantially and unreasonably divert UQ's resources from their use by UQ in performing its functions.

Background

2. The applicant applied on 29 November 2010 to UQ under the IP Act for access to:

> *…all of all documents where there is a mention of myself or of information about myself or relevant to me.*
>
> *This will include all documents on FOI files, and all documents which have already been released to me, including the date stamp and signature.*

3. UQ's RTI and Privacy Coordinator identified 96 files relevant to the application and on 10 December 2011 gave the applicant written notice[1] of UQ's intention not to deal with the application (**Notice**). The RTI and Privacy Coordinator explained that the bulk of 71 of the 96 files had previously been accessed by the applicant pursuant to earlier statutory access applications,[2] and set out UQ's estimate that dealing with the application would involve processing at least 14,789 documents, which would take some 1,514 hours. The Notice invited the applicant to reconsider the terms of the application, advising the applicant of the prescribed consultation period[3] and the date due for response.

4. The applicant responded by email dated 12 December 2010, requesting detailed information as to the nature of the 96 files. The RTI and Privacy Coordinator replied by letter dated 21 December 2010, categorising the 96 files identified, advising of their location, and advising the applicant of the samples of files used in estimating processing time.

5. The applicant then requested UQ supply a 'unique identifier' for each of the 96 files.[4] The RTI and Privacy Coordinator replied by email dated 22 December 2011, relevantly advising that he considered it unreasonable to supply a unique identifier such as a file number. The RTI and Privacy Coordinator suggested the applicant consider specifying the type of information sought, noting that the applicant had previously pursued some 58 statutory access applications and should be aware of the types of information UQ held about him.

6. Further correspondence followed. In an email dated 22 December 2010, the applicant maintained his request for a unique identifier, and by letter dated 23 December 2010 the RTI and Privacy Coordinator replied, repeating his advice as to the nature of all files held, and setting out file relevant descriptions. As to the applicant's request for 'unique identifiers', the RTI and Privacy Coordinator stated:

> *…the unique identifier is the file number that is assigned to every University file. I fail to understand how a file number, such as CR-A17561, could assist you in reducing the*

[1] Under section 61 of the IP Act.
[2] Under both the now-repealed *Freedom of Information Act 1992* (Qld) and IP Act.
[3] 10 business days after the date of the notice – section 61(6) of the IP Act.
[4] By email dated 21 December 2011.

> *scope of your IP application. I take the view that the provision of this type of information, particularly where it does not contribute to the understanding of the type of information held by the University, is unreasonable.*

7. By email dated 23 December 2010 the applicant again requested 'unique identifiers' claiming that he would then '*limit my application to documents meeting my original request, but limited to documents from a selection of 'unique identifiers' that I shall advise*'. The applicant also requested information as to how many of the 96 files located UQ could process without substantially and diverting resources.

8. By letter dated 24 December 2010 the RTI and Privacy Coordinator again sought from the applicant an indication of the types of documents and information requested. The letter restated UQ's position as to unique identifiers, noting that '*…this number would not assist you in understanding the types of documents held by the University nor…assist you in reducing the scope of your application.*'

9. This letter went on to note that UQ considered it unreasonable to indicate how many files could be processed without substantially and unreasonably diverting resources, pointing out the obligation imposed on an applicant under section 42(3)(b) of the IP Act to provide sufficient information concerning documents requested, so as to allow an agency to identify same.

10. By email dated 6 January 2011, the applicant ignored UQ's request that the access application be narrowed by way of clarification as to the types of documents and information sought, and instead advised he was prepared to narrow the scope of the access application to 26 of the 96 files identified by UQ (**Narrowed Application**).

11. On 6 January 2011, UQ's RTI and Privacy Coordinator wrote to the applicant advising of his decision to refuse to deal with the Narrowed Application. The decision relevantly stated that 5,388[5] folios were relevant to the Narrowed Application, the processing[6] of which would require 171 hours.

12. The applicant applied for internal review.[7] By letter dated 24 January 2011, UQ's Executive Director (Operations), affirmed the RTI and Privacy Coordinator's initial decision.

13. On 25 January 2011 the applicant applied to the Information Commissioner for external review, relevantly stating:

> *The government body creates these documents about me, and then they hold that they have created too many so I cannot know what they have recorded about me.*
>
> *Additionally, they base the amount of time required to perform on the method they choose which is so time consuming they can refuse to do any work.*
>
> *This is all in their control not my control and so I cannot be made responsible for not being provided with all their information about me.*
>
> *This is an act of disability discrimination…*

Reviewable decision

14. The decision under review is UQ's internal review decision dated 24 January 2011.[8]

[5] An estimate based on page numbers derived from a sample of relevant files.
[6] That is, the resources that would be used in undertaking the various steps involved in processing an application as out in section 60(2)(a)-(d) of the IP Act and required to be considered by an agency in contemplating refusal to deal under section 60.
[7] By email dated 6 January 2011.

External review process

15. Significant procedural steps are set out in Appendix 2 to this decision. I consider it necessary, however, to briefly canvass the following steps in the external review process.

16. By letter dated 24 February 2011, the Office of the Information Commissioner (**OIC**) wrote to the applicant conveying the preliminary view that UQ was entitled to refuse to deal with the access application under section 60 of the IP Act. The applicant was invited to provide submissions in support of his case by 10 March 2011, in the event he did not accept OIC's preliminary view.

17. By email dated 27 February 2011 the applicant advised that he did not accept OIC's preliminary view, setting out submissions in support of his case and advising that he was '*disabled and this mitigates against my being able to meet timelines.*' The applicant further advised that his email *'…did not complete his submission.*'

18. Having received no further communication from the applicant, OIC wrote to the applicant by email dated 3 May 2011 inviting any further submissions by 17 May 2011. On the same day, the applicant replied by email, relevantly advising he did '*wish to make further submissions*' and had '*more to add'*.

19. Despite his advice as noted above, nothing further was received from the applicant. Accordingly, by email dated 3 October 2011, OIC wrote to the applicant requesting any final submissions by 17 October 2011, and advising that OIC would proceed to the next step in this review once that date had passed. The applicant replied by email on the same day, making various statements of no relevance to the issues in this review and advising '[i]*t is not over yet'*.

20. Nothing further has been received from the applicant. It is not clear whether his statement '[i]t *is not over yet*' was intended as an intimation that he wished to make further submissions in this review, or was a reference to irrelevant matters raised by him in his email of 3 October 2011. In any event, I am satisfied he has been:

    - apprised of the issues arising in this external review,
    - afforded sufficient opportunity over some eight months to provide submissions addressing those issues, and
    - informed that OIC would be proceeding with this external review after 17 October 2011.

Evidence considered

21. Evidence, submissions, legislation and other material I have considered in reaching my decision is as disclosed in these reasons (including footnotes and appendix).

Relevant Law

22. 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. The limited circumstances in which dealing with an access application will be contrary to the public interest are set out in sections 59, 60 and 62 of the IP Act.

[8] A decision refusing to deal with an application under chapter 3, part 4 of the RTI Act is a reviewable decision; Schedule 6.

23. Relevantly, section 60 of the IP Act permits an agency to refuse to deal with an access application if it considers the work involved in dealing with the application would substantially and unreasonably divert the resources of the agency from performing its functions.

24. Before making a decision to refuse to deal with an application, however, an agency must satisfy certain procedural prerequisites.[9] Relevantly, an agency must issue a written notice to the applicant, stating the agency's intention to refuse to deal with the application and offering a period for the applicant to consult with the agency, with a view to amending an application to remove the grounds for refusal.[10]

25. The agency must also give the applicant a reasonable period to consult with the agency as to the scope of the application, and provide, as far as is reasonably practicable, any information that would, essentially, assist the applicant to reframe the application so as to render it in a form capable of processing.

Findings

Did UQ satisfy the prerequisites before refusing to deal with the application?

26. Yes. I have examined the Notice dated 10 December 2010. I am satisfied it fulfils the requirements prescribed in section 61 of the IP Act.

27. I am also satisfied UQ provided the applicant with information about the files identified and advice as to how the application could be reframed in a form that would allow processing without substantially and unreasonably diverting UQ's resources.[11]

Would dealing with the application substantially and unreasonably divert UQ's resources from their use in its functions?

28. Yes.

29. Sections 60(2) and (3) of the IP Act set out factors an agency must have regard to in determining whether dealing with an application would substantially and unreasonably divert the agency's resources from it functions, and those which must be disregarded. Relevantly, an agency must:

    a) have regard to the resources that would be used for:[12]

    - identifying, locating or collating any documents in UQ's filing system, or
    - making copies, or edited copies of any documents, or
    - deciding whether to give, refuse or defer access to any documents, including resources that would have to be used in examining any documents or conducting third party consultations;[13] or
    - notifying any final decision on the application.

    b) not have regard to any reasons the applicant gives for applying for access or UQ's belief about what the applicant's reasons are for applying for access.[14]

[9] Section 61 of the IP Act.
[10] Section 61 also sets out other requirements which must be stated in the written notice: section 61(2)-(6).
[11] Particularly UQ's letters and emails to the applicant dated 21, 22 and 23 December 2010.
[12] Though this is not an exhaustive list: section 60(2) of the IP Act.
[13] Under section 60(2)(b) of the IP Act.
[14] Section 60(3) of the IP Act.

30. I will consider firstly the factors not to be taken into account as summarised at b) above. The applicant did not provide any reasons for applying for access to the requested documents, and thus obviously none were taken into account by UQ in making its decision.[15]

31. The internal review decision does cite authorities from another jurisdiction[16] suggesting the demonstrable importance of requested documents to an applicant may be a relevant factor in considering whether dealing with an application would substantially and unreasonably divert resources. This is problematic in the context of section 60(3) of the IP Act. Assessing the importance of documents to a given applicant would appear to almost invariably require an inquiry as to an applicant's motives. This is, in turn, likely to lead a decision-maker to take into account or form and rely upon a belief as to an applicant's reasons for applying for relevant documents, both of which, as noted, are factors expressly proscribed under section 60(3) of the IP Act.

32. There is nothing on the face of the decision nor otherwise before me suggesting UQ formed, let alone had regard to, any belief as to the applicant's reasons for applying in deciding to refuse to deal with the application.[17]

33. I am satisfied UQ has complied with section 60(3) of the IP Act, and not had regard to the considerations specified in that provision (and nor, in conducting this merits review and considering relevant matters afresh, have I).

34. As to the non-exhaustive list of considerations required to be taken into account and summarised at a) above, UQ's internal review decision addresses relevant factors, recording the following estimates for dealing with the 5,828 documents identified as responsive to the Narrowed Application:

> *Location and retrieval of document: 1 hour*[18]
> *scanning documents (10 seconds per page x 5828 pages): 16 hours*[19]
> *examining documents to determine whether they are within the scope of the application (10 second per page x 5828 pages): 16 hours*[20]
> *marking up the documents (40 pages per hour): 145 hours*[21]
> *preparation of decision: 5 hours.*[22]

35. UQ also explained in its internal review decision that dealing with the Narrowed Application would require UQ's RTI and Privacy Coordinator to commit all of his time to the Narrowed Application for a period equating to 25.2 business days. UQ contended that this would result in:

    - *the University being unable to process the application within the 25 business day statutory period;*

[15] Thus complying with section 60(3)(a) of the IP Act.
[16] *Cianfrano and Director-General, Premier's Department* [2006] NSWADT 137 and *Chalita and NSW Department of Education and Training* [GD] [2009] NSWADTAP 70, both of which considered decisions to refuse access to documents under section 25(1)(a1) of the now-repealed *Freedom of Information Act 1989* (NSW). Importantly, and contrary to UQ's internal review decision, section 25(1)(a1) of that Act was not drafted in the same terms as section 60 of the IP Act, in that it did not prescribe factors that must and must not be taken into account in determining whether to refuse to deal.
[17] The relevant paragraph of the decision simply notes many requested documents are likely to have been previously disclosed to the applicant pursuant to earlier statutory access applications.
[18] Section 60(2)(a) of the IP Act.
[19] Section 60(2)(a) of the IP Act – the action of 'scanning' documents can in my view be seen as a facet of the act of 'collation' (and in any event noting the resource factors set out in section 60(2) are non-exhaustive). There is a discrepancy between the number of folios identified in the initial decision (5,388) and the internal review decision: this is explained in the latter as arising from a further sampling of files falling within the terms of the Narrowed Application.
[20] Section 60(2)(a) and (b), noting that the act of examining a document to determine whether it responds to the terms of an application is strictly part of identifying relevant documents, while examining documents to determine whether parts are irrelevant within the meaning of section 88 of the IP Act is an act in my view falling within section 60(2)(b)(i).
[21] Section 60(2)(c) of the IP Act.
[22] Section 60(2)(b) - deciding whether to give, refuse, or defer access – and (d) – notifying final decision – of the IP Act.

- *the University not dealing with other applications under the [IP Act] and the [RTI Act];*
- *delay and backlog in access applications;*
- *delays to other applicants receiving a decision within the statutory timeframe;*
- *delay and backlog in the provision of privacy advice to the University.*

36. The applicant contends:[23]
    - UQ '*base the amount of time required to perform on the method they choose which is so time consuming*'[24]
    - the '*criteria of the legislation is unconstitutional*' and UQ's decision an act of '*disability discrimination*'[25]
    - UQ's decision is '*just a way to deny me access to my personal information'*
    - UQ's RTI and Privacy Coordinator has shown 'bad faith' in refusing to provide the applicant with 'unique identifiers' as requested during the consultation phase following issuance of the Notice.

37. The thrust of the applicant's first submission appears to be that UQ has arbitrarily selected a method of calculating the impact of processing his application so as to arrive at the most resource-intensive estimates possible. There is nothing before me to support that assertion. The basic procedure for assessing processing impact is prescribed in section 60 of the IP Act, a procedure to which, as noted above, UQ has clearly adhered. Nor do I consider the time estimates arrived at in the decision for undertaking various necessary processing steps – scanning, marking documents, etc. – are unreasonable or inaccurate (and if anything, these are likely to be conservative.)[26]

38. As to the applicant's contentions summarised at the second dot point above, other than these mere assertions the applicant has presented no submissions or evidence to give rise to any constitutional issues. Additionally, alleged acts of 'disability discrimination' are not matters I have jurisdiction to consider in conducting an external review under the IP Act. In any event, there is nothing before me to suggest UQ has done anything other than apply relevant provisions of the IP Act as framed.

39. Similarly, there is nothing before me to suggest UQ's decision to refuse to deal with the Narrowed Application was in some way a pretext to avoid disclosing to the applicant his personal information. The applicant's submission as to UQ's motives in this regard is not strictly relevant given that, as noted above, I am conducting a merits review and considering matters afresh – that is, applying relevant provisions of the IP Act in accordance with appropriate principles as disclosed in these reasons.

40. In any case, I note UQ had dealt with some 58 statutory access applications from the applicant, pursuant to which it has, as I understand, previously disclosed to him his personal information.

41. Finally, I do not accept that UQ's refusal to accede to the applicant's request during consultation for 'unique identifiers' in any way invalidates its decision. An agency is, as noted, under an obligation to give an applicant information that would help the applicant

[23] By email dated 27 February 2011; subsequent emails from the applicant contain no submissions of any relevance to the issues in this review.
[24] External review application dated 25 January 2011.
[25] Email dated 27 February 2011.
[26] Noting that, for example, UQ's 10 second per page scanning estimate compares favourably with an effective rate of 15 seconds per page to prepare and scan responsive documents as based on historical processing data and accepted by me in *Middleton and Building Services Authority* (Unreported, Queensland Information Commissioner, 24 December 2010, at paragraph 26), and noting the difficulty inherent in comparing processing rates across agencies and applications. I also note UQ did not take into account time involved in consulting with any third parties that might be identified, a factor specified at section 60(2)(b)(ii) of the IP Act.

to make an application capable of being processed without diverting resources within the meaning of section 60.

42. UQ did, however, provide considerable information on the nature of the files held, and suggested the applicant indicate the types of information to which he sought access – a legitimate suggestion given both the information conveyed by UQ during consultation, and the extent of access which the applicant had previously been afforded.

43. Importantly, the obligation imposed by section 61(1)(c) is only expressed to extend to what is 'reasonably practicable', and furthermore, only requires provision of information that would assist an applicant to reframe the scope of an application.

44. In this case, UQ's RTI and Privacy Officer clearly advised the applicant that he could not see how provision of a mere 'identifier' such as a basic file number would have allowed the applicant to comprehend the scope and nature of information contained within such file at all, or at least, to a level any better than the information actually supplied by UQ (together with that which must have been known to the applicant given his prior access), so as to permit him to meaningfully narrow the access application as envisaged by sections 60 and 61 of the IP Act.

45. This is a view with which, in the circumstances of this case, I agree. I cannot see how supply of file numbers could have enabled the applicant to reframe the scope of his application. I consider UQ was under no obligation to supply 'unique identifiers' as part of the consultation process mandated by section 61 of the IP Act.

46. Accordingly, I am satisfied UQ adequately discharged its obligation to provide information under section 61, and do not consider it acted in 'bad faith' in the manner in which it consulted with the applicant in relation to the application.

47. There is nothing before me to call into question the estimates set out in UQ's decision, and I accept them as accurate. On the basis of those estimates:
    - the UQ RTI and Privacy Officer would be required to spend over 25 business days processing the Narrowed Application under the IP Act
    - processing that application would cause a significant strain on the UQ RTI Office's resources leading to a backlog of other access applications; and
    - dealing with the Narrowed Application would therefore substantially[27] and unreasonably[28] divert UQ's resources as contemplated by section 60 of the IP Act.

DECISION

31. For the reasons set out above, I affirm UQ's decision to refuse to deal with the Narrowed Application under section 60 of the IP Act on the basis that it would substantially and unreasonably divert UQ's resources from their use by the agency in performing its functions.

_____

Jenny Mead
Right to Information Commissioner

Date: 5 December 2011

[27] 'Ample', 'considerable': Macquarie Dictionary online, accessed 24 October 2011.
[28] Given the resources available to UQ for dealing with all applications under the IP and RTI Acts, and not just the applicant's.

Appendix 1

Relevant provisions of the IP Act

60 Effect on agency's or Minister's functions

(1) An agency or Minister may refuse to deal with an access or amendment application, or, if the agency or Minister is considering 2 or more access or amendment applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—

(a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
(b) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.

(2) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used—

(a) in identifying, locating or collating any document in the filing system of the agency or the Minister's office; or
(b) for an access application—in deciding whether to give, refuse or defer access to any documents, or to give access to an edited copy of any documents, including resources that would have to be used—
(i) in examining any document; or
(ii) in consulting in relation to the application with a relevant third party under section 56; or
(c) in making a copy, or edited copy, of any document; or
(d) in notifying any final decision on the application.

(3) In deciding whether to refuse, under subsection (1), to deal with an access or amendment application, an agency or Minister must not have regard to—

(a) any reasons the applicant gives for applying for access or amendment; or
(b) the agency's or Minister's belief about what are the applicant's reasons for applying for access or amendment.

61 Prerequisites before refusal because of effect on functions

(1) An agency or Minister may refuse to deal with an access or amendment application under section 60 only if—
(a) the agency or Minister has given the applicant a written notice—
(i) stating an intention to refuse to deal with the application; and
(ii) advising that, for the prescribed consultation period for the notice, the applicant may consult with the agency or Minister with a view to making an application in a form that would remove the ground for refusal; and
(iii) stating the effect of subsections (2) to (6); and
(b) the agency or Minister has given the applicant a reasonable opportunity to consult with the agency or Minister; and
(c) the agency or Minister has, as far as is reasonably practicable, given the applicant any information that would help the making of an application in a form that would remove the ground for refusal.

(2) Following any consultation, the applicant may give the agency or Minister written notice either confirming or narrowing the application.

(3) If the application is narrowed, section 60 applies in relation to the changed application but this section does not apply to it.

(4) If the applicant fails to consult after being given notice under subsection (1), the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.

(5) Without limiting subsection (4), the applicant is taken to have failed to consult if, by the end of the prescribed consultation period, the applicant has not given the named officer or member written notice under subsection (2).

(6) In this section—
prescribed consultation period, for a written notice under subsection (1)(a), means—
- *(a) the period of 10 business days after the date of the notice; or*
- *(b) the longer period agreed by the agency or Minister and the applicant whether before or after the end of the 10 business days mentioned in paragraph (a).*

Appendix 2

Date[29]	Event
29 November 2010	Applicant applies to UQ for '…all of all documents where there is a mention of myself or of information about myself or relevant to me. …'
10 December 2010	UQ gives applicant written notice of intention not to deal with application under section 61 of the IP Act.
12 December 2010	Applicant emails UQ requesting detail of files identified in section 61 notice.
21 December 2010	UQ writes to applicant supplying information regarding files identified in section 61 notice. Applicant emails in response requesting 'unique identifier' for files.
22 December 2010	UQ writes to the applicant, advising it considered it unreasonable to supply a unique identifier and suggesting the applicant specify the type of information requested. Applicant emails in response maintaining request for unique identifier.
23 December 2010	UQ provides advice as to nature of files held and relevant descriptions, repeating advice providing unique identifier would be unreasonable. Applicant emails UQ in reply, again requesting unique identifier and enquiring how many files UQ could process without substantially and unreasonably diverting resources.
24 December 2010	UQ writes to the applicant seeking details as to type of information applicant seeks. UQ notes unique identifier would not assist in narrowing scope of application. UQ advises it considers providing advice as to number of files that could be processed without substantially and unreasonably diverting resources unreasonable.
6 January 2011	Applicant emails UQ advising he is prepared to narrow scope of application to 26 files identified in section 61 notice. UQ decides to refuse to deal with narrowed application under section 60 of the IP Act. Applicant applies for internal review.
24 January 2011	UQ issues internal review decision, affirming initial decision to refuse to deal with narrowed application under section 60 of the IP Act.
25 January 2011	Applicant applies to Information Commissioner for external review of UQ's internal review decision.
24 February 2011	OIC writes to applicant conveying preliminary view that UQ was entitled to refuse to deal with access application under section 60 of the IP Act.
27 February 2011	Applicant emails OIC advising he does not accept preliminary view and setting out submissions in support of his case. Applicant advises email does not 'complete his submission'.
3 May 2011	OIC writes to applicant requesting any further submissions by 17 May 2011. Applicant replies by email, advising he intends to make further submissions and has 'more to add'.
3 October 2011	OIC writes to applicant requesting any final submissions by 17 October 2011. OIC advises next step in external review will be taken following 17 October 2011. Applicant replies by email, relevantly advising '[t]his is not over yet'.

[29] Of correspondence or relevant communication unless otherwise stated.