



Decision and Reasons for Decision

Citation:	<i>Z69 and Metro North Hospital and Health Service [2019] QICmr 48 (6 November 2019)</i>
Application Number:	314822
Applicant:	Z69
Respondent:	Metro North Hospital and Health Service
Decision Date:	6 November 2019
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL TO DEAL – RELEVANT APPLICATION REQUIREMENT – EVIDENCE OF IDENTITY – application to access documents containing the applicant’s personal information – evidence of identity required – whether an expired driver’s licence is a document verifying a person’s identity – section 43(3)(a) of the <i>Information Privacy Act 2009 (Qld)</i> and section 3(1) of the <i>Information Privacy Regulation 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the respondent agency (**MNHHS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to all documents that contained the personal information of the applicant in relation to a complaint he submitted to MNHHS in July 2019. Although he made the application under the IP Act, which limits applications to an applicant’s personal information, the applicant stated that he sought access to the personal information of all MNHHS employees contained in responsive documents, ‘including, without limitation, full names, personal logon identifiers and direct contact details’.
2. MNHHS responded by advising the applicant² that his application was noncompliant with certain application requirements, including the requirement in section 43(3)(a) of the IP Act that evidence of identity for the applicant be provided. The applicant had provided a photocopy of an expired driver’s licence that had been certified over three years ago (on 29 January 2016). MNHHS advised the applicant that it only accepted current identity documents that had been certified within the last 12 months. MNHHS also advised the applicant that his application had requested access to personal and nonpersonal information and that if he wished to pursue access to the personal information of others, his application would be processed under the *Right to Information Act 2009 (Qld)* (**RTI Act**), which required payment of an application fee.³ MNHHS advised the applicant that

¹ Application dated 18 July 2019, received by MNHHS on 5 August 2019.

² Letter dated 6 August 2019.

³ Section 24(2)(a) of the RTI Act.

if his application was not made compliant by 3 September 2019, it would issue a decision refusing to deal with his application on the grounds of noncompliance with all relevant application requirements.

3. The applicant responded with a submission dated 6 August 2019 in which he argued, firstly, that MNHHS did not have jurisdiction to make its decision dated 6 August 2019, and secondly, that it was open to MNHHS to *'depart from or disregard'* its discretionary policy about requiring a current identity document to be provided. The applicant argued that MNHHS had fallen into *'administrative error'* in that it had exercised a discretionary power without regard to the merits of his application, and that it was an unreasonable exercise of discretionary power. He also confirmed that his application was intended to be made under the IP Act and that it should be amended to exclude from its scope any non-personal documents the provision of which would incur a fee or charge.
4. By email dated 7 August 2019, MNHHS advised the applicant that it had not made a decision under the IP Act, and that it would wait until the date it had specified in its letter (3 September 2019) for the applicant to make his application in a compliant form before making a decision.
5. The applicant did not take steps to make his application compliant. MNHHS therefore issued a decision⁴ refusing to deal with his application under section 53(6) of the IP Act and section 33(6) of the RTI Act on the grounds that it did not comply with all relevant application requirements.
6. The applicant applied to this Office (**OIC**) for external review of MNHHS's decision.⁵
7. For the reasons set out below, I affirm MNHHS's decision to refuse to deal with the applicant's access application under section 53(6) of the IP Act on the grounds that it does not comply with the application requirement contained in section 43(3)(a) of the IP Act.

Reviewable decision

8. The decision under review is the decision of MNHHS dated 4 September 2019.

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the appendix).

Issue for determination

10. The issue for determination is whether the access application complies with the requirement contained in section 43(3)(a) of the IP Act – that an applicant must provide with their access application, or within 10 business days after making the application, evidence of identity for the applicant.

Relevant law

11. Sections 43(2) and (3) of the IP Act contain the *'relevant application requirements'* for making a valid access application.

⁴ 4 September 2019.

⁵ 5 September 2019.

12. Section 43(3) of the IP Act requires that *'evidence of identity for the applicant'* be provided.
13. Section 43(4) of the IP Act provides that *'evidence of identity'* means the evidence of identity prescribed under a regulation.
14. Section 3(1) of the *Information Privacy Regulation 2009 (Qld) (IP Regulation)* relevantly states that, for section 43(4) of the IP Act, the evidence of identity prescribed for a person is a document *'verifying the person's identity'* and includes a passport, birth certificate, driver licence and a statutory declaration from an individual who has known the person for at least one year.
15. Section 3(2) of the IP Regulation provides that if an identity document is a photocopy of an original document, the document must be certified by a qualified witness as being a correct copy of the original document.
16. Section 53(1) of the IP Act provides that this section applies if a person purports to make an access application and the application does not comply with all relevant application requirements.
17. Section 53(3) of the IP Act provides that an agency must not refuse to deal with an application because it does not comply with all relevant application requirements without first giving the applicant a reasonable opportunity to consult with a view to making an application in a form complying with all relevant application requirements.
18. Section 53(6) of the IP Act provides that if, after giving the opportunity mentioned in section 53(3), and any consultation, the agency decides that the application does not comply with all relevant application requirements, the agency must, within 10 business days after making the decision, give the applicant prescribed written notice of the decision.

Application made under IP Act

19. In the submissions⁶ that accompanied his application for external review, the applicant confirmed that his application was intended to be made under the IP Act and that it should therefore be considered to be amended so as to remove from its scope any nonpersonal document for which any fee or charge would be payable by him.
20. The applicant lodged further submissions on 1 October 2019 in which he complained that MNHHS had sent him an Overdue Debt Notice for non-payment of the application fee when he had confirmed that his application was made under the IP Act, which attracted no fee.

Attempted informal resolution

21. After considering the applicant's application and submission, OIC contacted MNHHS to advise that the applicant had confirmed that his access application was to be amended so as to confine its terms to his personal information. MNHHS agreed to process the application under the IP Act on that basis (and to cancel the Overdue Debt Notice) if the applicant provided a current identity document certified less than 12 months ago, or if he attended at MNHHS's offices and produced an original, current identity document.

⁶ Dated 5 September 2019.

22. In a letter dated 14 October 2019, the Acting Assistant Information Commissioner (**AAIC**) advised the applicant of this. The AAIC also stated:

The reason why it is important for a current form of ID to be certified or sighted is to ensure that the information sought, if it is to be released, is released to the right person. In this case, you have provided a photocopy of an expired driver's licence which was certified over three years ago. From this information, MNHHS would be unable to verify that you ... are the person who submitted the application and that documents, if they were to be released, would be provided to you, without being able to verify your ID. It is also a matter which goes to the fundamental purpose of the IP Act – that is, to provide safeguards for the handling of personal information in the public sector environment. We therefore consider that MNHHS's policy is reasonable in the circumstances and, for the above reasons, it is our preliminary view that your application is non-compliant.

23. The applicant was advised he had two options moving forward:

- if he agreed to resolve the review informally, he should provide a certified copy of a current identity document, or attend at MNHHS to show his original current identity document, and his application would be processed; or
- if he did not agree to resolve the review informally, he should provide a submission in support of his case.

24. By email dated 16 October 2019, the applicant advised that he did not agree to resolve the review informally. He provided another submission in support of his case, and also confirmed that he continued to rely on the previous submissions he had made both to MNHHS and OIC.⁷

The applicant's submissions

25. The applicant's submissions can be summarised as follows:

- MNHHS lacks jurisdiction under any law to require that an applicant submit a current identity document certified less than 12 months ago
- MNHHS made an administrative and/or jurisdictional error within section 20(2)(c) of the *Judicial Review Act 1991* (Qld) (**JR Act**) because the person who purported to make the decision did not have jurisdiction to make the decision
- the making of the decision by MNHHS was an improper exercise of the power conferred by the enactment under which it was purported to be made within the meaning of section 20(2)(e) of the JR Act
- the improper exercise of the power involved exercising a discretionary power in accordance with a rule or policy without regard to the merits of the particular case within the meaning of section 23(f) of the JR Act
- MNHHS failed to consider that it was open to it to depart from or disregard its policy, or to consider the merits of the application outside the confines of the policy
- MNHHS's exercise of its discretionary power was unreasonable
- a policy may be reasonable but also unlawful by virtue of giving rise to an administrative or jurisdictional error
- if it was the intention of Parliament to confer upon MNHHS the jurisdiction to impose additional documentary requirements beyond those contained in the IP Regulation, Parliament would likely have clarified this intention in law

⁷ Dated 6 August 2019, 5 September 2019 and 1 October 2019.

- the primary intention of the IP Act is that persons should be given access to their personal information held in the government's possession and this takes priority over safeguards for the handling of personal information in the public sector; and
- MNHHS failed to properly consider the applicant's submissions or to give proper reasons for its decision.

26. In respect of the last of these submissions, on external review OIC conducts a full merits review of an agency's decision: it stands in the shoes of the agency decision-maker and may decide anything that the agency had power to decide.⁸ Accordingly, issues raised or complaints made by an applicant about the way in which an agency has decided their application are addressed on external review.

Discussion

27. I have set out above the relevant provisions contained in the IP Act and IP Regulation that deal with evidence of identity.

28. Section 3 of the IP Regulation provides that the evidence of identity prescribed for a person is a document '*verifying the person's identity*'. To '*verify*' means '*to show or agree that something is true*⁹ or to '*check that something is true by careful examination or investigation*'.¹⁰ I find it reasonable to regard an identity document that has expired as no longer *verifying* as true a person's identity or any of the other information contained in the document. When an identity document such as a driver's licence contains an expiry date, the intention of the issuing authority is that the document is no longer to be regarded as valid (that is, as no longer *verifying* the information contained in the document) beyond the expiry date.

29. As such, I find it was reasonable for MNHHS to refuse to accept an expired driver's licence as a document verifying the applicant's identity. To impose no requirement of currency for such a document would be to permit an applicant to provide a driver's licence that expired, for example, 10 years ago as an identity document for the purposes of section 3 of the IP Regulation. I do not consider that is a reasonable interpretation of section 3 of the IP Regulation or that it achieves the purpose of the relevant provisions about identity contained in the IP Act and IP Regulation, which is to ensure that an agency is satisfied of verification of an individual's identity at the time of dealing with a request by that person to access his or her personal information.

30. My finding on this issue renders the remainder of the applicant's submissions irrelevant. I would simply note that I reject the applicant's submission that MNHHS did not have jurisdiction to make its decision. I consider that an agency has jurisdiction, when responding to an applicant's access application, to determine whether an identity document submitted by an applicant is a document that verifies the person's identity and therefore satisfies the relevant application requirement under section 43(3) of the IP Act.

Finding

31. I find that, where an identity document contains an expiry date and that date has expired, that document is not a document that verifies a person's identity for the purposes of section 43(3) of the IP Act and section 3(1) of the IP Regulation.

⁸ Section 118(1) of the IP Act.

⁹ *Macmillandictionary.com*. Accessed 4 November 2019.

¹⁰ *Collinsdictionary.com*. Accessed 4 November 2019.

DECISION

32. I affirm MNHHS's decision to refuse to deal with the applicant's access application under section 53(6) of the IP Act on the grounds that it does not comply with the application requirement contained in section 43(3)(a) of the IP Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 6 November 2019

APPENDIX

Significant procedural steps

Date	Event
5 September 2019	The applicant applied to OIC for external review.
13 September 2019	MNHHS provided OIC with procedural documents.
1 October 2019	The applicant provided written submissions.
14 October 2019	OIC advised the applicant and MNHHS that it had accepted the application for external review, and proposed two options to the applicant to progress the review.
16 October 2019	The applicant advised that he did not agree to informally resolve the review and provided further written submissions.