



## Decision and Reasons for Decision

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Citation:	<i>S90 and Veterinary Surgeons Board of Queensland; T38 (Third Party)</i> [2020] QICmr 23 (20 April 2020)
Application Number:	314593
Applicant:	S90
Respondent:	Veterinary Surgeons Board of Queensland
Third party:	T38
Decision Date:	20 April 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - SERIOUS ACT OF HARASSMENT OR INTIMIDATION - veterinary patient treatment information - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the <i>Right to Information Act 2009</i> (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Veterinary Surgeons Board of Queensland (**VSBQ**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to:  
  
*ALL DOCUMENTS, EMAILS, DRAFTS, FILE NOTES, RECORDS ABOUT [her] AND [her] DOG AND [her] MATTERS FROM 1/2/14 TO 14/2/19*  
*Include blind copied parties to emails, calendar entries, phone call notes. Complaint made to Vet Services Board.*
2. The VSBQ located 295 pages and decided<sup>2</sup> to refuse access to 19 pages on the basis the information was contrary to the public interest to disclose.
3. The applicant applied<sup>3</sup> to the Office of the Information Commissioner (**OIC**) for external review of the VSBQ's decision refusing access.

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<sup>1</sup> Dated 14 February 2019.

<sup>2</sup> Decision dated 26 April 2019.

<sup>3</sup> By email dated 26 April 2019.

4. For the reasons set out below, I vary the VSBQ's decision by finding that access to information may be refused<sup>4</sup> on the ground that it comprises exempt information as its disclosure could reasonably be expected to result in a serious act of harassment or intimidation.<sup>5</sup>

### Background and evidence considered

5. The documents released to the applicant<sup>6</sup> (**Released Documents**) reveal that:
  - the applicant sought treatment at a veterinary practice<sup>7</sup> for her dog in February 2014<sup>8</sup>
  - the applicant subsequently made a complaint to the VSBQ about the treatment provided to her dog by the treating veterinarian at the veterinary practice;<sup>9</sup> and
  - the VSBQ investigated the applicant's complaint and found that the treating veterinarian's treatment of the applicant's dog was appropriate and that there were no grounds to support a contention that there had been acts or omissions of the kind that would warrant censure or disciplinary action.<sup>10</sup>
6. During the external review, OIC consulted with three relevant third parties.<sup>11</sup> One third party applied to OIC to participate in the external review<sup>12</sup> and provided submissions in support of their objection to disclosure.
7. Significant procedural steps taken during the external review are set out in the Appendix to this decision.
8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
9. In reaching my decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>13</sup> particularly the right to seek and receive information as embodied in section 21 of the HR Act. I consider that a decision-maker will, when observing and applying the law prescribed in the IP Act, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.<sup>14</sup> I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between the Victorian equivalent of Queensland's IP Act and HR Act: '*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>15</sup>
10. The applicant provided extensive submissions during the review. I have considered all this material and have extracted those parts which I consider have relevance to the issue to be determined in this external review.

<sup>4</sup> Under section 67(1) of the IP Act and section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>5</sup> Section 48 and Schedule 3, section 10(1)(d) of the RTI Act.

<sup>6</sup> As provided to OIC by the VSBQ on 3 June 2019.

<sup>7</sup> So as to avoid inclusion of information that could possibly identify the applicant and other individuals, this decision refers to the 'veterinary practice' rather than naming the specific veterinary practice.

<sup>8</sup> At pages 1-4 of the Released Documents.

<sup>9</sup> At pages 1-4 of the Released Documents.

<sup>10</sup> At page 38 of the Released Documents.

<sup>11</sup> Letter to third party dated 16 October 2019 under section 56 of the IP Act.

<sup>12</sup> By email dated 13 November 2019 under section 102 of the IP Act.

<sup>13</sup> Which came into force on 1 January 2020.

<sup>14</sup> See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

<sup>15</sup> XYZ at [573].

## Preliminary Issue - Alleged bias

11. The applicant has made submissions alleging that Assistant Information Commissioner Rickard's preliminary view letter,<sup>16</sup> advising the applicant that the information sought was exempt from disclosure, '*shows bias*'.<sup>17</sup> The applicant has also requested that I be removed from her matters<sup>18</sup> and alleged that I have an undisclosed bias against her.<sup>19</sup> I have carefully considered these submissions, alongside the High Court's test for assessing apprehended bias for a decision maker. The High Court's test requires consideration of '*if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide*'.<sup>20</sup> The High Court has also noted that '[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made'.<sup>21</sup>
12. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.<sup>22</sup> In order to ensure procedural fairness (as required by both the IP Act<sup>23</sup> and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected party. This appraises that party of the issues under consideration, and affords them the opportunity to put forward any further information they consider relevant to those issues.
13. During this external review, Assistant Information Commissioner Rickard conveyed a preliminary view to the applicant that access to the Information in Issue may be refused. Assistant Information Commissioner Rickard's letter advised the applicant that the purpose of her view was to give the applicant the opportunity to put forward her views, and if she provided additional information supporting her case, this would be considered and could alter the outcome.<sup>24</sup>
14. For this decision, I am the delegate of the Information Commissioner.<sup>25</sup> I have not to my knowledge dealt with the applicant in any capacity prior to her reviews, and cannot identify any conflict of interest in my dealing with her application for review of the VSBQ's decision to refuse access. I do not consider the fact that the applicant has asked for me to be removed from her matters has altered my conduct of the review or consideration of the issues before me in any way. In these circumstances, paraphrasing the High Court's test, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I<sup>26</sup> might not bring an impartial and unprejudiced mind to the resolution of this matter. Accordingly, I have proceeded to make this decision.

<sup>16</sup> Dated 31 January 2020.

<sup>17</sup> Emailed submission dated 31 January 2020.

<sup>18</sup> Emailed submission dated 27 February 2020.

<sup>19</sup> Emailed submission dated 12 March 2020

<sup>20</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

<sup>21</sup> *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Keifel, Bell, Keane and Nettle JJ.

<sup>22</sup> Section 108 of the IP Act.

<sup>23</sup> Section 110 of the IP Act.

<sup>24</sup> Footnote 1. of letter from OIC to applicant dated 31 January 2020.

<sup>25</sup> Section 139 of the IP Act.

<sup>26</sup> As a delegate of the Information Commissioner under section 139 of the IP Act.

## Reviewable decision

15. The decision under review is the VSBQ's decision dated 26 April 2019.

## Information in issue

16. The VSBQ refused access to 19 pages contained within a complaint file, being pages 6 to 14, 17 to 19, 22 to 25 and 35 to 37.
17. In seeking an external review, the applicant provided OIC with a copy of the complaint file as released to her by the VSBQ. This included full unredacted copies of pages 17 to 19. Accordingly, pages 17 to 19 have not been considered in this review.
18. The Information in Issue considered in this review is therefore contained within the remaining 16 pages.

## Issue for determination

19. The issue for determination is whether disclosure of the Information in Issue could reasonably be expected to result in a serious act of harassment or intimidation and therefore access to it should be refused pursuant to section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the RTI Act.

## Relevant law

20. Under the IP Act, an individual has a right to access documents of an agency to the extent they contain the individual's personal information.<sup>27</sup> However this right is subject to certain limitations, including grounds for refusing access.<sup>28</sup>
21. Relevantly, information is exempt from disclosure if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.<sup>29</sup> For this exemption to apply, OIC must be satisfied that:
- there is an expectation of harassment and intimidation that is serious in nature
  - the expectation is reasonably based; and
  - the expected harassment or intimidation arises as a result of disclosure.

## Findings

### ***Is there an expectation of a serious act of harassment or intimidation?***

22. Yes.
23. The RTI Act does not define harassment or intimidation therefore, the terms are given their ordinary meanings.<sup>30</sup> The Information Commissioner has previously accepted<sup>31</sup> the following definitions:

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<sup>27</sup> Section 43 of the IP Act.

<sup>28</sup> Section 67(1) of the IP Act and section 47 of the RTI Act.

<sup>29</sup> Schedule 3, section 10(1)(d) of the RTI Act.

<sup>30</sup> *Sheridan and South Burnett Regional Council, Local Government Association of Queensland Inc. and Dalby Regional Council* (Unreported, Queensland Office of the Information Commissioner, 9 April 2009) (***Sheridan***) at [188].

<sup>31</sup> *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13] applying the *Macquarie Dictionary Online* (Fourth Edition) definitions referred to in *Sheridan* at [194]-[195].

- 'harass' includes 'to trouble by repeated attacks, ... to disturb persistently; torment'; and
  - 'intimidate' includes 'to make timid or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear'.
24. In this matter, I note that there is a history of acrimony between the applicant and the treating veterinarian at the veterinary practice who provided treatment to the applicant's dog. Some of the information before OIC is sensitive in nature, and I am limited by the operation of the IP and RTI Acts in the extent to which I can describe the Information in Issue, so my descriptions below are necessarily circumspect.<sup>32</sup>
25. In response to Assistant Information Commissioner Rickard's preliminary view,<sup>33</sup> the applicant submitted that '[no] *harassment allegation is substantiated against me*'.<sup>34</sup> I understand the applicant's submission to be that there is insufficient information before OIC for me to make a finding that disclosure of the Information in Issue could reasonably be expected to result in the applicant engaging in a serious act of harassment or intimidation. The applicant also submitted<sup>35</sup> that '*there is very little communication from [her] to [the VSBQ] or [the veterinary practice]*' and she has not '*contacted [the veterinary practice] possibly in several years*'.
26. While I acknowledge that the applicant has not had any recent direct contact with the VSBQ or the veterinary practice, the evidence before OIC shows:
- the applicant has engaged in a pattern of past behaviour which involves repeated attacks against individuals she has encountered at other agencies<sup>36</sup> or third party individuals and entities; and
  - the applicant's past behaviour has resulted in convictions for using a carriage service to menace, harass or offend in relation to Council officers and obstructing a police officer.
27. In relation to the applicant's past behaviour, the VSBQ submits:<sup>37</sup>
- ...the Applicant has been convicted of harassing and menacing individual staff of the Gold Coast City Council for actions taken by them in the course of their employment. Some of the statements made in that case ... were designed to induce fear as they alluded to violence against those to whom the statements were made and violence against members of their families. In our view, it is entirely reasonable for the VSBQ to apprehend that the Applicant will repeat this behaviour with persons identified in the [Information in Issue] ...*
- The Applicant has demonstrated contempt for the law and law enforcement on numerous occasions. It is entirely reasonable for the VSBQ to expect that the Applicant continues to have contempt for the law and law enforcement. Further, the Applicant continues to make fresh allegations against persons involved in the care of animals...*
- [In 2012] the Applicant was charged with and ultimately convicted of obstructing police and a subsequent appeal of that decision was unsuccessful.*
- The allegations made by the Applicant in support of her appeal from her initial conviction indicate that the Applicant is, amongst other things, unwilling to take responsibility for her actions and prone to making serious allegations without any proper basis for those allegations.*
- ...

<sup>32</sup> Section 121 of the IP Act and section 108 of the RTI Act.

<sup>33</sup> Conveyed by letter dated 31 January 2020.

<sup>34</sup> Emailed submission dated 31 January 2020.

<sup>35</sup> Emailed submission dated 31 January 2020.

<sup>36</sup> Such as the City of Gold Coast Council (**Council**).

<sup>37</sup> Submission dated 7 November 2019. A copy of the judgement referred to in the VSBQ's submission was attached.

*We draw your attention to the serious allegations made by the Applicant as part of the appeal, including against Queensland Police and the Magistrates Court of Queensland at Southport which the Court (being, the District Court of Queensland) found were entirely unsubstantiated. In particular, we draw your attention to:*

- *paragraphs [31] and [32] regarding the Applicant's allegation that the Magistrate was biased against the Applicant;*
- *paragraph [33] regarding the Applicant's allegation that "the prosecution involved an underlying mob mentality of prejudice and sexism against the [Applicant] because everyone except the appellant involved in the Magistrates Court trial was male";*
- *paragraph [35] regarding the Applicant's allegation that the arresting officer was "merely acting on the instructions of a teenage boy who was a student"; and*
- *paragraph [42] where it sets out that the Applicant alleged in her Notice of Appeal that she had been the victim of "mistaken arrest, mistaken imprisonment and assault in custody".*

...

*In summary, the VSBQ is of the view that, given all of the above matters, it is reasonable to apprehend that the disclosure of the [Information in Issue] is likely to result in the Applicant seeking to harass, menace and intimidate the persons identified in the [Information in Issue] in the same way the Applicant did with respect to the employees of the Gold Coast City Council.*

28. In light of the applicant's past behaviour, the VSBQ submitted in conclusion<sup>38</sup> that there is *'a reasonable expectation that if the [Information in Issue] is disclosed to the Applicant, as a direct result of that disclosure, the persons identified in the [Information in Issue], are likely to be subject to a serious act or acts of harassment or intimidation by the Applicant'*.
29. Based on the evidence before me, the applicant's past behaviour demonstrates a tendency for the applicant to engage in behaviour which is harassing or intimidating when engaging with individuals who are providing a service to, or responding to complaints by or about, the applicant. In these circumstances, I consider that the applicant's pattern of past behaviour is reasonably likely to be repeated in the future.
30. During the external review, the applicant made various submissions about the VSBQ, veterinarians in general and the treating veterinarian specifically, including that:
  - *the 'role of a vet attracts serious sadists'*<sup>39</sup>
  - *the treating veterinarian at the veterinary practice 'committed a crime of animal cruelty against [her] dog'*<sup>40</sup>
  - *the VSBQ failed to investigate her complaint'*<sup>41</sup>
  - *she 'was denied justice and animal cruelty was concealed';*<sup>42</sup> and
  - *OIC has 'the audacity to make decisions claiming I am harassing and I make harassing discrimination claims so therefore for that reason you withhold my data and names of persons you viewed evidence of having committed crimes such as ... [the treating veterinarian] (for inflicting torture on my dog then causing its death just to cause me shock based on her bigoted and hateful view of people with disabilities.)'*<sup>43</sup>
31. Further, the Released Documents detail that the applicant has made allegations against the treating veterinarian that her *'dog was killed by a covert effort to bring it to that state'*<sup>44</sup>

<sup>38</sup> Submission dated 7 November 2019.

<sup>39</sup> Emailed submission dated 26 October 2019.

<sup>40</sup> Emailed submission dated 31 January 2020.

<sup>41</sup> Emailed submission dated 31 January 2020.

<sup>42</sup> Emailed submission dated 31 January 2020.

<sup>43</sup> Emailed submission dated 5 March 2020.

<sup>44</sup> At page 183 of the Released Documents.

and she had *'received official documents showing the vet attempted to deliberately bring [her] dog to death as an act of revenge'*.<sup>45</sup>

32. In relation to the applicant's view about veterinarians, the VSBQ submitted:<sup>46</sup>

*On 26 October 2019 the Applicant sent [an] email to a number of entities and individuals including the Office of the Australian Information Commissioner and Queensland Police. That email was subsequently copied to [OIC] referring to the "systemic corruption of the VSB[Q]".*

*The email makes various complaints which, when combined with the above-referred matters [set out at paragraph 27 above], indicates at best, a bias, at worst, a hysteric obsession with vets and those involved in the care of animals. For example, the Applicant asserts that "[t]he role of a vet attracts serious sadists". The contents of the email indicate that the relationship between the Applicant and vets, including those identified in the [Information in Issue], is more than merely antagonistic.*

33. Despite the applicant's submissions and statements detailed at paragraphs 30 and 31 above, there is nothing in the Information in Issue, or within the Released Documents, which suggests that the treating veterinarian at the veterinary practice *'committed a crime'* or that the VSBQ failed to appropriately investigate the applicant's complaint.
34. The applicant submits<sup>47</sup> she has *'instituted legal proceedings against every agency that made harassment allegations against [her] or any type of misconduct as those were false allegations to mitigate exposure by [her] of crime and human rights abuse'* and she *'intends to deal with [the treating veterinarian at the veterinary practice] and the coverup by [the VSBQ] with a goal of law reform and formal redress'*.
35. I also note from the Released Documents that:
- the applicant has threatened to commence *'preliminary discovery under NSW UCPR S5.3 if [the veterinary practice] continue to withhold my information'*;<sup>48</sup> and
  - following release of information to the applicant in or around 2018 from the RSPCA and the Gold Coast Hospital and Health Service which detailed contact from the treating veterinarian, the applicant further complained to the VSBQ about the treating veterinarian's treatment of her dog.<sup>49</sup>
36. I have reviewed the applicant's complaints against the VSBQ, the veterinary practice and the treating veterinarian and the applicant's threats/institution of vexatious legal proceedings against certain individuals. I consider that the applicant's complaints and threats of legal action are designed to *'persistently disturb'* and *'torment'* the VSBQ, the veterinary practice, the treating veterinarian and third parties. It is also clear from the applicant's submissions that she does not consider that her pattern of behaviour constitutes harassment. Rather, the applicant is of the belief that she has been *'wronged'* by the treating veterinarian at the veterinary practice, and that the veterinary practice and the VSBQ are conspiring against her. None of which is supported by the information before me.

<sup>45</sup> At page 204 of the Released Documents.

<sup>46</sup> Submission dated 7 November 2019.

<sup>47</sup> Submission dated 31 January 2020.

<sup>48</sup> At page 179 of the Released Documents.

<sup>49</sup> At pages 180-182 of the Released Documents.

37. In *Australian Competition and Consumer Commission v Maritime Union of Australia*,<sup>50</sup> Hill J considered the meaning of 'undue harassment or coercion' in the context of otherwise lawful recovery action for payment for goods or services. His Honour said:

*The word "harassment" in my view connotes conduct which can be less serious than conduct which amounts to coercion. The word "harassment" means in the present context persistent disturbance or torment. In the case of a person employed to recover money owing to others, as was the first Respondent in McCaskey, it can extend to cases where there are frequent unwelcome approaches requesting payment of a debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely to convey the demand for recovery, the conduct will constitute undue harassment (see per French J in McCaskey at [48]). Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment.*

38. The Information Commissioner has previously cited this passage, and held that making a large volume of information access applications may 'torment or wear down' particular agency officers, and if so, when considered in the context of the surrounding circumstances, these otherwise lawful applications may constitute a vehicle through which agency officers are harassed.<sup>51</sup> Similarly here, I am satisfied that the combined effect of the repeated complaints to various persons/agencies about the treating veterinarian's treatment of her dog and the various threats of legal action stemming from those complaints has had the effect of tormenting and wearing down particular individuals, including the treating veterinarian and staff at the VSBQ. Accordingly, I am satisfied that the relevant conduct<sup>52</sup> constitutes harassment.
39. In relation to whether the relevant conduct is 'serious', I note that it is not necessary to demonstrate a likelihood of criminal behaviour such as assault or unlawful stalking in a criminal sense.<sup>53</sup> In particular, evidence of a criminal conviction is not required. In this case, there is evidence before me that the relevant behaviour is a cause for concern or apprehension and has previously resulted in distressing and undesired consequences.<sup>54</sup> Accordingly, I am satisfied that the apprehended harassment is serious in nature.

### ***Is there a reasonable basis for the expectation?***

40. Yes.
41. The term 'could reasonably be expected to' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,<sup>55</sup> nor merely a possibility.<sup>56</sup> Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.<sup>57</sup> It is not necessary for OIC 'to be satisfied upon a balance of

<sup>50</sup> (2001) 114 FCR 472 at [60]. This decision concerned section 60 of the now repealed *Trade Practices Act 1974* (Cth), which provided that 'A corporation shall not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.'

<sup>51</sup> *Sheridan* at [295] – [302].

<sup>52</sup> Set out at paragraphs 26 to 27 and 31 to 32 above.

<sup>53</sup> *Conde and Queensland Police Service* (Unreported, Queensland Information Commissioner, 18 October 2012) (**Conde**) at [23].

<sup>54</sup> As in *Conde* at [20]. I am not able to outline the specific background to this, as it forms part of the information in issue in this review.

<sup>55</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**) at 106.

<sup>56</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**) at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

<sup>57</sup> *Murphy* at [45]-[47].



*probabilities* that disclosing the document will produce the anticipated serious harassment.<sup>58</sup>

42. In determining whether a serious act of harassment '*could reasonably be expected to*' occur, a range of factors may be relevant depending on the particular circumstances of the review. These factors may include but are not limited to:<sup>59</sup>
- past conduct or a pattern of previous conduct
  - the nature of the relevant matter in issue
  - the nature of the relationship between the parties; and
  - relevant contextual and/or cultural factors.
43. In this case, it is relevant to consider the past pattern of behaviour outlined at paragraphs 26 to 27 and 31 to 32 above, as well as the nature of the Information in Issue and the relationship between the applicant and the VSBQ, the treating veterinarian at the veterinary practice and third parties. It is also relevant that the applicant has previously been convicted of using a carriage service to menace, harass or offend in relation to Council staff.<sup>60</sup>
44. I acknowledge the applicant's submission<sup>61</sup> that she has not contacted the veterinary practice in '*several years*'. However, based on the considerations at paragraph 26 to 27 and 31 to 32 above, I am satisfied that there is a reasonable basis for particular individuals to expect to be subjected to serious acts of harassment should the Information in Issue be disclosed.

***Does the expectation arise as a result of disclosure of the Information in Issue?***

45. For the exemption to apply, it must be reasonably expected that the relevant conduct arises *as a result of* disclosure of the information, rather than independently or from any other circumstance.<sup>62</sup>
46. The death of the applicant's dog has understandably been a source of distress for the applicant. While I am unable to set out in detail the content of the Information in Issue,<sup>63</sup> I can confirm that it discusses that distressing time. This is significant given the applicant's conviction for using a carriage service to menace, harass or offend in relation to Council staff occurred after the applicant was involved in another distressing incident involving another one of her other dogs. This suggests that the applicant's propensity to engage in harassing behaviour can be directly attributable to being involved in situations which cause her distress.
47. I consider that releasing the Information in Issue, which relates to the applicant's dog, is highly likely to be a trigger point for the applicant to be again placed in circumstances of distress and therefore result in harassment of staff at the VSBQ and the veterinary practice, including the treating veterinarian at the veterinary practice, and other third parties. While the acrimony between the applicant and the VSBQ, the veterinary practice, the treating veterinarian at the veterinary practice and particular third parties is pre-existing and relatively longstanding, on the evidence before me, I am satisfied that it

<sup>58</sup> *Cockcroft* at 106, cited in *Sheridan* at [192].

<sup>59</sup> *Sheridan* at [193].

<sup>60</sup> While the Information in Issue does not directly relate to these proceedings, I consider the nature of the charges against the applicant are relevant to consider in determining whether there is a reasonable expectation of harassment as a result of disclosure of the Information in Issue.

<sup>61</sup> Submission dated 31 January 2020.

<sup>62</sup> *Watson v Office of Information Commissioner Qld & Ors* [2015] QCATA 95 per Thomas J at [19].

<sup>63</sup> Section 121 of the IP Act and section 108 of the RTI Act.

could reasonably be expected that disclosure of the Information in Issue will result in further hostile correspondence, unsubstantiated complaints, and threats/institution of vexatious legal proceedings against certain individuals.

48. Accordingly, in this case, I am satisfied that there is the necessary nexus between disclosure of the Information in Issue and the reasonable expectation of relevant conduct. On this basis, I find that disclosure of the Information in Issue could reasonably be expected to result in persons being subjected to a serious act of harassment.
49. Accordingly, access to the Information in Issue may be refused because it is comprised of exempt information under sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the RTI Act.

## **DECISION**

50. For the reasons set out above, I vary the VSBQ's decision and find that access to information may be refused on the ground that it comprises exempt information on the basis that its disclosure could reasonably be expected to result in a serious act of harassment or intimidation.
51. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

**Date: 20 April 2020**

## APPENDIX

### Significant procedural steps

Date	Event
26 April 2019	OIC received the applicant's application for external review.
30 April 2019	OIC notified the applicant and the VSBQ that the application for external review had been received and requested procedural documents from the VSBQ. OIC received the requested procedural documents from the VSBQ.
29 May 2019	OIC advised the VSBQ and the applicant that the external review application had been accepted and requested a copy of documents located from the VSBQ.
3, 4 and 5 June 2019	OIC received copies of the documents located from the VSBQ.
2 August 2019	OIC conveyed a written preliminary view to the VSBQ.
27 August 2019	OIC received an emailed submission from the applicant.
28 August 2019	OIC received two emailed submissions from the applicant.
30 August 2019	OIC received a submission from the VSBQ.
11 September 2019	OIC received an emailed submission from the applicant.
19 September 2019	OIC received an emailed submission from the applicant.
25 September 2019	OIC wrote to the applicant about this and other external reviews.
26 September 2019	OIC received an emailed submission from the applicant.
9 October 2019	OIC consulted with two third parties and invited them to participate in the external review. OIC wrote to the VSBQ requesting a submission and assistance with third party consultation.
11 October 2019	The VSBQ advised OIC that it had provided the requested assistance with third party consultation and suggested that an additional third party be consulted.
16 October 2019	OIC consulted with an additional third party and invited them to participate in the external review. OIC wrote to the VSBQ requesting assistance with the additional third party consultation. The VSBQ advised OIC that it had provided the requested assistance with the additional third party consultation
26 October 2019	OIC received an emailed submission from the applicant.
7 November 2019	OIC received the requested submission from the VSBQ.
13 November 2019	OIC received an application from a consulted third party to participate in this review. OIC confirmed the third party's request to participate in this review.
23 December 2019	OIC received a submission from the third party.

Date	Event
31 January 2020	OIC conveyed a written preliminary view to the applicant. OIC received an emailed submission from the applicant.
27 February 2020	OIC received an emailed submission from the applicant.
5 March 2020	OIC received an emailed submission from the applicant.
11 March 2020	OIC received an emailed submission from the applicant.
12 March 2020	OIC received an emailed submission from the applicant.