



Decision and Reasons for Decision

Citation:	<i>Y63 and Department of Health [2022] QICmr 3 (21 January 2022)</i>
Application Number:	316157
Applicant:	Y63
Respondent:	Department of Health
Decision Date:	21 January 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - ACCESS APPLICATION - evidence of identity - whether electronic provision of uncertified documents is sufficient for evidence of identity - whether application does not comply with all relevant application requirements - section 24(3)(a) and section 33 of the <i>Right to Information Act 2009</i> (Qld) and section 16 of the <i>Electronic Transactions Act (Queensland) Act 2001</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Health (**Queensland Health**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to his medical records, for the period of February 2021 to May 2021.
2. Queensland Health advised² the applicant that his application did not comply with all the statutory requirements for applications as acceptable evidence of his identity had not been provided. Queensland Health also advised the applicant that if the requested information was not provided by the due date, Queensland Health would refuse to deal with the application on the basis that it did not comply with all relevant application requirements.
3. The applicant offered³ to provide Queensland Health with a '*digital copy of the original*' of his evidence of identity, stating that it '*is entirely impossible to provide a certified true copy via email as it is no longer a certified copy once scanned and becomes digital*'⁴.

¹ Access application dated 13 May 2021.

² By email dated 19 May 2021.

³ By email dated 19 May 2021.

⁴ Applicant's emphasis.

4. Queensland Health decided⁵ to refuse to deal with the access application under section 33(6) of the RTI Act on the ground it did not comply with all relevant application requirements.⁶
5. The applicant applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of Queensland Health's decision refusing to deal with the access application.
6. For the reasons set out below, I affirm Queensland Health's decision and find that it was entitled to refuse to deal with the access application under section 33(6) of the RTI Act on the ground that it did not comply with all relevant application requirements.

Reviewable decision

7. The decision under review is Queensland Health's decision dated 14 June 2021.

Background and evidence considered

8. Significant procedural steps taken during the external review are set out in the Appendix.
9. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ 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.⁹ I have acted in this way in making this decision.¹⁰ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹¹ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹²

Issue for determination

11. The issue for determination is whether Queensland Health was entitled to refuse to deal with the access application under section 33(6) of the RTI Act on the ground that it did not comply with all relevant application requirements.
12. During the review, lengthy conversations occurred around different ways in which this matter may be resolved.¹³ This resulted in further disagreement between the applicant and Queensland Health as to appropriate ways the applicant could provide evidence of his identity to Queensland Health. OIC asked Queensland Health¹⁴ whether it would be prepared to accept evidence of identity from the applicant via a video call. Queensland Health accepted this proposal. The proposal was then conveyed¹⁵ to the applicant and

⁵ Decision dated 14 June 2021.

⁶ In the decision, Queensland Health also noted that as the applicant was seeking information of a personal nature only, the application could have instead been processed under the *Information Privacy Act 2009* (Qld) (**IP Act**) and, therefore, the application fee would be refunded.

⁷ On 23 June 2021.

⁸ Section 21 of the HR Act.

⁹ *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].

¹⁰ In accordance with section 58(1) of the HR Act.

¹¹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹² *XYZ* at [573].

¹³ Section 90(1) of the RTI Act provides that the Information Commissioner must identify opportunities and processes for early resolution of the external review application and promote settlement of the external review application.

¹⁴ On 7 October 2021 during a telephone call with an OIC officer.

¹⁵ On 12 October 2021 during a telephone call with an OIC officer and confirmed in writing on the same date.

the applicant indicated that he was open to the idea of providing evidence of identity to Queensland Health via a Microsoft Teams video meeting. However, the applicant subsequently sought for this matter to be finalised by written decision.¹⁶

13. This decision does not address the concerns or questions raised by the applicant during OIC's attempts to informally resolve this matter. As this matter was not informally resolved, this decision considers the formal requirements set out in the RTI Act before an agency may refuse to deal with an application on the basis of noncompliance.
14. It remains open to the applicant and Queensland Health to negotiate the terms of the provision of evidence of his identity for future applications. For example, the applicant and Queensland Health may now explore the option of providing identity documents via video meeting.

Relevant law

15. If an access application seeks access to a document containing the personal information of the applicant, the applicant must provide evidence of their identity with the application or within 10 business days after making the application.¹⁷ *Evidence of identity* means a document verifying the person's identity, for example, a passport, copy of a certificate or extract from a register of births, driver licence, or a statutory declaration from an individual who has known the person for at least 1 year.¹⁸ If a document is a photocopy of an original document, the document must be certified by a qualified witness¹⁹ as being a correct copy of the original document.²⁰
16. If a person purports to make an access application and the application does not comply with all relevant application requirements, the agency must:²¹
 - make reasonable efforts to contact the person within 15 business days after the purported application is received
 - inform the person how the application does not comply with the relevant application requirement; and
 - give the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements.
17. If, after giving the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements, the agency then decides that the application does not comply with all such requirements, the agency must give the applicant prescribed written notice of the decision.²²

Findings

18. Queensland Health notified²³ the applicant that the access application was noncompliant with the application requirements and requested that he provide an '*original **certified true copy***' of his evidence of identity by email.

¹⁶ Emails to OIC dated 13 October 2021 and telephone call with an OIC officer on 14 October 2021.

¹⁷ Section 24(3)(a) of the RTI Act.

¹⁸ Section 3(1) of the *Right to Information Regulation 2009* (Qld) (**RTI Regulation**) which contains a non-exhaustive list of documents which may be relied on when establishing evidence of identity.

¹⁹ A qualified witness means a lawyer, notary public, commissioner for declarations, or a justice of the peace – section 3(3) of the RTI Regulation.

²⁰ Section 3(2) of the RTI Regulation.

²¹ Section 33(2) and (3) of the RTI Act.

²² Section 33(6) of the RTI Act.

²³ Email to the applicant dated 19 May 2021.

19. In response, the applicant stated:²⁴

It is entirely impossible to provide a certified true copy via email as it is no longer a certified copy once scanned and becomes digital...A JP certifies a copy as a "true copy of the original" - This true copy cannot be scanned or duplicated – Its [sic] the same as an original.

20. In response, Queensland Health advised the applicant²⁵ that provision of his certified identification is a requirement under the RTI Regulation and provided the applicant with the following options to provide his evidence of identity:

1. *Provide an original identification document to either Department of Health or RBWH so that the original document can be viewed (I note ... that this may not be possible for you). If this is the best option, I can provide you with physical location details.*
2. *Provide a scanned copy of your identification, certified by a qualified witness as being a correct copy of the original document via email ...*
3. *Provide a photocopy of your identification, certified by a qualified witness as being a correct copy of the original document via mail...*
4. *Noting you are seeking access to information from the RTI Office at the RBWH, if you have previously provided identification documents to them, we could ask them to confirm if they will accept your new application on the basis that they have previously identified you at their office.*
5. *I can provide you with a formal decision, refusing to deal with your application on the basis that it does not meet the compliance requirements of the RTI or IP Acts. This will enable you to seek formal review of the decision to the Queensland Office of the Information Commissioner.*

21. Ultimately, the applicant did not provide any evidence of his identity consistent with one of the methods outlined above and Queensland Health decided that the access application did not comply with the application requirements and issued the decision which is the subject of this review.²⁶

22. In his application for external review, the applicant stated:²⁷

[Queensland Health] has refused my application because I have been unable to provide an invalid legal document (A scanned copy of a Certified Copy). [Queensland Health] has not accepted my provision of a Scanned copy of an Original Document despite it being equally valid (if not more valid) than a Certified Copy.

23. Section 16 of the *Electronic Transactions (Queensland) Act 2001* (Qld) (**ETA**) provides that if, under a State law, a person is required to produce a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person produces, by an electronic communication, an electronic form of the document in the following circumstances:

- having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document²⁸

²⁴ Email to Queensland Health dated 19 May 2021. Applicant's emphasis.

²⁵ By email dated 2 June 2021.

²⁶ Queensland Health advised OIC on 21 July 2021 that it had requested the applicant provide the required evidence of identity to which he then offered to provide a scanned copy of the original identity, however, no documents were received for further consideration. The procedural documents provided by Queensland Health and decision give no indication that there was ever any form of identity received from the application (certified or uncertified). The applicant has also not sought to argue that any such evidence of identity had been provided in the course of the external review.

²⁷ Application for external review dated 23 June 2021.

²⁸ Section 16(3) of the ETA provides that the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from the addition of any endorsement or any immaterial change arising in the normal course of communication, storage or display.

- when the communication was sent, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
 - the person to whom the document is required to be produced *consents* to the production, by an electronic communication, of an electronic form of the document.²⁹
24. Based on this provision, I am satisfied that a decision-maker has the discretion to decide whether to accept evidence of identity electronically when considering access applications under the RTI Act.
25. While the applicant submits that a scanned copy of a certified copy is an '*invalid legal document*', it is unnecessary for me to determine this issue. The only issue I must consider is whether the access application complies with the relevant application requirements, and I am satisfied that it does not.
26. There is no evidence before me to indicate that the applicant provided evidence of his identity, in any form, with the access application. On external review the applicant has disputed the way in which Queensland Health suggested he could provide his evidence of identity. The applicant is seeking to contest Queensland Health's requirement that he provide a **certified copy** of his evidence of identity if he seeks to provide it electronically. I am satisfied that Queensland Health is entitled to request the evidence of identity to be provided in this way pursuant to the section 16 of the ETA as outlined above.
27. Queensland Health did not consent to the applicant's offer to provide copies of uncertified evidence of identity electronically as a method of verifying a person's identity under the RTI Act.³⁰ As such, I find that:
- Queensland Health consulted with the applicant about how to make his application compliant as required by section 33(2) and (3) of the RTI Act;
 - there is no evidence before me that the applicant provided Queensland Health with evidence of his identity following this consultation; and
 - Queensland Health was therefore entitled to decide that the access application does not comply with the relevant application requirements and refuse to deal with the application under section 33(6) of the RTI Act.

DECISION

28. For the reasons set out above, I affirm the decision under review and find that Queensland Health was entitled to refuse to deal with the access application under section 33(6) of the RTI Act on the basis that it does not comply with the relevant application requirements contained in section 24 of the RTI Act.
29. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Shiv Martin
Assistant Information Commissioner

²⁹ My emphasis.

³⁰ As this was not an option outlined to the applicant in the notice of noncompliance. Queensland Health has the discretion to make that decision as per the ETA.

Date: 21 January 2022

APPENDIX

Significant procedural steps

Date	Event
23 June 2021	OIC received the applicant's application for external review. OIC advised Queensland Health that the application for external review had been received and requested procedural documents.
24 June 2021	OIC advised the applicant that the application for external review had been received.
15 July 2021	OIC received the requested procedural documents from Queensland Health.
30 July 2021	OIC advised the applicant and Queensland Health that the application for external review had been accepted.
9 September 2021	OIC conveyed a written preliminary view to the applicant.
10 September 2021	OIC received an emailed submission from the applicant.
28 September 2021	OIC wrote to the applicant about his external review.
7 October 2021	OIC received an emailed submission from the applicant. OIC discussed informal resolution options with external review participants, namely allowing the applicant to provide evidence of identity to be sighted via a video meeting. Queensland Health agreed for a Microsoft Teams meeting to be arranged by OIC to facilitate this.
12 October 2021	OIC had a phone conversation with the applicant and asked whether he would be willing to resolve the review if Queensland Health could sight his evidence of identity via a video meeting. The applicant was agreeable to a Microsoft Team meeting being arranged. OIC subsequently wrote to the applicant about his external review.
13 October 2021	OIC received two emailed submissions from the applicant.
14 October 2021	OIC had a phone call with applicant who advised he wanted the matter to proceed to a formal decision. OIC advised applicant that the informal resolution negotiations would conclude on that basis.
5 November 2021	OIC received an emailed submission from the applicant.
9 November 2021	OIC wrote to the applicant about his external review. OIC received an emailed submission from the applicant.