



## Vexatious Applicant Declaration

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**Applicant:** The University of Queensland

**Respondent:** [Respondent]

**Declaration Date:** 27 February 2012

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## DECLARATION

**Section 127 of the *Information Privacy Act 2009* (Qld)  
Section 114 of the *Right to Information Act 2009* (Qld)**

I declare, in accordance with sections 127 of the *Information Privacy Act 2009* (Qld) and 114 of the *Right to Information Act 2009* (Qld) that [respondent] is a vexatious applicant on the basis that he has repeatedly engaged in access actions and the repeated engagement involves an abuse of process for an access action.

I make the declaration in the following terms:

*[Respondent] is prohibited from making any further access applications to The University of Queensland concerning any document about him which was brought into existence prior to the date of this declaration.*

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**Julie Kinross  
Information Commissioner**

**Date: 27 February 2012**

## REASONS FOR DECLARATION

### Background

1. The applicant seeks a declaration that the respondent is a vexatious applicant, including a condition that the respondent first be required to obtain the Information Commissioner's consent to make an access application for the following classes of documents:
  - (a) documents that have previously been provided to him under the *Freedom of Information Act 1992 (FOI Act)* and the *Information Privacy Act 2009 (Qld) (IP Act)*; or
  - (b) documents that were generated in the course of processing his applications under the FOI Act and the IP Act.
2. The respondent has held a series of unresolved grievances against the applicant for many years. One grievance concerns the purchase by a church on behalf of one of the university colleges of a house the respondent rented. The respondent maintains the purchase was contrary to an oral agreement made with the previous owner that the respondent would retain an option to buy the house once he was discharged from bankruptcy in 1996.

### Relevant law

3. On the application of an agency or on the Information Commissioner's own initiative, the Information Commissioner may declare in writing that a person is a vexatious applicant under section 127 of the IP Act and/or section 114 of the *Right to Information Act 2009 (Qld) (RTI Act)*. Such a declaration is subject to any terms or conditions stated in the declaration. A declaration can only be made if the respondent has been given an opportunity to make written or oral submissions. The Information Commissioner can declare a person a vexatious applicant if satisfied that:
  - (a) the person has repeatedly engaged in access actions; and
  - (b) the repeated engagement involves an abuse of process for an access action.
4. Section 127(6) of the IP Act sets out a non-exhaustive list of circumstances which might constitute an 'abuse of process'.<sup>1</sup>

### Evidence considered

5. In deciding to make this declaration I have considered the following evidence:
  - the application and the applicant's submissions
  - the respondent's submissions
  - external review applications made by the respondent; and
  - content on the [respondent's] website.

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<sup>1</sup> Section 114(6) of the RTI Act is in substantially similar terms.

## Findings

### ***Has the respondent repeatedly engaged in access actions?***

6. Yes, for the reasons that follow.
7. Making an access, internal review and/or external review application are access actions.
8. I accept the applicant's submission that the respondent has lodged 65 access applications in total with the applicant, with 10 of those lodged in a twelve month period between 30 September 2010 and 12 September 2011. The 10 most recent applications sought access to documents that have previously been disclosed to him, or relate to the processing of his applications. The applicant submits it was required to internally review all 10 applications and the respondent sought external review of all but one of the internal review decisions.
9. The respondent has made a total of 35 applications for external review of decisions of the applicant since the introduction of the FOI Act.
10. I am satisfied that the respondent has repeatedly engaged in access actions.

### ***Does the repeated engagement involve an abuse of process for an access action?***

11. Yes, for the reasons that follow.
12. Section 127(6) states that an 'abuse of process' includes but is not limited to:
  - harassing or intimidating an individual or an employee of an agency in relation to the access action; and
  - unreasonably interfering with the operations of an agency in relation to the access action.
13. Other grounds for abuse of process established in the common law include:
  - duplicate proceedings already pending or determined and therefore incapable of serving a legitimate purpose<sup>2</sup>
  - the making of unsubstantiated or defamatory allegations in applications;<sup>3</sup> and
  - wastage of public resources and funds<sup>4</sup>.

### **Harassment or intimidation of the applicant's staff - unsubstantiated and defamatory allegations**

14. The applicant contends that the respondent's explanation for re-applying for documents is that he lost them. It is the applicant's position that the true purpose of the respondent's applications is to harass or intimidate staff. By way of

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<sup>2</sup> *Walton v Gardner* (1993) 177 CLR 378 at 410.

<sup>3</sup> *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557.

<sup>4</sup> *Re Cameron* [1996] 2 Qd R 218 at 220.

evidence, the applicant provided various links to the respondent's website. The links provided include (with any and all staff names replaced as XXX):

- [link]
- [link]
- [link]

15. It may well be that the respondent has misplaced or lost documents and is re-applying for them. It is not necessary to establish whether he did to consider whether the repeated engagement involves harassing or intimidating staff. I have examined all of the website links provided by the applicant and other content on the [respondent's] website and find that it contains many unsubstantiated or defamatory allegations. Many of the unsubstantiated or defamatory allegations are made in the respondent's access applications, his applications for external review and are referred to in the respondent's submissions in relation to this application.
16. The applicant submits that, following the decision of the Information Commissioner in *Sheridan and South Burnett Regional Council & Ors*<sup>5</sup> (***Sheridan***), postings on the respondent's website amounted to serious acts of harassment because they comprise attacks which have disturbed and tormented the subject of the attack and given cause for concern or apprehension. The applicant provided twelve examples as a sample of the nature and substance of the content published on the website. The applicant contends that the only test for me to make a declaration under section 127 of the IP Act is whether the disclosure of the information will result in the respondent harassing or intimidating an individual or an employee of an agency. I am not convinced that this is quite the correct formulation of the test under section 127 of the IP Act. However, I accept that, consistent with the decision in *Sheridan*, that the postings amount to acts of harassment. However, section 127 requires that the repeated engagement involves harassing or intimidating an individual or an employee of an agency ***in relation to the access action***. In the circumstances of this case, I am satisfied that it does.
17. In considering the respondent's external review applications,<sup>6</sup> the Right to Information Commissioner expressed the preliminary view that the information being sought was exempt information on the basis that its disclosure could reasonably be expected to result in a person being subject to a serious act of harassment or intimidation. The respondent did not make further submissions and those applications were subsequently closed without the need for a decision to be made. I have reviewed those applications and formed my own view that the [respondent's] website and the respondent's correspondence in relation to these reviews provide evidence that he seeks retribution against University staff who [the respondent] believes have 'wronged' him. It is clear that his correspondence in his access actions is designed to harass and intimidate. It is clear documents accessed by the respondent through RTI processes are posted onto the website to 'substantiate' unfounded allegations and to mount personal attacks on targeted individuals.

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<sup>5</sup> (Unreported, Queensland Information Commissioner, 9 April 2009).

<sup>6</sup> In external reviews 310572, 310610, 310693, 310739, 310774, 310823 and 310867.

18. Unsubstantiated allegations made on the website and in previous access actions are repeated in the respondent's submissions to this application when he submits that the applicant has been discriminating against him for many years, that a University employee secretly defrauded him of the house beneficially owned by him and that the applicant had denied him rights with his assistance dogs.

**Unreasonable interference with the operations of the applicant – repeat applications and waste of public resources**

19. In recent access applications the respondent sought access to all documents in the applicant's possession concerning the respondent. The applicant submits that the respondent's conduct in applying for 'all documents' constitutes an unreasonable interference with its operations. The applicant states that it holds 99 files relating to the respondent, of which it has processed 23 and that processing applications for the remaining 76 files (which include working documents relating to the access applications and in some cases, copies of documents already provided to the respondent) would be unreasonable.
20. In response to the application, the respondent submits that he has been forced to make incremental applications because the applicant would not discuss a timetable they could live with (to provide the information) and in his view, this means the number of applications he made in the last year cannot be used against his interests.
21. I note that in external review 310631 the respondent sought review of an internal review decision by the applicant to discontinue dealing with the access application on the basis that the work involved would substantially and unreasonably divert its resources. In that access application the respondent sought all documents held on 16 of the 99 files that "contains any information that relates to me, is relevant to me or is in any way personal to me", apart from information already released. Similarly, in external review [number] the respondent sought review of the applicant's internal review decision to refuse to deal with his access application for 26 of the 99 files on the same basis as that in 310631. In both matters the RTI Commissioner formed the view that the applicant was entitled to refuse to deal with the applications, with external review [number] being finalised by decision and 310631 being resolved on the basis of the applicant's non-response to a preliminary view. I have reviewed these matters and consider that, in light of the 'culmination of a pattern of requesting behaviour',<sup>7</sup> dealing with either of these matters alone or in combination with any other applications relating to the 99 files would unreasonably interfere with the operations of the agency.
22. As well as making voluminous applications, the respondent has often applied for information previously sought. In many instances the information applied for has been provided to the respondent. In instances where he has been denied access, the respondent has had recourse to review mechanisms. I am of the view that requiring the applicant to process further applications for this information would be a waste of public resources and funds.

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<sup>7</sup> *Transport for London (UK Information Commissioner)*, FS50090632, 10 April 2007, paragraph 47.

### ***In summary***

23. The features of the access actions instituted by the respondent can be summarised as:

- comprising multiple and continuing applications over a long period of time, sometimes for the same documents
- comprising unsubstantiated allegations against, and vilification of, the applicant's staff
- an abuse of access rights – using documents obtained under the IP Act to purportedly substantiate baseless allegations posted on the respondent's website and to continue the long standing and ongoing harassment of the applicant's staff
- an unreasonable interference with the applicant's operations; and
- amounting to a waste of public resources.

### ***The respondent's claim of disability discrimination***

24. The respondent contends that the applicant produced many documents against him and the application to have him declared vexatious is just more disability discrimination against him. With respect to any claim of disability discrimination, the respondent has pointed me to various assessments made of him over time, and which are posted on the [respondent's] website. I have read these reports. The respondent appears to have suffered three incidents in which he sustained head injuries. The most recent report states:

*To my knowledge, he has suffered at least two further accidents since that initial injury in which he suffered further brain damage including frontal lobe damage and some cortical atrophy. Nevertheless, he returned to the University of Queensland and over an extended period of time completed further studies including a Law degree.*

*He has various diagnoses over the years. In fact, he has suffered cognitive and personality changes consistent with his brain damage. His judgement, decision making and social competence is significantly impaired and he has become vulnerable to ridicule, exploitation and what he perceives as harassment. He lives a reclusive lifestyle and his self-care, maintenance of his home and personal effects have deteriorated over time. He could be described as suffering from a schizotypal personality disorder consequent of his head injuries. Nevertheless, it does not impair his ability to conduct his own affairs.*

25. I am satisfied that the respondent can conduct his own affairs for the purposes of this external review.<sup>8</sup> In deciding whether to declare the respondent is a vexatious applicant, I am not required to determine the respondent's motives. The focus is on the conduct of the respondent and/or the objective effect of the conduct on the applicant.<sup>9</sup> I am required to determine the issue on the facts and the law.

### **Conclusion**

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<sup>8</sup> As did Fryberg J in [case citation removed].

<sup>9</sup> *Oceanic Sun Line Special Shipping Company Inc v Fay* (1988) 165 CLR 197 at 247.

26. The applicant seeks a declaration that the respondent is a vexatious applicant under section 127 of the IP Act. In short I am satisfied that the requirements of this provision have been met as the respondent is a person who has repeatedly engaged in access actions that are an abuse of process. I am also satisfied, for the reasons outlined above, that the requirements of section 114 of the RTI Act have been met and that it is appropriate for the declaration that the respondent is a vexatious applicant to be made in respect of the relevant provisions of both the IP Act and RTI Act.

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**Julie Kinross**  
**Information Commissioner**

**Date: 27 February 2012**



## APPENDIX

### Significant procedural steps

Date	Event
18 October 2011	Application for a Declaration received
20 October 2011	Submissions sought from respondent
20 October 2011	Submissions sought from applicant to complete required application details
1 November 2011	Submissions sought from respondent via email
1 November 2011	Email received from respondent
2 November 2011	Email received from respondent
2 November 2011	Email received from respondent
8 November 2011	Applicant submissions received
29 November 2011	Submissions on terms and conditions sought from respondent
30 November 2011	Email received from respondent
1 December 2011	Submissions sought from respondent
1 December 2011	Email received from respondent