



Decision and Reasons for Decision

Citation:	<i>Lester and Queensland Police Service [2017] QICmr 11 (27 March 2017)</i>
Application Number:	312961
Applicant:	Lester
Respondent:	Queensland Police Service
Decision Date:	27 March 2017
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL TO DEAL WITH APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - where the agency had previously decided to grant access to the requested documents - whether the later application, on its face, discloses any reasonable basis for again seeking access - section 62(3) of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)¹ for access to certain CCTV footage in the Hervey Bay Watchhouse for March 2003.
2. QPS's decision² refused access to the requested CCTV footage on the basis that it was nonexistent or unlocatable.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review.
4. For the reasons set out below, I set aside QPS's decision, and find that QPS was entitled to refuse to deal with the access application, as the requested CCTV footage was the subject of a previous application under the IP Act and this later access application does not, on its face, disclose any reasonable basis for again seeking access.

Background

5. Significant procedural steps relating to the application and external review are set out in the Appendix.

¹ By application received by QPS on 20 July 2016.

² Issued on 24 August 2016.

Reviewable decision

6. The decision under review is QPS's decision dated 24 August 2016.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).

Issue for determination

8. External review by the Information Commissioner³ is merits review—ie, an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.⁴ After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.⁵
9. OIC advised QPS⁶ of our intention to deal with this external review on the basis of the previous application for same documents provision, instead of on the basis of sufficiency of search relied on in QPS's decision. QPS took no issue with OIC proceeding on this basis. Therefore, the issue for determination is whether, under section 62 of the IP Act, QPS may refuse to deal with the access application to the extent it seeks access to certain CCTV footage on the basis that the applicant has previously sought access to the same footage under the IP Act.

Relevant law

10. Under section 62 of the IP Act, an agency may refuse to deal with an access application in certain circumstances, including, relevantly, where:
- (i) an applicant makes an access application to an agency, and then makes a later access application to the same agency seeking access to one or more of the same documents⁷
 - (ii) the agency's decision on the previous application was that access was to be given to the document(s) sought;⁸ and
 - (iii) the later access application does not, on its face, disclose any reasonable basis for again seeking access to the document(s).⁹

Findings

Does the later application seek access to one or more of the same documents sought under a previous application?

11. Yes, for the following reasons.

³ Or delegate.

⁴ Section 118(1)(b) of the IP Act.

⁵ Section 123(1) of the IP Act.

⁶ By letter dated 27 September 2016 and in telephone calls on 24 November 2016 and 14 February 2017.

⁷ Section 62(1) of the IP Act.

⁸ Section 62(3)(b)(i) of the IP Act.

⁹ Section 62(1)(b) of the IP Act.

12. In an access application received by QPS on 25 July 2011 (the **First Application**), the applicant sought access to a number of documents, including video recordings in the Hervey Bay Watchhouse for 17 to 19 March 2003. Access to the video recordings was granted to the applicant through a viewing on 5 December 2011.
13. The access application that is the subject of this review was received by QPS on 20 July 2016 (the **Later Application**). The Later Application sought access to Hervey Bay Watchhouse CCTV footage for 17 to 19 March 2003. The applicant confirmed to OIC on external review that he only required CCTV footage for 17 March 2003.¹⁰
14. I am satisfied that the Later Application seeks access to the same documents sought under the First Application to the extent that both applications relate to Hervey Bay Watchhouse CCTV footage for 17 March 2003 (**Requested Footage**).

Was QPS's decision on the First Application that access was to be given to the Requested Footage?

15. Yes, for the following reasons.
16. QPS's decision dated 18 October 2011 in relation to the First Application was to grant the applicant access via an arranged viewing to one videotape recording containing the Requested Footage. Records provided by QPS confirm that the applicant viewed the Requested Footage on 5 December 2011. The applicant also acknowledges that he viewed it in 2011.¹¹ I am satisfied that a decision to grant a viewing of the Requested Footage constitutes a decision to give 'access' to it,¹² as the IP Act provides that access may be given in the form of a reasonable opportunity to inspect the document.¹³
17. On the basis of the above, I am satisfied that QPS's decision on the First Application was that access was to be given to the Requested Footage.

Does the Later Application, on its face, disclose any reasonable basis for again seeking access to the Requested Footage?

18. No, for the following reasons.
19. The Later Application did not refer to the First Application. The Later Application simply stated that the Requested Footage was required '*[t]o prove [the applicant's] innocence*', and that it would be used '*[i]n further court proceedings*'.
20. There is nothing *on the face of* the Later Application which discloses a reasonable basis for the applicant to again seek access to the Requested Footage. The applicant's mere assertion that he required the Requested Footage to prove his innocence and for use in further court proceedings is not sufficient to provide evidence of a reasonable basis for again seeking access to that footage. In reaching this conclusion, I note that the Requested Footage dates from 2003 and the applicant is seeking to contest 2004 court proceedings, when it appears the applicant would have had avenues of appeal open to him at the finalisation of those court proceedings.

¹⁰ By letter dated 28 September 2016 and 15 October 2016. This letter from the applicant had two dates on it. For ease of reference, I will refer to this correspondence as the applicant's submission dated 15 October 2016.

¹¹ Applicant's submission dated 15 October 2016. In the same submission, the applicant acknowledges having also previously viewed the Requested Footage during a trial in the Magistrates Court on 7 September 2004. However, as discussed below at paragraphs 21 to 22, the applicant submits that the footage he viewed on both occasions does not comprise the original CCTV footage.

¹² For the purpose of section 62(3)(b)(i) of the IP Act.

¹³ Section 83(1)(a) of the IP Act.

21. On external review, the applicant provided submissions in support of again seeking access to the Requested Footage.¹⁴ In these submissions, the applicant is seeking to better explain why there was a reasonable basis for making the Later Application. However, the terms of section 62(1)(b) of the IP Act are clear—a reasonable basis for making a later application must be disclosed on the face of the access application itself.
22. Nevertheless, to the extent that the applicant's submissions on external review relate to his contention that the footage he had previously viewed '*had been modified and several minutes were missing*',¹⁵ I note that the applicant had the opportunity to seek internal or external review of QPS's decision on the First Application in relation to these concerns, but he did not do this.
23. Nothing in the Later Application or the applicant's submissions on external review persuades me that there is a reasonable basis to again seek access to the Requested Footage.

DECISION

24. On the basis of the above, I am satisfied that section 62(3)(b)(i) of the IP Act applies to the Requested Footage. Accordingly, I set aside QPS's decision and find that QPS was entitled to refuse to deal with the Later Application to the extent it seeks access to the Requested Footage.
25. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

C Smith
Right to Information Commissioner

Date: 27 March 2017

¹⁴ External review application, submission dated 15 October 2016, and submission dated 3 November 2016 and 9 November 2016 (this letter from the applicant also had two dates on it).

¹⁵ External review application. The applicant raises similar submissions in his letter dated 15 October 2016.

APPENDIX**Significant procedural steps**

Date	Event
14 September 2016	OIC received the external review application.
15 September 2016	OIC notified QPS of the external review application and requested procedural documents.
20 September 2016	OIC received the requested procedural documents from QPS.
21 September 2016	OIC made enquiries of QPS about a previous application by the applicant, and QPS provided OIC with documents related to this.
27 September 2016	OIC notified the applicant and QPS that the external review application had been accepted. OIC conveyed a preliminary view to the applicant and invited him to provide submissions in response.
21 October 2016	OIC received submissions from the applicant in response to the preliminary view.
28 October 2016	OIC provided a further preliminary view to the applicant and invited him to provide submissions in response.
10 November 2016	OIC received further submissions from the applicant in response to the further preliminary view.