Office of the Information Commissioner
Queensland

Vexatious Applicant Declaration

Applicant:	**Queensland Police Service**
Respondent:	**'Respondent'**
Application No:	**431005**
Declaration Date:	**21 September 2020**

Contents

DECLARATION

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

I declare, in accordance with section 127 of the *Information Privacy Act 2009* (Qld) (**IP Act**), that the respondent is a vexatious applicant on the basis that she 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:

1. *The respondent is prohibited from making any further access applications to the applicant under the IP Act concerning any document about her that was brought into existence prior to the date of this declaration.*
2. *For a period of twelve (12) months from the date of this declaration, the respondent is prohibited from making any access or amendment application to the applicant under the IP Act.*
3. *For a period of twelve (12) months commencing on the date that the period referred to in clause 2 expires, the applicant is not required to consider any access or amendment application made to it by the respondent under the IP Act unless the respondent has first applied in writing to the Office of the Information Commissioner (**OIC**) and OIC has granted written permission for the application to be made.*
4. *OIC will not consider any access request made by the respondent under clause 3 unless it complies with section 43 of the IP Act, the information to which access is sought is clearly identified, and it does not contravene clause 1.*
5. *If OIC grants written permission for the application to be made under clause 3, the agreed terms of the request will be confirmed by OIC in writing to both the applicant and the respondent, and a valid application will be taken to have been made by the respondent on that date.*
6. *OIC will not consider any written request made by the respondent under clause 3 that is made within ninety (90) days of the last written request made by the respondent under clause 3.*
7. *The applicant is not required to further process any access application made by the respondent under the IP Act prior to the date of this declaration and that is outstanding at the date of this declaration.*

Rachael Rangihaeata
Information Commissioner
21 September 2020

REASONS FOR DECLARATION

Background

1. The respondent has been involved in a series of long-running disputes with various neighbours. Since 2007, she has made complaints to Queensland Police Service (**QPS**) about her neighbours. The respondent has also made associated complaints to QPS about its actions (or alleged lack of action) in investigating or otherwise dealing with her and her complaints.

2. In connection with her complaints, the respondent has made multiple applications to QPS since late 2016 under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking access to information held by QPS about her, her neighbours, her complaints, actions taken by police in response to her complaints, and police officers involved in dealing with her and her complaints.

3. QPS seeks a declaration, under section 127 of the IP Act,[1] that the respondent is a vexatious applicant and that she be prohibited from making any access or amendment application to QPS under the IP Act for a period of five years from the date of the declaration.

4. Significant procedural steps taken in the course of deciding QPS's application are set out in the Appendix to this Declaration.

Relevant law

5. 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. 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 or amendment actions; and
   (b) the repeated engagement involves an abuse of process for an access or amendment action.

6. Section 127(8) provides that *'access or amendment action'* means any of the following:

   - an access application
   - an amendment application
   - an internal review application; and
   - an external review application.

7. *'Engage'*, for an access or amendment action, means to make the access or amendment action.

8. Section 127(8) of the IP Act sets out a non-exhaustive list of circumstances which might constitute an *'abuse of process'* and includes:

[1] QPS initially sought a declaration that also covered access actions made by the respondent under the *Right to Information Act 2009* (Qld) (**RTI Act**). However, section 114 of the RTI Act establishes a separate process for declaring a person vexatious under the RTI Act and requires that the applicant for a declaration establish that the person has repeatedly engaged in access actions under the RTI Act. As QPS was not able to establish that the respondent had repeatedly engaged in RTI Act access actions, it elected not to pursue this aspect of its application.

- 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.

9. Other grounds for abuse of process established at common law include:

- duplicate proceedings already pending or determined and therefore incapable of serving a legitimate purpose[2]
- the making of unsubstantiated or defamatory allegations in applications;[3] and
- wastage of public resources and funds.[4]

Application of the Human Rights Act

10. In making my decision in this matter, I have had regard to the *Human Rights Act 2019* (Qld)[5] (**HR Act**), particularly the right to seek and receive information as embodied in section 21 of that Act. I acknowledge that the making of a vexatious declaration that places conditions upon, or otherwise restricts, an individual's right to make access or amendment applications under the IP Act for a period of time, could be regarded as interfering with the right embodied in section 21 of the HR Act. However, just as is the case where a decision-maker, who observes and applies the relevant law prescribed in the IP Act when deciding access or review applications is regarded as *'respecting and acting compatibly with'* this right and others prescribed in the HR Act,[6] so too is a decision-maker who applies the law contained in section 127 of the IP Act when deciding whether or not to make a vexatious declaration.

11. In enacting section 127 of the IP Act, Parliament recognised that, in limited and specific circumstances, the right to make an access or amendment action under the IP Act may be interfered with where such an action involves an abuse of process or would be manifestly unreasonable. As required by section 58 of the HR Act, I have considered and am satisfied that, in applying the law contained in section 127 of the IP Act, which contemplates restrictions being placed upon the right to seek and receive information, I am acting compatibly with the right prescribed in section 21 of the HR Act. I have also considered other wider rights contained in the HR Act and do not consider that I am acting incompatibly with them in making the declaration. I note Bell J's observations on the interaction between the Victorian equivalents of Queensland's RTI/IP Acts 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'*.[7]

General considerations

12. The requirements of section 127 of the IP Act, and of the equivalent provision in section 114 of the RTI Act, have been considered in four previous decisions issued by my Office (**OIC**).[8] I have had regard to these decisions in considering the present matter.

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[2] *Walton v Gardiner* (1993) 177 CLR 378, at [410].
[3] *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557.
[4] *Re Cameron* [1996] 2 Qd R 218, at [220] (***Re Cameron***).
[5] Which came into force on 1 January 2020.
[6] *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].
[7] *XYZ* at [573].
[8] *The University of Queensland and Respondent* (Queensland Information Commissioner, declaration made 27 February 2012) (***UQ and Respondent***); *Cairns and Hinterland Hospital and Health Service and Respondent* (Queensland Information Commissioner, declaration made 26 October 2017) (***CHHHS and Respondent***); *Moreton Bay Regional Council and Respondent* [2020] QICmr 21 (8 April 2020) (declaration refused) (***MBRC and Respondent***); and *Gold Coast Hospital and Health Service and Respondent*, [2020] QICmr 25 (6 May 2020) (declaration made - presently on appeal to QCAT) (***GCHHS and Respondent***).

13. In addition, section 114 of the RTI Act and section 127 of the IP Act are substantially the same as sections 89K and 89L of the *Freedom of Information Act 1982* (Cth). The FOI Guidelines (**Guidelines**) published by the Office of the Australian Information Commissioner (**OAIC**)[9] provide useful guidance on the interpretation of section 127 of the IP Act, as do several declarations made by the OAIC, which I will refer to in my discussion below.

14. As noted in the OAIC's Guidelines:

> *A declaration has the practical effect of preventing a person from exercising an important legal right concerned by the FOI Act. For that reason, a declaration will not be lightly made, and an agency that applies for a declaration must establish a clear and convincing need for a declaration. …*
> *…*
> *… The power conferred on the Information Commissioner to make a declaration is an important element of the balance in the FOI Act between conferring a right of access to government documents while ensuring that access requests do not interfere unreasonably with agency operations. This is apparent from the terms of section 89L which expresses a principle that the legal right of access should not be abused by conduct that harasses or intimidates agency staff, unreasonably interferes with the operations of agencies, circumvents court-imposed restrictions on document access, or is manifestly unreasonable.*

15. The power to make a declaration is discretionary. In addition to considering the grounds for a declaration specified in section 127 of the IP Act, the Information Commissioner may consider other relevant features of a person's access actions, or, for example, the way in which the agency concerned administers its obligations under the IP Act.

16. In considering whether or not to exercise the discretion, the Information Commissioner is bound not only to consider the limb of section 127(8) that is advanced by the agency. The Commissioner can decide that a different ground has been established.

Evidence considered

17. I have considered the following evidence:

- QPS's application and supporting submission;[10] and
- the respondent's submissions in response.[11]

18. It is clear that the respondent does not consider that grounds for declaring her vexatious exist. In her initial response to QPS's application,[12] the respondent accused QPS of maliciously targeting her by making the application, and attempting to conceal information about the crimes that she has reported. She asserted that her access applications are valid and that *'people apply for QPS information as they believe they have been violated and mistreated in some way by QPS'.* The respondent contended that she has legitimately required police assistance since 2007 when new neighbours moved into the area and *'began to intentionally target* [her] *and* [her] *address'*:

> *RTI QPS limiting my access and my rights to QPS information is a prevention of the course of justice. A cover up.*
> *…*
> *Any attempt to block my rights is malicious and will need to be corrected for further matters involving RTI QPS and the Office of the Information Commissioner.*

[9] Part 12 – Vexatious applicant declarations.
[10] Dated 9 June 2020.
[11] Emails dated 6 July 2020; 18 July 2020; 20 July 2020; and 21 July 2020.
[12] Email dated 6 July 2020.

> *I believe the Office of Information* [sic] *should be aware by now of my need for peace and my respect for honesty and my passion for justice. I will not tolerate further hate crimes, injustice or malice just because this group, their friends and visitors to their address and their workplace contacts side with this group.*[13]

19. The bulk of the respondent's submissions do not specifically address QPS's submission about the volume and nature of access actions made by the respondent or the terms of the declaration sought. Rather, they generally seek to repeat her various complaints and allegations against her neighbours and QPS, and to affirm the validity of her contact with QPS over the years concerning her neighbours. I have referred to the respondent's submissions in my discussion below where they are relevant to the particular issue under consideration.

20. After receiving notice of QPS's vexatious declaration application, the respondent sought to make access applications to QPS seeking access to information associated with QPS's application, including seeking information about any disciplinary action taken against the QPS officer who had compiled the application on behalf of QPS. She sought to make another application seeking access to information held by QPS that related to her use of the 000 Emergency number.[14]

21. By letter dated 21 July 2020, I advised the respondent that it was not appropriate for her to make access applications to QPS in connection with QPS's vexatious declaration application when the matter was before me for consideration and determination. I directed the respondent to raise with OIC any requests for additional information that she considered she required in order to respond to QPS's application. If I determined that the information was relevant to the issues to be determined in his matter, I would raise it with QPS.

22. The respondent made no further requests for information and provided no further submissions in support of her position.

Grounds relied upon by QPS

23. QPS contends that the respondent has repeatedly engaged in access actions, and that this repeated engagement constitutes an abuse of process on the following grounds:

- unreasonable interference with operations of QPS and wastage of public resources and funds; and
- harassment and intimidation of QPS staff and the making of unsubstantiated or defamatory allegations against QPS staff.

24. By way of background, QPS also submits that, in addition to the IP Act access actions in which the respondent engages, she:

- attends at her local police station to make complaints
- calls the 000 Emergency number
- makes numerous online complaints via Policelink; and
- complained to the Crime and Corruption Commission (**CCC**) (and to its predecessor, the Crime and Misconduct Commission) alleging police inaction, victimisation and bias.[15]

[13] Email dated 6 July 2020.
[14] Email dated 6 July 2020.
[15] Complaints which were found to be unsubstantiated.

Has the respondent repeatedly engaged in access actions?

25. Yes, for the reasons that follow.

QPS's submissions

26. QPS submitted that, from December 2016 to April 2020, the respondent made 264 access actions. These were comprised of 168 access applications, 24 internal review applications, and 72 external review applications. When considered as an average, this amounted to 6.5 access actions per month since December 2016.

27. QPS also highlighted that, at one point in 2017, the respondent made 23 access applications in 23 days.

28. QPS relied upon the declarations granted in *UQ and Respondent* (100 access actions in total), *CHHHS and Respondent* (33 access actions made in a period of approximately 11 months); and *GCHHS and Respondent* (19 access actions made in a period of two years and nine months) to argue that the respondent's engagement was clearly repeated within the meaning of section 127(2)(a) of the IP Act. It also cited the decision of the OAIC in *Australian Taxation Office and Andrew Garrett*[16] where 117 access actions over a period of five years was found by the OAIC to amount to a 'repeated engagement'.

The respondent's submissions

29. The respondent did not specifically address QPS's contention that she had repeatedly engaged in access actions, but sought to reiterate and justify the various complaints she had made to QPS and her right to seek information about those complaints and what action was taken.

Finding

30. The term *'repeatedly engaged'* is not defined in the IP Act and many be interpreted within the ordinary meaning of those words: *'done, made or said again and again'*.[17]

31. I am satisfied that in making 264 access actions over a period of less than five years, the respondent has repeatedly – *'again and again'* – engaged in access actions. The merit or otherwise of those access actions is not relevant to this issue.

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

32. Yes, for the reasons that follow.

Grounds relied upon by QPS

33. QPS submitted that the respondent's repeated engagement involves an abuse of process for an access action because her actions involve:

    a) unreasonable interference with the operations of QPS and associated wastage of public resources and funds; and/or
    b) harassment and intimidation of QPS employees including making unsubstantiated or defamatory allegations.

[16] (Freedom of Information) [2017] AICmr 50.
[17] *Sweeney and Australian Information Commissioner & Ors* [2014] AATA 531 (4 August 2014) at [53] (***Sweeney***), quoting the Macquarie Dictionary.

34. For the reasons explained below, I am satisfied that the first ground is made out, but the second is not.

a) Unreasonable interference with agency operations/wastage of public resources and funds

35. I will consider whether the respondent's repeated engagement in access actions involves an abuse of process on the basis that the repeated engagement has unreasonably interfered[18] with QPS's operations. As part of that consideration, I will take account of QPS's related submission that the repeated engagement also involves a wastage of public resources and funds.

36. The OAIC Guidelines[19] list various factors relevant to assessing this issue, which I consider are relevant when considering the application of section 127(2)(b)(i) of the IP Act:

- *the total number of a person's access actions to the agency in a specific period, and in particular, whether a high number of access actions has led to a substantial or prolonged processing burden on the agency or a burden that is excessive and disproportionate to a reasonable exercise by an applicant of the right to engage in access actions*

- *the impact of the person's access actions on* [IP] *administration in the agency, and in particular, whether a substantial workload impact has arisen from the nature of a person's access actions, such as multiple* [IP] *requests that are poorly-framed or for documents that do not exist, requests for documents that have already been provided or to which access was refused, or requests that are difficult to discern and distinguish from other complaints a person has against the agency. It is nevertheless important to bear in mind that an individual, who may lack both expertise in dealing with government and a close knowledge of an agency's records management system, may make access requests that are poorly framed, overlapping or cause inconvenience to an agency*

- *the impact of the person's access actions on other work in the agency, and in particular, whether specialist or senior staff have to be redeployed from other tasks to deal with* [IP] *requests, or the requests have caused distress to staff or raised security concerns that required separate action*

- *whether the agency has used other provisions under the* [IP] *Act to lessen the impact of the person's access actions on its operations …*

- *the size of the agency and the resources that it can reasonably allocate to* [IP] *processing*

- *whether the person has cooperated reasonably with the agency to enable efficient* [IP] *processing, including whether the person's access actions portray an immoderate prolongation of a separate grievance the person has against the agency, or the continued pursuit of a matter that has already been settled through proceedings in another dispute resolution forum*
  …
- *whether deficiencies in an agency's* [IP] *processing or general administration have contributed to or might explain a person's access actions*....

[18] 'Unreasonable' is relevantly defined as meaning '*exceeding the bounds of reason; immoderate; exorbitant*'. 'Interfere' is defined as '*to interpose or intervene for a particular purpose*' (Macquarie Dictionary, 7th edition). I note that the use of the phrase *'unreasonably interfering'* indicates a degree of interference with agency operations is permissible, before it will be regarded as unreasonable.
[19] At paragraph [12.27].

QPS's submissions[20]

37. QPS submitted that the respondent's excessive number of access actions had had a detrimental impact on QPS's resources and that her applications showed *'a pattern of requesting behaviour that could be considered to be manifestly unreasonable by a dispassionate person'*:[21]

> *Whilst it is acknowledged that an agency is required to show more than having to expend significant resources, this prolonged application activity has had a major impact on the operation of the QPS. This is shown by the fact the QPS Right to Information and Privacy (RTIP) Unit has spent over 616 hours processing the respondent's applications. When broken down further, this equates to 77 complete 8-hour days, or four months spent by a staff member responding only to work generated by the respondent and working on those files non-stop for 8 hours a day. It is difficult to identify any line of reasoning where such a monopolisation of resources could not be identified as an unreasonable 'diversion of resources or interference with normal operational functions'.*
>
> *In the case of* UQ and R*, the unreasonable interference criteria was met as the respondent had made 'voluminous applications', had 'often applied for information previously sought', and his actions had created 'an unreasonable interference with the applicant's operations', which 'amount[ed] to a waste of public resources.' In* Cairns and Hinterland Hospital and Health Service and Respondent*, the Right to Information Commissioner was satisfied that this criteria had been met after having regard to the volume and terms of the applications and that many of them 'were incapable of serving a legitimate purpose and to process them would involve a wastage of public funds.' As previously highlighted, in the current matter the respondent has made 264 access actions in a period of forty months and has often applied for information previously sought. In addition to this being a large volume of actions, most of these applications have been for large amounts of documents. Many of these applications, and her correspondence regarding these applications, could reasonably be classified as voluminous. Examples of this voluminous nature can be seen in Appendix B.*
>
> [Footnotes omitted]

38. As an example of what it regarded as the unreasonable nature of the respondent's actions, QPS stated that the respondent had made 20 access applications over a period of six months seeking access to documents concerning the CCC investigation of her complaints against police,[22] despite having received a decision from QPS in response to her initial application that the documents were exempt under the IP Act, and OIC confirming that decision on external review. QPS refused to deal with these 20 subsequent access applications in reliance upon section 62 of the IP Act (previous application for same documents). The respondent then sought external review by OIC of all decisions by QPS, and all reviews were resolved after the respondent accepted OIC's preliminary view that QPS was entitled to rely upon section 62.

39. QPS further submitted:

> *Another noteworthy example of the applicant applying for information she has previously sought is the applicant's continued applications for police job cards over a six year period. On 12/09/2013 the respondent made an application under the IP Act for police job cards made from and to her address since 2007. On 4/11/2013 she was provided with a decision and seventy four documents relevant to this application. Since this date, the respondent has made four further applications seeking the same job cards, including one in each of 2016 and 2018, and two in 2019.*

[20] Paragraphs 21-33 and 46-47 of QPS's submission.
[21] *Transport for London* (UK Information Commissioner), FS50090632, 10 April 2007.
[22] The investigation was referred by the CCC to QPS's Ethical Standards Unit (**ESU**) for investigation, with CCC retaining oversight powers.

> *Commonwealth vexatious declaration decisions also support the use of excessive workload as a relevant factor in finding an interference with operations. In* Sweeney and Australian Information Commissioner and Australian Prudential Regulation Authority (Joined Party)*, there had been 118 applications over a thirty three month period. The Administrative Appeals Tribunal found that an excessive workload required to respond to access applications, and seeking documents previously sought are factors which indicate an interference with the operations of an Agency. It was further considered in this case that the 'volume, frequency and nature of the access actions' made this conduct unreasonable and thus founded an abuse of process for an access action. A factor considered in* Sweeney*, was the effect of the subsequent workload on an agency as a result of access applications made. This is mirrored in the current matter, where there has been an impact on frontline officers and administration staff in the* [regional] *Police District, who have been diverted from the normal duties to conduct searches and compile documents.*
>
> *A further factor considered in Commonwealth cases when deciding upon unreasonable interference has been whether the respondent is attempting to use the access rights provided in the Act to revisit a long standing grievance that has already been thoroughly investigated. As discussed in the introduction to this report, the respondent has made an extraordinarily large amount of complaints and her interactions with her neighbours has* [sic] *consumed an inordinate amount of police time and resources. She has been kept informed about the progress of her complaints, both via written correspondence but also via personal contact with Officers in Charge of the* [regional] *Station and* [regional] *District Police Communications. It is clear that she is now using the RTI and IP Acts for the 'prolongation of a personal grievance'.*
>
> [Footnotes omitted]

40. As regards the wastage of public funds and resources, QPS raised the impact that processing the access applications had on frontline officers and administration staff in the regional police station where the respondent resides, diverting them away from their normal duties in order to conduct searches for, and compile, relevant documents. QPS reiterated its submission about the number of hours that staff of QPS's Right to Information and Privacy (**RTIP**) Unit had spent responding to the respondent's requests, the repetitive nature of those requests, and their lack of merit:

> *… In addition to the repetitive nature of the respondent's access applications, the respondent has monopolised an extraordinary amount of police time over the last decade. This is due to her repeated unfounded allegations against her neighbours, and also her repeated unfounded complaints about the investigations of these allegations. She has displayed an unwillingness to accept any blame for her own actions, and her repeated complaints and access applications appear to be driven by an erroneous belief that there is some type of conspiracy against her.*
>
> *Whilst it is acknowledged that the right to make a complaint is an important right, the respondent has consistently abused this right by refusing to accept the outcomes of investigations. Her complaints and access applications often repeat similar allegations and arguments which have continually been rejected and found to be unreasonable and without basis. This has resulted in a large amount of police time "wasted" investigating and responding to matters which have no substance, and subsequently responding to access actions regarding these matters. Repetition and lack of legitimacy were also identified as factors which indicate an abuse of process in the* Cameron *case.*[23]

Respondent's submissions

41. As noted, the respondent's submissions in her various emails focused on reiterating the legitimacy of her complaints against her neighbours and against police, and her right to seek access to information from QPS regarding these matters. She provided photographic evidence to support various of her complaints, and provided copies of correspondence with QPS, the local council, and the CCC, regarding her complaints.

[23] *Re Cameron*, at [2].

42. In response to QPS's submission that dealing with her access applications involved a wastage of public resources, the respondent argued:[24]

> *The allegation … is malicious and unacceptable.*
>
> *In 2007 it would have taken QPS half an hour to stop this intentional abuse and mistreatment.*
>
> *Instead the QPS allowed hidden abuse and mistreatment, with the suffering at my address including the ill and the elderly. A loved one in my care at my address has not survived this abuse.*
>
> *What I have had to experience over these many years for requiring the help from QPS is a disgrace. To intentionally also shift the blame onto myself so the truth, justice and the real offender can escape responsibility and accountability will not happen any further and should not have happened in the firt* [sic] *instance.*
>
> *… QPS will hide the truth and hold me responsible for this groups behaviour. This furthered the financial abuse, hidden abuse and mistreatment and further concealed the facts. After being charged with stalking the neighbors* [sic] *involved since 2007 in the destructive behaviours, property damages, excessive noise, emotional and psychological torture and other crimes concealed, stolen from my address by QPS raid in late 2014. All my property and evidence returned to me 2016 March by Officer in Charge* [name deleted]. *No* [sic] *Guilty of ten criminal charges.*
>
> *Do not ever believe that I am the cause of public waste of resourses* [sic] *when the facts prove exactly the opposite to* [QPS RTIP officer's] *recent allegations.*
>
> *It is critically important that police service is capable of doing their job for the safety and well being in the community. At this time families, children and communities are suffering violence and ignorance. The QPS is responsible for safety in our communities and the communities are suffering unsafety, unhealthy and toxic environments. Unacceptable to knowingly allow this to exist without support as a voice for people without a voice in the communities.*
>
> *Any person suffering is a detriment to the whole community.*
>
> *Empathy of others suffering is a good human quality. My neighbours and the people involved have caused suffering.*
>
> *No life is more important than another life. The fact that people believe they are entitled or privileged for having QPS friends and contacts to distort evidence and information is a disgrace and inhumane. To dehumanise my life is unacceptable to continue as over the last decade of hidden abuse and mistreatment.* [QPS RTIP officer] *is distorting the facts because he can and because his is able and because his is shifting the blame and the focus off of the real disgrace as hidden abuse and mistreatment in toxic communities.*
>
> *I have not been able to live as any person as a right to live since I required QPS assistance at my address in 2007 as new neighbors* [sic] *moved into my area. I have a right know why people are abused and mistreated by the inaction of QPS. In order to find the evidence and to stop this abuse from happening I will require QPS documents relating to the facts. To deny any QPS information is a part of the problem and allowing the QPS problem to extend and the incit* [sic] *of violence towards the community.*

Discussion

43. As noted above, QPS submitted that, from December 2016 to April 2020, the respondent made 264 access actions (including, at one point in 2017, 23 access applications in 23 days). This equates to an average of 6.5 access actions per month, and the work

[24] Email dated 20 July 2020.

involved required the equivalent of one officer of QPS's RTIP Unit spending eight hours per day for four months exclusively attending to the respondent's matters. QPS argued that this is an excessive number of access actions that has led to a substantial and prolonged processing burden on QPS.

44. QPS did not state how many access actions it had received in total during the relevant period. Hence, a relative comparison of the number made by the respondent against the total during the period is not possible.[25]

45. QPS also did not provide information about the current number of staff employed in its RTIP Unit and the relative impact on its available resources in having one staff member spend the equivalent of four months, full-time, on the respondent's matters. While QPS is undoubtedly a large agency with a substantial workforce and budget, I am not satisfied that an agency's size is necessarily an accurate measure of resources available to it to deal with access actions under the IP Act or RTI Act.[26] QPS performs crucial law enforcement and public safety duties on behalf of the people of Queensland. Its available resources and budget must reasonably be apportioned between those law enforcement and public safety functions, and functions it is required to perform under legislation such as the IP Act and RTI Act. QPS deals with a substantial number of IP and RTI access applications each year,[27] and it experiences a constant strain on its available resources. It is an unreasonable impost on those resources for one individual's IP matters to consume an officer's time for four months across a four year period.

46. Viewed objectively, the respondent's average of engaging in 6.5 IP Act access actions per month with a single agency is extremely high. I am satisfied that this has led to a substantial and prolonged processing burden on QPS since 2017 that is excessive and disproportionate to a reasonable exercise by the respondent of the right to engage in access actions. I am satisfied that dealing with the respondent's access actions has had a significant impact on the workload of QPS's RTIP Unit.

47. I also accept that many of the respondent's access applications are repetitive and seek access to the same information, or substantially overlap in their terms. Examples highlighted by QPS are set out at paragraphs 38 and 39 above. However, there are numerous other examples contained in Appendix A to QPS's submission. The respondent makes persistent complaints to QPS about her neighbours (or police), and, soon after making the complaint, often makes an associated IP application seeking access to information about the complaint and QPS's investigation of it. Some examples are as follows:

> *My attendance at the* [regional] *Police Station, 04.09.2019 Approx 8am, meeting with Sergeant* [deleted], *body camera footage, notes, QPrime, investigations, reports, emails and all information involving myself … as a result of neighbours videoing myself and other incidences that have occurred over these years. All police officers involved, including Officer in Charge* [name deleted].[28]

[25] I note that a relative comparison of the number of access actions made by an applicant during a period versus the total received by an agency for that same period is not always helpful in establishing that an individual's repeated engagement amounts to an abuse of process. If, for example, an agency receives only four access actions in a year, but three of them are made by the same individual, then relatively, that individual is a high user of the agency's resources. However, this small number of applications in total would not represent an excessive processing burden on the agency.
[26] See the discussion at paragraphs 87-90 in *Services Australia and 'RS'* (Freedom of Information) [2020] AICmr 6.
[27] The 2018-2019 Annual Report on the RTI Act and IP Act that is published each year by the Department of Justice and Attorney-General (which is the agency responsible for the administration of both Acts) indicates that QPS received 2,410 access applications during that financial year, and finalised 2,848.
[28] RTI/28008 received on 5 September 2019.

Approx 730am 10/09/18 – Front counter footage, body camera footage of myself attending the [regional] *Police Station to compile a formal witness statement about what has been occurring in my neighbourhood since 2007. …*[29]

All QPS information regarding my conversation with Sergeant [name deleted] *approx. 12 noon 20180115. The recording of this conversation and QPS documents, emails, internal and external regarding all the recent investigations.*[30]

CCTV footage and recordings of my attendance at the front counter of the [regional] *Police Station approx. 815am 20180516. I spoke to male constable, I would like the name of this constable. I spoke to female admin person.*[31]

48. The respondent has made multiple and repeated access applications for all QPRIME[32] information held about her. Some examples are as follows:

Copy of all information about [the respondent] on QPrime between 1987 and 2017.[33]

Copies of QPrime reports and job cards in relation to the arrest of [the respondent] *that occurred between 07/15 and present.*[34]

Copy of QPrime entries in relation to complaints made by [the respondent] *at* [regional] *Police Station on 7/10/15.*[35]

…QPrime information regarding my address and my name …[36]

…Documents to support Constable [name deleted]*'s comments as advised to me on 20171208 Duty Sergeant at the time .. "all my evidence of crime I provided to QPS since mid 2007 to this day has all been investigated by QPS." Summary of QPRIME to support this statement. …*[37]

All QPS information, QPRIME ENTRIES, QPS evidence, QPS action, QPS advise [sic] *since July 2018 of the ongoing circumstance. The whole circumstance reported to QPS at the* [regional] *Police Station when I attended 2007. Information supplied by myself … since 2007 and ongoing …*[38]

ALL QPRIME entries in relation to myself … since 2015 to this day 2019. All entries including restricted INFORMATION about myself and my address. …[39]

Seeking: 2019 to an including November ALL QPrime, ALL evidence, ALL VIDEO FOOTAGE, ALL relevant information including statements QPS has of myself … as the alleged offender. Names of ALL police involved. … [40]

49. I accept QPS's submission that the respondent's applications are often voluminous. Some examples highlighted by QPS in Appendix B to its application include:

Evidence of complaints made by [the respondent] *and their outcomes.*
Specifically:
- *Evidence of complaints made by* [the respondent] *to Senior Constable* [name deleted] *at the* [regional] *Police Station between 2009 and 2013.*

[29] RTI/24701 received on 10 September 2018.
[30] RTI/22761 received on 25 January 2018.
[31] RTI/23692 received on 17 May 2018.
[32] Queensland Police Records and Information Management Exchange (QPS's electronic database).
[33] RTI/22094 received on 1 November 2017.
[34] RTI/22107 received on 1 November 2017.
[35] RTI/22132 received on 6 November 2017.
[36] RTI/22405 received on 8 December 2017.
[37] RTI/22433 received on 13 December 2017.
[38] RTI/24766 received on 17 September 2018.
[39] RTI/25780 received on 11 January 2019.
[40] RTI/28631 received on 9 December 2019.

- *Evidence and outcomes into complaints of the intentional abuse of* [the respondent]*, her family and her address continuing since mid 2007.*
- *The outcomes of these complaints with evidence supplied by* [the respondent] *to Senior Constable* [name deleted] *to prove facts of this intentional abuse continuing over many years.*
- *The outcomes of the investigation into the violence with proven intention of residents of and visitors to* [address deleted] *during the years of concern, including a smoke alarm left beeping for three weeks. The torture of this beeping every thirty seconds continuously twenty four hour a day for three weeks.*
- *Investigations into the comments, "we have police friends, What are you going to do about it …"*
- *The return of the photographs and the two usb's supplied by* [the respondent] *to Senior Constable* [name deleted] *as evidence to prove these concerns as a fact.*[41]

Outcomes of the police investigations into my concerns of [name deleted] *involved in the abuse of myself, my family & my address since mid 2007. Outcomes of the police investigations with evidence supplied to OIC* [name deleted] *15/08/2014 with emails to OIC* [name deleted] *as evidence since this time. Evidence of abuse extending to the community & workplace of* [name deleted]*. Police outcome into the investigations of* [name deleted] *involvement into proven abuse, harassment, torture, property damages, abuse of the ill and the elderly, where a member of my family did not survive these crimes and these violent acts. The intentions evident to police since mid 2007, illegal drugs used and sold in my neighbourhood, illegal drugged and drunken party goers obscene language and threats to myself and property, bass systems, large stereos blasting at these three and four day miners parties held six mtrs from the bedroom areas at my address, concern of police not attending when I required assistance breakin at my address from a drugged party goer from a neighbourhood party where I was again abused and assaulted, Assaulted as I got out of my vehicle parked in the street, police harassment, inactions from police allowing this abuse to continue over ten years now support to police from … City Council with evidence, support from the local member … with evidence, Child endangerment, Illegal and dangerous parking, Discrimination, Deprivation of liberty, Acts of violence, misuse of weapons, animal abuse. As some proven concerns to date and since mid 2007 when a neighbouring property was sold and new neighbours moving into the neighbourhood.as a neighbourhood group involving* [name deleted] *proven, there was no need for police in my neighbourhood before mid 2007.notes and other degrading material left in my letterbox and on and around my vehicle. emailing of my clients making reference to this group, cyber bullying, facebook harassment ,defermation* [sic] *of character and other crimes known to police involved.*[42]

50. QPS also highlighted RTI/19533 in which the applicant initially requested access on 23 December 2016 to:

Copy of all documents, emails, memos, all internal and external letters and emails on file regarding [the respondent] *between 05.2007 - 04.01.2017*.

51. QPS advised that it attempted to consult with the respondent to narrow the terms of the application, however, the respondent sent a number of emails in response that specified a list of 22 separate items that in fact sought to expand the terms of the application:

1. *2007 – 2017 - All police jobcards, complaints and correspondence involving my address and police jobcards made from and by address …* [contact details deleted] *about complaints. Recording of all calls to police from these numbers including 000 emergency. Including all traffic police complaints and video recordings. All QP9s and all related evidence regarding myself and my arrests.*
2. *All recording of meetings with and complaints made to Sergeant* [name deleted] *since mid 2007.*
3. *All emails as correspondence to and from Sergeant* [name deleted].

[41] RTI/20426 received on 18 April 2017.
[42] RTI/20796 received on 22 May 2017.

4. *All recording of meetings with and complaints made to Senior Constable* [name deleted] *since mid approx. 2009. Copies or return three USBs and photographs provided as evidence to support concerns and complaints.*
5. *All correspondence to police link and replies to complaints made.*
6. *Correspondence from and to Officer in Charge* [name deleted].
7. *Video and recording of complaints made to Sergeant* [name deleted] *and Senior Sergeant* [name deleted] *10 July, 2014.*
8. *Watch house video and recordings – 12th March 2015 of*
9. *Senior Constable* [name deleted] *and Constable* [name deleted] *at watch house counter and also in front of lockup.*
10. *Approx 2.00pm same day, myself and Sergeant* [name deleted]*'s conversations.*
11. *Two separate conversations. One briefly and one at watch house counter discussing charges and bail.*
12. *Sergeant* [named deleted]*'s visits to my address… . Sergeant* [name deleted] *wears a recorder around his neck on all five meeting where he attend my residence. Recordings between approx. 14th July, 2015 and October, 2015.*
13. *Recording of* [name deleted]*'s interview with Sergeant* [name deleted] *about my complaint to police link. Sergeant* [name deleted] *advised me at the time that he interviewed* [name deleted] *regarding myself and my complaints.*
14. *Police advised, at the time, police would not be providing a written response to my complaint of* [name deleted] *also police will not be providing written response to my other complaints. Police advised me that a verbal response was provided by Sergeant* [name deleted]*. I will need this recorded verbal response in addition to other recordings of Sergeant* [name deleted] *during his visits to my residents over these years. A/Superintendent* [name deleted] *advised me that the recorded outcome and advise* [sic] *from Sergeant* [name deleted] *would only be provided as verbal recordings as Sergeant* [name deleted] *always wore a voice recorder around his neck while visiting my address.*
15. *Recordings of myself with female constable at* [regional] *police station 10th July, 2015. Recording and video of conversations from police counter to the interview room, first conversations between constable and myself before police started and recorded on disk.*
16. *20th July, 2015 when I was arrested breach of bail, recordings and video of Myself and arresting officers. Video and recordings while I was incarserated* [sic] *for two nights and three days.*
17. *All recording and evidence during court proceedings.*
18. *17-18th October, 2015 Recordings and video of police conversations in* [address deleted] *with regards to door knocks made by police.*
19. *Recording and video with documentation regarding CIB at my address 20161204, at 300pm approx.*
20. *All other information regarding myself and police would be appreciated.*
21. *The sergeant/ sergeants involved in the below incident. This may be in the QP9's you provide me of these police incidents. Thanks*
22. *20150720 - approx 600pm - police collected me from my address, all QP-9 and video evidence, recordings of police with myself …, at the counter at the watch house and conversations and communications with police on this night. All evidence and communications relating to my charge of breach of bail.*

52. I am satisfied that dealing with these types of voluminous applications has a significant impact on QPS's resources available for IP and RTI administration. Compounding that impact is the fact that many of the respondent's applications are densely-worded and poorly framed, such that it is often difficult to discern the information that she is seeking to access. I am cognisant of the fact that an individual, who may lack both expertise in dealing with government and a close knowledge of an agency's records management system, may make access requests that are poorly framed, overlapping, or cause inconvenience to an agency. However, the respondent has been making access applications to QPS for over four years, and staff of both QPS's RTIP Unit, and OIC on external review, have spent a considerable amount of time attempting to clarify with her the terms of her various applications and discussing with her the need to make requests

that clearly identify the information sought. However, the respondent continues to make applications that are difficult to comprehend, and that often require clarification. A recent example is RTI/30159, received by QPS on 30 March 2020, in the following terms:

> *Subject: Mobile phone Video footage, investigations into an incident at my address … 23022020am into the ongoing circumstance in my community of organized stalking directed towards myself and my address known to QPS since 2007. On this day* [name deleted] *videoing* [sic] *myself as she drove past my address. Crime stalking harassment and dangerous operation of a motor vehicle. Group members known to police are* [names deleted].
> *Many other crimes committed also in relation to the dangerous operation of motor vehicles by this group. 2007 comments from police, "sounds like a mob of dickheads have moved in", comments from this group, "we have police friends who help us … , you have no friends … , this will be on a current affair one day, aren't you embarrassed", my comments, "someone with a bit of common-sense needs to get involved here". Evidence to* [regional] *Police supporting that these people believe they are above the law and evidence to also support these people involved are a risk to the safety and wellbeing of people in my community. The people involved are obsessed to cause further chaos and trauma with their evil intentions and immoral regime in relation to a swat sticker* [sic] *burnt into the front lawn at my address and the associated behaviours to conspire and force ongoing detriment and persecution with their immoral intentions towards people in the community*.

53. A further example is found in RTI/30159, received by QPS on 30 March 2020:

> *Subject: A.) All QPS action on my POLICELINK complaints B). STEPS TAKEN by QPS from myself sending information as PoliceLink email to steps others QPS members have taken all included C). POLICE Involved D). DECISIONS MADE E). ALL RELEVANT INFORMATION TOWARDS CRIME PREVENTION. F.) all Policelink recording of phone conversations, all PoliceLink emails and responses g.) Video footage of myself taken by others from January 1st 2020 to this day. 1. Complaints – QP* [number deleted] *2. March 26 Reference ID:* [deleted] *<< Reference ID:* [deleted] *including the Police action on my information of male walking the streets asking for money for elderly people suck* [sic] *on a bus, on other occasions asking for money for children stuck in a vehicle needing repairs.*

54. Having to devote additional time to attempting to identify the information requested, and to consult with the respondent in an effort to clarify the terms of the application, increases the processing burden on QPS's RTIP Unit and unreasonably consumes its resources.

55. I am also satisfied that the respondent uses the IP Act process to continue to agitate complaints that have already been investigated and dealt with, or that have been found to be unsubstantiated. While I have no doubt the respondent remains aggrieved by these matters, I consider that she is using the IP Act process to continue to agitate them. Her IP access applications are repetitive and mainly seek access to the same, or substantially the same, type of information about her complaints, her neighbours and actions of police. In *Sweeney,* the former Australian Information Commissioner stated:[43]

> *Caution is needed in evaluating the public interest dimension of a person's FOI requests. Even so, the inescapable impression in Mr Sweeney's case is that many of his requests are aimed at re-agitating a grievance of long-standing that has been acknowledged and investigated by ASIC and other agencies, albeit not to his satisfaction. It is inappropriate that the FOI Act should become the platform to support the immoderate prolongation of a personal grievance. The impact and inconvenience of Mr Sweeney's requests upon ASIC operations is disproportionate to his campaign for 'justice' in relation to his own affairs and more widely.*

56. I make the same finding in respect of the respondent in this case.

[43] *Australian Securities and Investments Commission and Sweeney* [2013] AICmr 62, at [44].

57. Based on the discussion I have set out above regarding:

- the repetitive and often unclear nature of the respondent's IP access applications; and
- her use of the IP Act process to continue to ventilate and agitate grievances and complaints that have already been examined and dealt with,

I am satisfied that dealing with the respondent's access actions involves a wastage of public resources and funds.

58. All resources funded by public monies to assist in the delivery of government services must be used prudently and efficiently, and this is particularly true of the funding provided for law enforcement and public safety services, which represents a significant impost on taxpayers. Despite the respondent's submissions to the contrary, I consider that the time, resources and attendant cost of dealing with her IP access actions are excessive and unjustified.

Finding

59. Based on the information before me and for the above reasons, I am satisfied that the respondent's access actions are an abuse of process because they unreasonably interfere with QPS's operations and involve an associated wastage of public resources and funds.

b) Harassment and intimidation of QPS staff including making unsubstantiated or defamatory allegations

60. I will consider whether the respondent's repeated engagement in access actions involves an abuse of process on the basis that the repeated engagement involves the harassment or intimidation of QPS staff. As part of that consideration, I will take account of QPS's related submission that the respondent has made unsubstantiated or defamatory allegations against QPS staff.

61. The terms 'harassing' and 'intimidating' are not defined in the IP Act. The ordinary dictionary meaning of 'harass' is '*to trouble by repeated attacks or to disturb persistently'* and 'intimidate' is to '*to force into or deter from some action by inducing fear*'.[44] In the OIC decision in *Sheridan*,[45] the terms were given the following meanings:

- acts which persistently trouble, disturb or torment a person are acts of harassment; and
- acts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation.[46]

62. The OAIC's Guideline states:

> *12.23 The occurrence of harassment or intimidation must be approached objectively. The issue to be resolved is whether a person has engaged in behaviour that could reasonably be expected on at least some occasions to have the effect, for example, of tormenting, threatening or disturbing agency employees. An agency will be expected to explain or provide evidence of the impact that a person's access actions have had on agency employees, though this evidence must be considered in context with other matters. …*

[44] Macquarie Online Dictionary.
[45] *Sheridan and South Burnett Regional Council* (Unreported, Queensland Information Commissioner, 9 April 2009) (***Sheridan***).
[46] Note that the issue in *Sheridan* was whether the act in question amounted to a serious act of harassment or intimidation. Section 127(8) of the IP Act does not require the act of harassment or intimidation to be serious in nature.

> *12.24 Harassment and intimidation may be established by a variety of circumstances that include:*
>
> - *the content, tone and language of a person's correspondence with an agency, especially if language is used that is insulting, offensive or abusive*
> - *unsubstantiated, derogatory and inflammatory allegations against agency staff*
> - *requests that are targeted at personal information of agency employees*
> - *requests that are designed to intimidate agency staff and force them to capitulate on another issue*
> - *requests of a repetitive nature that are apparently made with the intention of annoying or harassing agency staff*
> - *a person's refusal or failure to alter dubious conduct after being requested by an agency to do so.*
>
> *12.25 Those circumstances, if present in an individual case, must nevertheless be assessed objectively in a broader FOI context. It is not contrary to the requirements or spirit of the FOI Act that an FOI request will contain additional commentary or complaints by the FOI applicant. These may provide context for a request, or be compatible with the stated objects of the FOI Act of facilitating scrutiny, comment and review of government activity.*

63. A number of decisions of the OAIC have found that an access applicant engaging in threatening or abusive behaviour towards agency staff may amount to harassment or intimidation, and therefore an abuse of process:

- *DOD and 'W'*:[47] the Commissioner found that the access applicant had abused staff in a manner that was insulting, offensive, and directly impugned their personal and professional integrity, and had made demands that bordered on threats
- *CO and 'S'*:[48] the Commissioner found that the access applicant had made repeated requests aimed at procuring the personal information of Ombudsman staff to intimidate and harass them, and that the applicant's allegations of misconduct and threats to report the misconduct to the Australian Public Service Commission had the effect of harassing staff
- *Comcare and Price*:[49] the Commissioner found that the access applicant had made repeated requests involving offensive language that harassed, intimidated and abused staff and could understandably be distressing to them, and in this capacity had engaged in an abuse of process; and
- *IBA and 'QB'*:[50] the Commissioner found that the access applicant had engaged in a campaign of harassment and intimidation by way of persistently and frequently contacting, threatening and intimidating staff and service providers, and in this capacity had engaged in an abuse of process.

64. In *GCHHS and Respondent*, the Privacy Commissioner found that the respondent had engaged in threatening and abusive behaviour towards staff of the agency, which amounted to harassment or intimidation of the agency's employees. A similar finding was made by the Right to Information Commissioner in *CHHHS and Respondent*.

[47] *Department of Defence and 'W'* [2013] AICmr 2.
[48] *Commonwealth Ombudsman and 'S'* [2013] AICmr 31.
[49] [2014] AICmr 24.
[50] *Indigenous Business Australia and 'QB'* (Freedom of Information) [2019] AICmr 14.

QPS's submissions[51]

65. QPS's submissions focused on the contention that the respondent had made a number of unsubstantiated allegations about QPS officers in her access applications. Relying on OIC's decision in *Hearl and Mulgrave Shire Council*,[52] where allegations are unable to be substantiated, they will be *'plainly vexatious and defamatory'*:

> *This includes allegations of mistreatment by police … and dereliction of duty allegations, such as failure to attend and investigate her complaints and concealing evidence.*
>
> *A specific example of this is illustrated when the respondent applied on 31 May 2018 for access to:*
>
> > All official reports, all documents, all evidence, all dates, all other information that supports the:
> >
> > 1. QPS code 504 placed against my name and my address
> > 2. Danger intelligence messages against myself and my address
> > 3. Person or persons responsible for the placing of these codes and messages
> > 4. The years that these codes and messages were placed and removed
> > 5. All other significant information and references of this whole circumstance.
>
> *In response to a consultation seeking further information regarding this application, the respondent made the following allegations:*
>
> > The continued concealing of these offences allows these offences to continue. The inaction of QPS as concealed in your refuse to deal decisions supports an ongoing abusive [sic] and mistreatment since mid 2007 as known to QPS.
>
> *The respondent has also made allegations that QPS Right to Information (RTI) decision makers are making decisions to further continue this alleged mistreatment and to conceal the alleged inaction of police. A specific example of this was in response to a consultation seeking further information in relation to an access application. The respondent made the following allegation:*
>
> > I believe, as a police officer, Senior Sergeant [X], you are aware of where this information and where the documented communications would be located. With your previous conduct considered, I am aware that you are intentionally prolonging my right to any of my information.

66. QPS set out, in Appendix C to its application, other examples of what it contended were unsubstantiated allegations made by the respondent in her access applications. These included allegations that one of her neighbours, who is apparently employed by QPS, is involved in what the respondent contends are acts of victimisation against her in collusion with other neighbours.

67. As an addendum to its application, and following the publication by OIC of the declaration in *GCHHS and Respondent*, QPS argued that, while the respondent's behaviour in this case may not be at the same 'insulting or threatening level' as that engaged in by the respondent in *GCHHS and Respondent*, there was nevertheless a similar pattern in that:

- both repeatedly make applications or engage in correspondence containing unfounded allegations against staff who have interacted with them and who do not acquiesce to their requests or demands for information

[51] Paragraphs 15-20 and 43-45 of QPS's submission.
[52] (1994) 1 QAR 557, at [34].

- both use insulting language that impugns the professional reputation and integrity of staff; and
- there is no evidence to support their allegations.

68. QPS stated:

> *It is submitted that whilst it has a somewhat different complexion to that considered in GCHHS, the interactions of the person with the QPS in this matter contain many similarities to GCHHS. This is sufficient to support a consistent finding that the person in this matter has engaged in behaviour that is an abuse of process as it is harassing or intimidating and contains unsubstantiated and unfounded accusations against staff.*

Respondent's submissions

69. The respondent did not specifically address this issue in her submissions except to reiterate her grievances with her neighbours and her dissatisfaction with the actions of QPS in responding to her complaints and in dealing with her IP access applications.

70. It is clear that the respondent has grown increasingly frustrated with staff of QPS's RTIP Unit, whom she considers are deliberately obstructing or delaying her applications, or concealing information from her by refusing to deal with her applications. I will discuss these allegations further below.

Discussion

71. I have considered objectively whether the respondent has engaged in behaviour that could reasonably be expected to have the effect of harassing or intimidating QPS employees. As it is the conduct which must be shown to involve an abuse of the process, it is not necessary that an intent to harass or intimidate be shown.

72. Viewed objectively, I am not satisfied that the respondent's conduct has reached a level sufficient to find that it amounts to an abuse of process of this nature. Having regard to the various ways in which harassment and intimation can be established (set out at paragraph 62 above), I am not satisfied that the respondent's behaviour has the effect of harassing or intimidating QPS staff, through engaging in threatening or abusive behaviour, using insulting or offensive language, or through persistently making unsubstantiated or defamatory allegations.

73. The respondent is dissatisfied with what she regards as police inaction about her complaints. Many of her applications are aimed at seeking information about what actions were taken by police, or about their interactions with her more generally. These applications sometimes name individual police officers who have interacted with the respondent in some way. In addition, a small number have sought information about the QPS employee who lives at a neighbouring address and whom the respondent believes is involved in acts of victimisation against her.[53]

74. There is no evidence before me of the respondent having persistently adopted insulting, offensive or abusive language in her access applications, or more broadly. I accept that a small number of applications may contain unsubstantiated allegations against QPS staff. However, in making those ancillary allegations, the respondent appears not to be motivated by malice or retribution, but by a genuine belief in the matters complained about and a desire to obtain access to relevant information. I recognise that it is not necessary that an intent to harass or intimidate be shown and that the relevant

[53] See, for example, RTI/30203 dated 2 April 2020 (page 108 of QPS's application).

consideration is how, objectively, a person receiving the information would reasonably react. However, having reviewed the terms of the access applications made by the respondent since 2017 that are set out Appendix A to QPS's application, and having given consideration to their language, tone and content, I am not satisfied that relevant QPS staff could reasonably be expected to feel distressed, harassed or intimidated by the bulk of such communications.

75. In terms of the making of unsubstantiated or defamatory allegations against QPS staff, I have given careful consideration to the terms of a number of the respondent's access applications as they relate to the particular officer of QPS's RTIP Unit who has been responsible for processing and deciding many of the respondent's access applications. Upon receiving an access decision from this officer, it appears that the respondent has begun making a further access application in which she seeks access to information that supports the 'allegations' made against her by this officer in his decision.

76. I have also had particular regard to the actions of the respondent in connection with this officer subsequent to her being notified of QPS's vexatious declaration application. A person's conduct after they are notified that a declaration is being considered may be relevant when deciding whether or not to grant the declaration.[54]

77. As I noted at paragraph 20 above, following receiving notification of QPS's vexatious declaration application, the respondent made an access application to QPS seeking access to information about any action taken by QPS management in response to her complaints about the officer. In addition, in the various emails that she has sent to OIC during the course of the review, the respondent accused the officer of:

- bias
- dereliction of duty
- dishonesty and lying
- maliciously targeting her and depriving her of her rights
- intentionally blocking her access to information; and
- concealing crimes.

78. I advised the respondent that it was not correct for her to characterise QPS's application as an attempt by an individual officer to 'target' her or to make malicious allegations against her, and it was neither relevant nor appropriate for her to lodge an access application with QPS seeking information of a disciplinary nature about this officer in connection with the making of such an application. I informed the applicant that her conduct in that regard may be a relevant matter for me to take into account in deciding whether or not to grant the declaration.

79. The respondent thereafter made no further access applications of this nature, and sent OIC no further correspondence concerning this officer.

80. I recognise that the allegations made by the respondent against the QPS officer are serious in nature and are unsubstantiated. I also accept that the QPS officer in question may reasonably find the allegations, which impugn his integrity and honesty, offensive.

81. However, I have also taken into account the fact that the respondent immediately ceased her conduct upon being requested to do so by me, and that she has not, as far as I am aware, sought to re-engage in this type of behaviour since then. It is also relevant that

[54] See *Official Trustee in Bankruptcy v Gargan (No.2)* [2009] FCA 398, at [12] and *Attorney-General v Tarq Altaranesi* [2013] NSWSC 63, at [16].

she does not appear to have undertaken conduct of this nature over a sustained period of time in the past.

82. For these reasons, while unwarranted and unfair, I am not satisfied that the respondent's behaviour towards the QPS officer in question is sufficient to amount to an abuse of process.

Finding

83. I find that the circumstances I have discussed above do not establish that the bulk of the access actions undertaken by the respondent involved an abuse of process because they harassed or intimidated staff members of QPS. I am not satisfied that the access actions involved the use of threatening or abusive behaviour; that they persistently adopted insulting, offensive or abusive language; or that they persistently made unsubstantiated and/or defamatory allegations against QPS staff.

Conclusion

84. Based on the material before me and for the reasons given, I am satisfied that the respondent has repeatedly engaged in access actions and that the repeated engagement involves an abuse of process for an access action in that it unreasonably interferes with the operations of QPS and involves an associated wastage of public resources and funds.

85. I am also satisfied that the respondent was advised of QPS's application and was given an opportunity to make submissions in response. Accordingly, I make the declaration in the terms set out above.

86. QPS had sought a declaration that prevented the respondent from making any access applications to it under the IP Act for a period of five years. However, I consider a declaration in those terms would be an unreasonably broad and lengthy restriction on the respondent's statutory right to seek access to her personal information as held by QPS. The declaration I have made seeks to strike a balance between that right, and providing the applicant with relief from dealing with applications for past documents, as well as, for a two year period, from the burden on its resources that has resulted from dealing with the respondent's excessive volume of access actions over the past four years.

Rachael Rangihaeata
Information Commissioner
Date: 21 September 2020

APPENDIX

Significant procedural steps

Date	Event
9 June 2020	Application for a Declaration received from QPS
29 June 2020	Letter to the respondent attaching a copy of the Application
6 July 2020	Email received from the respondent
18 July 2020	Email received from the respondent
20 July 2020	Email received from the respondent
21 July 2020	Email received from the respondent
21 July 2020	Letter to the respondent.