



Decision and Reasons for Decision

Citation:	<i>3PF1YC and The University of Queensland</i> [2017] QICmr 21 (21 June 2017)
Application Number:	313089
Applicant:	3PF1YC
Respondent:	The University of Queensland
Decision Date:	21 June 2017
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL TO DEAL WITH APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS – whether there exists a previous application for the same documents – whether decision on previous application was the subject of a completed review - 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 University of Queensland (**University**), for access to mental health information and documents used in a determination set out in two bullet points of an email.
2. The University's decision refused to deal with the access application on the ground that the requested documents had been the subject of a previous application.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review.
4. I affirm the University's decision to refuse to deal with the access application as the requested documents have been the subject of a previous application under the *Information Privacy Act 2009* (Qld) (**IP Act**) and the later application does not on its face disclose any reasonable basis for again seeking access.

Background

5. Significant procedural steps relating to the external review are set out in the Appendix to this decision.

Reviewable decision

6. The decision under review is the University's decision dated 11 November 2016.

Evidence considered

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

Relevant law

8. Section 62 of the IP Act applies if:
- an applicant makes an access application to an agency, and then a subsequent access application to the same agency seeking access to one or more of the same documents; and
 - the later application does not, on its face, disclose any reasonable basis for again seeking access to the documents.
9. Relevantly for this review, section 62(3)(d)(ii) of the IP Act allows an agency to refuse to deal with the later application to the extent that it seeks access to documents requested under a previous application, if the agency's decision on the previous application has been the subject of a completed review.¹

Findings

Is there a later application seeking access to one or more of the same documents sought under a previous application?

10. Yes, for the reasons that follow.
11. On 7 December 2009, the applicant applied to the University (**First Application**) for access to:

*Find attached a copy of a page from FOI release 10 October 2005. I request all documents used in determination of the two bullet points.² (**Requested Documents**).*

No date range was specified.

12. The 'page from FOI release 10 October 2005' (**Email Extract**) comprises an extract of an email dated 29 August 2005 between two members of staff of the University and stamped as being released on 10 October 2005 'under FOI'. The Email Extract contains two bullet points concerning aspects of the applicant's behaviour and the responsibilities of the University's Health Service's staff that had been discussed earlier that day. Apart from salutations, the initial sentence 'Just going over the points as discussed this morning' and the two bullet points, the body of the email is blank.
13. The access application the subject of this review (**Later Application**) seeks access to:

Mental health information and documents used in determination thereof in accompanying extract of email dated 29 August 2005....

Date range: 8 May 1973 to present but mainly 2000-2010.

¹ Under sections 62(5)(b) and 62(6) of the IP Act, a completed review includes an external review which has ended because of an informal resolution.

² The applicant also sought access to other items, not relevant to this external review.

14. The 'accompanying extract of email dated 29 August 2005' attached to the Later Application consists of the same Email Extract mentioned in paragraph [12] above.
15. While the Later Application is worded slightly differently and specifies a date range, I consider that these differences do not result in the Later Application being for different documents.
16. In relation to the difference in wording, I have carefully considered the scope of the First and Later Applications. As noted above, the scope of the First Application is for 'all documents used in determination of the two bullet points' recorded on the Email Extract. Thus the applicant clearly sought all documents used to inform the bullet points in the Email Extract. In the Later Application the applicant used the following phrasing: 'Mental health information and documents used in determination thereof in accompanying extract of email dated 29 August 2005'. While the phrasing differs, the applicant is nonetheless seeking access to the documents relied upon to inform the bullet points in the Email Extract.
17. The use of the descriptor 'Mental health information' in the Later Application does not alter the nature of the documents being sought because the First Application was broadly worded to capture all documents, which would encompass any 'Mental health information' that was used in determination of the two bullet points. Thus the Later Application, while containing the more detailed descriptor, nonetheless seeks access to the same documents as those requested in the First Application, as it seeks access to the documents relied upon in forming the bullet points in the Email Extract.
18. In relation to the inclusion of a date range in the Later Application, it does not change the documents being sought by the applicant. This is because, regardless of the date range specified, the applicant is nonetheless seeking access to the documents that were used to inform the two bullet points in the Email Extract, that is, documents in existence at the time of the creation of the Email Extract. While, the date range expressed in the Later Application extends after the creation of the Email Extract, only documents that were or had been in existence at the date of the Email Extract would fall within the scope of the Later Application. Thus the Later Application seeks access to the same documents as the First Application.

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

19. On its face, the Later Application discloses no reasonable basis for the applicant to again seek access to the Requested Documents.
20. On external review, OIC invited the applicant to make submissions.³
21. I have carefully considered the applicant's emails to OIC.⁴ The applicant has been unable to provide any cogent submission in relation to this matter.⁵ The concerns raised by the applicant in his emails are not relevant to the issue for determination in this review.

³ Letter dated 24 April 2017.

⁴ Emails dated 24 April 2017, 27 April 2017 at 12.08pm and 9.52pm, 4 May 2017 and 9 May 2017.

⁵ For example, the applicant submitted by email dated 24 April 2017 that OIC had been stalking him and his child for several years and was responsible for his child's poor welfare. By letter dated 26 April 2017, which was both posted and emailed to the applicant that day, the Right to Information Commissioner informed the applicant of OIC's rejection of and objection to his assertions. As the applicant responded by email dated 27 April 2017, advising he had not opened the attachment to the email dated 26 April 2017, OIC informed him by email dated 27 April 2017 of the content of the letter from the Right to Information Commissioner, which formed the attachment to the email dated 26 April 2017

22. I am satisfied that:

- the applicant's emails do not indicate any reasonable basis for the applicant again seeking access to the Requested Documents; and
- the access application, on its face, does not disclose a reasonable basis for again seeking access to the Requested Documents.

Was the University's decision on the First Application the subject of a completed review?

23. Yes, for the reasons that follow.

24. The University's decision on the First Application⁶ stated that it refused access to the Requested Documents under section 62(3)⁷ of the IP Act on the basis that those documents had been the subject of two finalised applications. The applicant applied for external review of that decision.⁸ OIC accepted the external review application⁹ and the review was finalised by informal resolution.¹⁰

25. I am therefore satisfied that the University's decision on the First Application was the subject of a completed review.¹¹

Conclusion

26. I am satisfied that the applicant has made a Later Application to the University for access to the same documents sought under the First Application and the Later Application does not, on its face, disclose any reasonable basis for again seeking access to the documents. Accordingly, the requirements of section 62(1) and section 62(3)(d)(ii) of the IP Act are met.

DECISION

27. On the basis set out above I am satisfied that the Later Application seeks access to documents sought under the First Application. Accordingly, I affirm the University's decision to refuse to deal with the access application under section 62(3)(d)(ii) of the IP Act.

28. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 21 June 2017

⁶ Dated 12 January 2010.

⁷ Section 62(3) of the IP Act authorises an agency to refuse to deal with an access application.

⁸ On 8 February 2010.

⁹ External review 310088.

¹⁰ On 21 June 2010.

¹¹ Under sections 62(5)(b) and 62(6) of the IP Act, a completed review includes an external review which has ended because of an informal resolution.

APPENDIX**Significant procedural steps**

Date	Event
24 November 2016	OIC received the external review application. OIC notified the applicant and the University of its receipt and requested that the University provide OIC with relevant procedural information.
25 November 2016	OIC received the requested procedural documents from the University.
30 November 2016	OIC received a further request for external review from the applicant.
5 December 2016	OIC wrote to the applicant referring to his recent telephone conversations with OIC staff, informing him that OIC staff would not engage with him by telephone for the remainder of the review and directing him to make submissions or requests to OIC in writing or email.
13 December 2016	OIC notified the applicant and the University that the review had been accepted and requested that the University provide OIC with additional relevant information.
19 December 2016	OIC received the requested additional information from the University.
24 April 2017	OIC conveyed a preliminary view to the applicant that the University could refuse to deal with the Later Application and invited the applicant, if he did not accept the preliminary view, to provide submissions supporting his case.
April and May 2017	Various communications to and from the applicant.