



## Decision and Reasons for Decision

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**Application Number:** 311324

**Applicant:** Mathews

**Respondent:** Attorney-General and Minister for Justice

**Decision Date:** 20 May 2013

**Catchwords:** ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – noncompliance with application requirement – section 53 of the *Information Privacy Act 2009* (Qld) – whether the agency was entitled to decide an application does not comply with all relevant application requirements – requirement to provide evidence of identity – electronic submission of certified identification

### REASONS FOR DECISION

#### Summary

1. The applicant requested documents from the Attorney-General and Minister for Justice under the *Information Privacy Act 2009* (Qld) (**IP Act**). The Department of Justice and Attorney-General (**Department**) was directed to deal with the access application.<sup>1</sup>
2. In making an access application, an applicant must provide evidence of identity. In this case, the applicant emailed the Department a certified copy of his identification. The Department requested that he provide an original certified copy of the identification. The applicant did not provide the original certified copy as requested and the Department decided that the access application was noncompliant with the application requirements. The Department affirmed its decision on internal review.
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision that the application did not comply with the relevant application requirements.
4. For the reasons set out below, I am satisfied that the Department has the discretion to decide whether to accept electronic submission of certified identification and, in the circumstances, was entitled to decide that the access application did not comply with the relevant application requirements under section 53(5) of the IP Act.

#### Background

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

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<sup>1</sup> Section 51 of the IP Act.

## Reviewable decision

6. The decision under review is the Department's internal review decision dated 21 December 2012 that the access application does not comply with the relevant application requirements under section 53(5) of the IP Act.

## Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Issue for determination

8. In an attempt to informally resolve this external review, OIC asked if the Department would accept electronic submission of a certified copy of the applicant's identification if the applicant made a fresh application to the Department. The Department advised OIC that it was prepared to accept the identification in this format from the applicant in these circumstances. However, the applicant elected to proceed with the external review and did not agree to make a fresh application to the Department. As the Department had issued a decision to not accept the applicant's evidence of identity, the OIC had no power to remit and the Department had no power to then process the access application which is the subject of this external review.<sup>2</sup>
9. Therefore, the issue for determination is whether the Department was entitled to refuse to deal with the access application on the basis that it did not comply with the relevant application requirements under the IP Act.

## Relevant law

10. In making an access application, an applicant must provide evidence of identity either with the application or within 10 business days after making the application.<sup>3</sup> *Evidence of identity* means a document verifying the person's identity and relevantly includes a passport, copy of a certificate or extract from a register of births, driver licence, or a statutory declaration from an individual who has known the person for at least 1 year.<sup>4</sup> If a document is a photocopy of an original document, the document must be certified by a qualified witness as being a correct copy of the original document.<sup>5</sup>
11. If a person purports to make an access application and the application does not comply with all relevant application requirements, the agency must:<sup>6</sup>
  - make reasonable efforts to contact the person within 15 business days after the purported application is received
  - inform the person how the application does not comply with the relevant application requirement; and
  - give the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements.
12. If, after giving the applicant a reasonable opportunity to consult with a view to making the application in a form complying with all relevant application requirements, the

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<sup>2</sup> In contrast to circumstances where a decision is deemed and the agency or Minister applies for further time – see section 106 of the IP Act.

<sup>3</sup> Section 43(3)(a) of the IP Act.

<sup>4</sup> Section 3(1) of the *Information Privacy Regulation 2009* (Qld) (**IP Regulation**).

<sup>5</sup> Section 3(2) of the IP Regulation.

<sup>6</sup> Section 53(2) and (3) of the IP Act.

agency then decides that the application does not comply with all such requirements, the agency must give the applicant prescribed written notice of the decision.<sup>7</sup>

## Findings

13. To provide evidence of his identity, the applicant emailed the Department:
  - a certified photocopy of his birth certificate; and
  - an uncertified photocopy of his driver licence.
14. The Department notified the applicant that the access application was noncompliant with the application requirements and requested that he provide an *original* certified copy of his birth certificate by post. The applicant did not provide the identification in this format and the Department decided that the access application did not comply with the application requirements.
15. Section 16 of the *Electronic Transactions (Queensland) Act 2001* (Qld) provides that if, under a State law, a person is required to produce a document that is in the form of paper, an article or other material, the requirement is taken to have been met if the person produces, by an electronic communication, an electronic form of the document in the following circumstances:
  - having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the document provided a reliable way of maintaining the integrity of the information contained in the document<sup>8</sup>
  - when the communication was sent, it was reasonable to expect the information contained in the electronic form of the document would be readily accessible so as to be useable for subsequent reference; and
  - the person to whom the document is required to be produced *consents* to the production, by an electronic communication, of an electronic form of the document.
16. Based on this provision, I am satisfied that a decision-maker has the discretion to decide whether to accept evidence of identity electronically. Agencies may require the documents to be provided by post in specific circumstances, for example where the applicant's personal information is of a particularly sensitive nature, or if there are any concerns about the integrity of the document's information regarding the applicant's identity or an agent's authority.
17. In the circumstances of this case, the Department did not exercise the discretion to accept evidence of the applicant's identity electronically. I find that the Department was entitled to decide that the access application does not comply with the relevant application requirements under section 53(5) of the IP Act.
18. The applicant provided submissions supporting his case, most of which are irrelevant to the issue for determination and are not addressed in these reasons for decision. Otherwise, in summary, the applicant submits that:
  - he is a disabled person with special needs and decision-makers must consider how these special needs can be accommodated

<sup>7</sup> Section 53(5) of the IP Act.

<sup>8</sup> Section 16(3) of the *Electronic Transactions (Queensland) Act 2001* (Qld) provides that the integrity of information contained in a document is maintained only if the information has remained complete and unaltered, apart from the addition of any endorsement or any immaterial change arising in the normal course of communication, storage or display.

- his special needs can be accommodated by asking the Department to process the access application immediately
  - there has been disability discrimination by not accommodating his special needs; and
  - the relevant law is inconsistent with Commonwealth law and invalid to the extent of the inconsistency.
19. I do not propose to entertain these submissions as they traverse issues and legislation outside my jurisdiction. Confining myself to a consideration of the issues that are within my jurisdiction,<sup>9</sup> I simply reiterate that the Department had the discretion to decide whether to accept the applicant's evidence of identity electronically, and chose not to exercise that discretion. In my view, it was open for the Department to do so, and it would be inappropriate for me to revisit the Department's decision.
20. This is particularly so, given that the issue is now largely theoretical. As noted above,<sup>10</sup> some months ago, during informal resolution processes undertaken in the course of this review, the Department agreed to accept an electronic submission of certified identification from the applicant with a resubmitted application. This option would, within the legislative framework of this jurisdiction,<sup>11</sup> address in practical terms any detriment which, in the applicant's view, he has suffered.

## DECISION

21. For the reasons set out above, I affirm the decision under review and find that the Department was entitled to refuse to deal with the access application on the basis that it does not comply with the relevant application requirements under section 53 of the IP Act.
22. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Anna Rickard**  
**Acting Assistant Information Commissioner**

**Date: 20 May 2013**

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<sup>9</sup> That is, the issues related to the law canvassed at paragraphs 10-12 and 15 above.

<sup>10</sup> See paragraph 8.

<sup>11</sup> As mentioned above at paragraph 8, OIC has no power to remit and the Department has no power to then process the access application.

## APPENDIX

### Significant procedural steps

Date	Event
31 October 2012	The access application was received by the Office of the Attorney-General and Minister for Justice. The Minister directed the Department deal with the access application under section 51 of the IP Act.
1 November 2012	The Department received the access application.
2 November 2012	<p>The Department notified the applicant that the access application would be deemed noncompliant if he did not provide an original certified copy of his identification by 16 November 2012.</p> <p>The applicant emailed the Department a certified photocopy of a birth certificate.</p> <p>The Department asked the applicant to post the original certified copy of the birth certificate.</p> <p>The applicant explained to the Department that he is disabled and that it would be “<i>an exceptional impost</i>” on him to obtain the original certified copy of the birth certificate.</p>
5 November 2012	<p>The Department notified the applicant that the access application was noncompliant with the relevant application requirements of section 43 of the IP Act and requested he provide the original certified copy of the birth certificate.</p> <p>The applicant emailed the Department an uncertified copy of his driver licence.</p>
16 November 2012	The Department notified the applicant the access application was still noncompliant and allowed him until 23 November 2012 to provide an original certified copy of the identification.
26 November 2012	<p>The Department gave the applicant prescribed written notice of its decision that the access application did not comply with the relevant application requirements.</p> <p>The applicant applied for internal review of the decision.</p>
21 December 2012	<p>The Department affirmed the initial decision.</p> <p>The applicant applied to OIC for external review of the internal review decision.</p>
2 January 2013	OIC asked the Department to provide documents relating to the application (access application, decision, internal review application, internal review decision, and other relevant correspondence) by 7 January 2013.
8 January 2013	OIC received the requested documents from the Department.
29 January 2013	OIC asked the Department to advise by 8 February 2013 whether it would accept electronic submission of the applicant's certified identification if the applicant made a fresh application to the Department.
15 February 2013	The Department agreed to accept electronic submission of the applicant's certified identification.
20 February 2013	<p>OIC asked the applicant whether he would informally resolve the external review by agreeing to make a fresh application to the Department and submitting an electronic copy of the identification.</p> <p>The applicant notified OIC that he did not agree to informally resolve the external review on this basis.</p>
21 February 2013	<p>The applicant provided submissions supporting his case.</p> <p>OIC again asked whether the applicant would informally resolve the external review by agreeing to make a fresh application to the Department and submitting an electronic copy of the identification.</p>

Date	Event
23 February 2013	The applicant provided submissions supporting his case.
19 March 2013	<p>OIC indicated the next steps to the applicant and asked if he wished to proceed with the external review.</p> <p>The applicant confirmed that he wished to proceed with the external review.</p>
12 April 2013	<p>OIC conveyed its view to the applicant that the Department's decision to refuse to deal with the access application was made in accordance with the IP Act and invited the applicant to provide submissions supporting his case by 29 April 2013 if he did not accept the view.</p> <p>The applicant did not accept OIC's view and provided submissions supporting his case.</p>