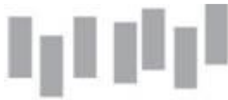

Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***A11 and Department of Housing and Public Works* [2019] QICmr 33 (26 August 2019)**
Application Number:	**314337**
Applicant:	**A11**
Respondent:	**Department of Housing and Public Works**
Decision Date:	**26 August 2019**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO PROCESS APPLICATION FOR NON-PAYMENT OF APPLICATION FEE - application for non-personal information - application not accompanied by application fee - whether application valid - section 24 and section 33 of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Housing and Public Works (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information since 2014 concerning *'applications (and material purportedly lodged in support thereof) and/or offers of transfers'* in relation to a nearby duplex unit.[1]

2. On the application form, in response to a series of pro-forma questions requesting that applicants specify whether or not they sought access to documents that contained their personal information, the applicant did not tick any box but instead wrote, *'Without inside knowledge it is impossible for me to answer any of the above queries'.*

3. In a 20 page handwritten letter that accompanied his application, the applicant stated that he required a reasonable opportunity to make a detailed inspection of the original of each and every application for a transfer to or from the nearby duplex unit, and each and every offer of a transfer to or from that unit, made in the last four years, including the reasons given for each and every offer, and which of those were rejected or declined. The applicant argued that the information sought *'would seem to be seen – in some part anyhow – to bear upon my very own personal affairs'* given that he was a neighbour. Even if he was wrong on that point, the applicant submitted that various other considerations, including the purposive approach to statutory interpretation; the overall legislative scheme of the RTI Act; and the RTI Act's pro-disclosure bias, meant that he should be given access to the documents he requested. He also contended that Parliament was prohibited from imposing a mandatory requirement to pay an application

[1] Application dated 4 September 2018 and received by the Department on 7 September 2018.

fee where the application sought access to information that was not the applicant's personal information.

4. By letter dated 10 September 2018, the Department referred to the applicant's application having been made under the *Information Privacy Act 2009* (Qld) (**IP Act**) and then advised him that it considered that some of the documents he sought were documents that contained information other than his personal information, as defined in section 12 of the IP Act. The Department stated that it considered that the application could not be dealt with under the IP Act in its current form and that, pursuant to section 54(3) of the IP Act, it was consulting with him to assist him to make his application in a compliant form. The Department gave him three options to consider:

   - amend his application to proceed under the IP Act by limiting its terms to documents that contained his personal information; or
   - request that his application be processed under the RTI Act, in which case, he was required to pay the application fee; or
   - withdraw his application.

5. The applicant responded by letter dated 17 September 2018, advising that his application was intended to be made under the RTI Act and not the IP Act.

6. On 24 September 2018, the Department wrote to the applicant to apologise for the misunderstanding. It advised him of the statutory requirement to pay a prescribed application fee of $49.70 if he wished to pursue his application under the RTI Act. It advised him that it was allowing him a further 10 business days to respond.

7. By letter dated 2 October 2018, the applicant complained that the Department had failed to provide him with a reasonable consultation opportunity, as required by section 33(3) of the RTI Act. He also stated that he considered that he had *'every right'* to make the application under the RTI Act and that he continued to do so, *'without withdrawal or transferring over to the IP Act or what-have-you'*. He accused the Department of *'changing its tune'* since its letter dated 10 September 2018 and requested a *'full, and concise, comprehensive statement of reasons, for your apparently proposed said findings of fact set down so generally then – in your initially proposed response to this matter'*. He did not pay the application fee.

8. By letter dated 11 October 2018, the Department gave the applicant prescribed written notice of its decision under section 33(6) of the RTI Act that his application was invalid because it did not comply with the application requirement set out in section 24(2)(a) of the RTI Act, namely, payment of the application fee. The Department rejected the applicant's contention that it had failed to properly consult with him under section 33(3) of the RTI Act. It also advised him that only processing and access charges were able to be waived under the RTI Act, but payment of an application fee was mandatory where the application sought access to information that was not the applicant's personal information.

9. The applicant applied for internal review of the Department's decision. In a letter dated 18 October 2018, he continued to complain that the Department had failed to provide him with a reasonable opportunity to consult under section 33(3) of the RTI Act. He again raised the purposive approach to statutory interpretation in support of his argument that Parliament was prohibited from imposing a mandatory application fee. He argued that the fee was prohibitive for impecunious applicants such as himself, and that 'must' in section 24(2) of the RTI Act should be read as 'may'. He again requested *'a comprehensive statement of reasons'* from the Department.

10. The Department gave its internal review decision dated 22 November 2018. It responded to the issues raised by the applicant, and confirmed its decision that his application did not comply with the application requirement contained in section 24(2)(a) of the RTI Act and that the Department was therefore not required to process it.

11. By a 22 page handwritten letter (plus an additional 29 pages of attachments) dated 30 November 2018,[2] the applicant applied to this Office (**OIC**) for external review of the Department's decision.

12. I am satisfied from the terms of the purported access application that the applicant sought access to information that was not his personal information within the meaning of section 12 of the IP Act, and that his application was therefore required to be made under the RTI Act. For the reasons given below, I affirm the Department's decision made under section 33(6) of the RTI Act that the applicant's purported application does not comply with the relevant application requirement contained in section 24(2)(a) of the RTI Act in that he did not pay the application fee required under section 24(2)(a) and prescribed by section 4 of the *Right to Information Regulation 2009* (Qld) (**RTI Regulation**). The Department was therefore not required to process the applicant's access request.

Reviewable decision

13. The decision under review is the Department's internal review decision dated 22 November 2018, made under section 33(6) of the RTI Act.

Evidence considered

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

15. The applicant has made a number of lengthy, handwritten submissions during the review.[3] The submissions are the same as, or similar to, submissions he made in review 314303, which also involved the applicant disputing the requirement to pay an application fee in respect of a request for access to non-personal information made under the RTI Act. I issued a decision dated 26 August 2019 in that review.

16. The applicant has complained throughout the review process that neither the Department nor OIC has properly taken account of his submissions. I will summarise and respond to the applicant's submissions further below, so far as they are relevant to the issue for determination.

Issue for determination

17. The applicant does not dispute that his application was intended to be made under the RTI Act. I am satisfied, based on the wording of the applicant's request, that the information to which he seeks access is not his personal information within the meaning of section 12 of the IP Act and that the request is therefore required to be made under the RTI Act. Accordingly, the only issue for determination is whether the applicant's purported application is invalid because it does not comply with a relevant application requirement under section 24(2)(a) of the RTI Act, namely, payment of the prescribed application fee.

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[2] Received on 10 December 2018.

[3] Dated 30 November 2018, 4 January 2019, 28 February 2019, and 3 June 2019.

Relevant law

18. Section 24 of the RTI Act relevantly provides:

24 Making access application

(1) A person who wishes to be given access to a document of an agency or a document of a Minister under this Act may apply to the agency or Minister for access to the document.

*(2) The application **must** –*

*(a) **be in the approved form and be accompanied by the application fee**; and*
(b) give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
(c) state an address to which notices under this Act may be sent to the applicant; and
(d) state whether access to the document is sought for the benefit of, or use of the document by –
(i) the applicant; or
(ii) another entity; and …
(e) if access to the document is sought for the benefit of, or use of the document by, an entity other than the applicant – the name of the other entity.

(3) …

*(4) **The application fee mentioned in subsection (2)(a) may not be waived.***

(5) … .

[emphasis added]

19. Section 33 of the RTI Act provides:

33 Noncompliance with application requirement

(1) This section applies if –
(a) a person purports to make an access application for a document to an agency or Minister; and
(b) the application does not comply with all relevant application requirements.

(2) The agency must make reasonable efforts to contact the person within 15 business days after the purported application is received and inform the person how the application does not comply with a relevant application requirement.

(3) An agency or Minister must not refuse to deal with an application because it does not comply with all relevant application requirements without first giving the applicant a reasonable opportunity to consult with a view to making an application in a form complying with all relevant application requirements.

(4) The applicant is taken to have made an application under this Act if and when the application is made in a form complying with all relevant requirements.

(5) …

(6) If, after giving the opportunity mentioned in subsection (3) and any consultation, an agency or Minister decides the application does not comply with all relevant application requirements, the agency or Minister must, within 10 business days

after making the decision, give the applicant prescribed written notice of the decision.

(7) In this section –

***relevant application requirement**, for an access application, means a matter set out in section 24(2) or (3) that is required for the application.*

The applicant's submissions

20. In the interest of brevity, and as best as I am able to distil them from his voluminous submissions, the applicant's arguments can be summarised as follows:

    (a) OIC has failed to properly consider and respond to the applicant's submissions throughout the review which is indicative of a lack of good faith: the principles of natural justice require OIC to consider all of the 'very pertinent' matters he has raised
    (b) the applicant holds a reasonable apprehension of bias because the Assistant Information Commissioner expressed a preliminary view during the course of the review that the Department's decision was correct; and because he regarded the Assistant Information Commissioner's preliminary advice – that a formal decision that named him as the applicant would be required if the matter was unable to resolved informally – as a threat made to intimidate him, and demonstrative of a lack of good faith and the presence of an improper motive
    (c) the Department did not genuinely consult with him under section 33(3) of the RTI Act and its decision under section 33(6) is therefore invalid
    (d) 'must' in section 24(2) of the RTI Act should be read as 'may' in relation to payment of the application fee, in accordance with the purposive approach to statutory interpretation, as well as the High Court's decision in *Project Blue Sky v Australian Broadcasting Authority*;[4] see also the decision of the Californian Court of Appeals in *Governing Board v Felt*[5] which should be taken into account because it is the decision of *'an eminent jurist'* that supports the argument that a technically non-compliant application under the RTI Act is intended to be taken as *'on foot, ab initio'*
    (e) the previous *Freedom of Information Act 1992* (Qld) (repealed) (**repealed FOI Act**) had the objective of providing access to information at little or no cost, with the making of a formal application an avenue of last resort: this confirms that the legislator's true intention was that payment of an application fee not be regarded as a mandatory requirement and, together with the proper application of the purposive approach to statutory interpretation, means that Parliament's attempt to impose a mandatory requirement to pay a fee under the RTI Act is *'an impermissible abuse of legislative power and contrary to the true spirit of the purposes of the overall legislative scheme'*
    (f) the pro-disclosure bias in the RTI Act, which was intended to permeate the entire statutory scheme, together with the discretion given to agencies to grant access to information even where grounds for refusal exist, indicate that mere matters of alleged non-compliance with an application requirement should not be regarded as fatal
    (g) the failure to include a power in the RTI Act to waive payment of the application fee was 'an anomalous oversight' given that there is a power for agencies to waive payment of processing and access charges
    (h) because he is impecunious, he is exempt from the RTI Act's charging regime and this includes the application fee

[4] [1998] HCA 28 (***Project Blue Sky***).
[5] Civ.No.45437 Court of Appeal of California, Second Appellate District, Division One, February 10, 1976.

(i) to require payment of an application fee as well as processing and access charges is unfair and amounts to *'double dipping'*; and

(j) OIC and the Department have the authority, power and jurisdiction to proceed with the application but instead choose to *'burn up'* his scant resources and engage in an oppressive abuse of the *'very superior resources of the public purse'* by denying him a fair hearing.

Discussion

21. I will respond in turn to each of the submissions above.

(a) Consideration of, and response to, the applicant's submissions

22. The applicant has complained throughout the review that OIC (and the Department during the processing of his application) failed to give proper consideration to his submissions.

23. On two occasions during the review, the Assistant Information Commissioner responded in detail to issues that the applicant had raised in his submissions.[6] The applicant continued to raise these issues in subsequent correspondence with OIC.

24. I have reviewed all submissions[7] made by the application in preparing these reasons for decision. Many of the submissions he makes are repetitive, and sometimes difficult to follow,[8] and a number were made by him in review 314303 and responded to in that review. Contrary to the applicant's assertions, I am not required to respond to each and every individual issue he raises, and nor is not doing so indicative of a lack of good faith. I am required to respond to submissions that are relevant to the issue for determination in this case, that is, whether the applicant's access application is invalid because it was not accompanied by payment of the prescribed application fee. To the extent that the applicant's submissions are not relevant to this issue, I am not required to respond to them.

25. I am satisfied that OIC has given full and fair consideration to the relevant submissions made by the applicant in support of his case and that I have responded to those submissions in these reasons for decision.

(b) Bias

26. I reject the applicant's contention that a reasonable apprehension of bias arises from the way in which OIC has handled this review.

27. OIC is an independent statutory body that conducts merits reviews of government decisions on access to, and amendment of, documents. The procedure to be followed on external review is, subject to the RTI Act, within the discretion of the Information Commissioner.

28. OIC's ordinary practice in the majority of external reviews is to review the agency's decision, and the information in issue, together with any relevant information the participants have provided to date, and to identify the issues for determination. OIC often expresses a preliminary view to the relevant participant, based on the information before it at that time. Where the preliminary view is contrary to the agency's decision, it is

[6] Letters dated 26 February 2019 and 30 May 2019.

[7] See footnote 3.

[8] His submission dated 3 June 2019 comprises 41 handwritten pages with, on one occasion, a single sentence extending to over 5 pages.

communicated to the agency. Where it is contrary to the applicant's position, it is communicated to the applicant. Such a preliminary view is genuinely preliminary. It is an assessment of the issues based on the information before OIC at the time. It offers an adversely affected party an opportunity to understand the issues under consideration and to put forward any further information they consider relevant or wish to have considered.

29. I reject the applicant's assertion that the fact that the Assistant Information Commissioner's preliminary view was supportive of the Department somehow indicates a level of bias against him, or that OIC is unfairly siding with the Department. I reject any allegation of bias or improper motive made by the applicant against OIC. The applicant has been given a fair and reasonable opportunity to understand the issue for determination in this review and to make submissions in support of his case. Moreover, I am the final decision-maker in this review. To the extent that the applicant is unhappy with the way in which the Assistant Information Commissioner handled the review in its early stages (and I do not accept that the applicant was treated unfairly or in any way differently to any other external review applicant), the decision-making role now rests with a different and more senior officer to make the final decision.

30. I also reject the suggestion that OIC's advice to the applicant that, in the event of the review being unable to be resolved informally, a formal published decision that named him as applicant would be required in order to finalise the review, should reasonably be construed as a 'threat' against him. In his letter dated 3 June 2019, the applicant said:

> *So, well, I don't seem to have, any option, but to, again, insist upon, not only a 'formal resolution (as you say)' – or that is proper exercise of discretion (by your very office) under the Act (in light of all the submissions I've made – now – herein), but also, as I say, that you only, hand – the record of – this matter over, to the Commissioner herself (or at least a delegate thereof of comparable seniority with your own), to be considered anew, now, and, well, as one more thing, I do not accept your assertion, that could only be done, by publicly identifying myself (i.e., disclosing my personal information) in the course of publishing any reasons for any proposed decision of your office as regards this matter (or matters generally – for that matter) and, well, I might add that, that sort of thing, in and of itself, might appear as, some kind of attempt, to intimidate a bona fide applicant, into withdrawing (unjustly and unfairly then), if not - or and/or – some kind of 'fishing expedition (e.g. as to that irrelevant matter of an applicant's motives for making application under the Act in the first instance etc.)'.*

31. Section 90 of the RTI Act provides that the Information Commissioner must identify opportunities and processes for early resolution of the review application and promote settlement of the application. Where that is not possible or is unsuccessful, section 110(1) of the RTI Act provides that the Information Commissioner must make a written decision that affirms, varies or sets aside the decision. Section 110(3) provides that the Information Commissioner must include in the decision the reasons for the decision. Section 110(6) provides that the Information Commissioner must arrange to have the decision and reasons for decision published. OIC fulfils this obligation by publishing decisions on its website.

32. All applicants are informed of these processes at the time OIC writes to them accepting their application for review.[9] Applicants are advised that formal decisions will contain the names of the parties unless the Information Commissioner exercises the discretion to de-identify a decision, as well as the facts relied upon, details of the relevant law, details of submissions made by the participants, and reasons for the decision.

[9] OIC Information Sheet: *Information for Applicants*.

33. I do not accept that the statutory requirement to publish a decision that names an applicant could in any way be regarded as a threat or some form of intimidation designed to force an applicant to withdraw his application. The Information Commissioner has a discretion to anonymise a decision in limited circumstances, most usually when the decision contains sensitive personal information about the applicant or where naming the applicant could reasonably be expected to enable others to identify that information that has been published elsewhere is the applicant's personal information. Given the submissions the applicant has made in this review about the state of his financial position, together with the fact that other decisions concerning the applicant are required to be anonymised because they contain sensitive personal information, I have elected to exercise the discretion to anonymise this decision.

34. Throughout this review, the applicant has labelled his correspondence as 'Confidential', or 'Personal, Private and Confidential'. It has been explained to him on several occasions that OIC is unable to accept submissions on a confidential basis from any participant in a review, except in exceptional circumstances, because of the obligation upon OIC to afford procedural fairness and to provide reasons for its decisions. I am unable to identify any extraordinary circumstances in this case. The issue for determination relates to a threshold processing issue under the RTI Act. I acknowledge the applicant's genuinely-held views made in his submissions over the course of the review, but I must reiterate that the issue for determination is purely mechanical in nature, and not, of itself, personal or sensitive.

(c) Section 33 of the RTI Act

35. Section 33 is set out above.

36. Section 33(3) provides that, before refusing to deal with an application, an agency must give an applicant a reasonable opportunity to consult with a view to making a compliant application.

37. The applicant submits that the Department's interactions with him did not satisfy section 33(3):

> *… how, if at all-ever-indeed,* [the Department's decision-maker] *could not be seen to have truly – i.e. only in all good faith – given any real consideration to – openly and – genuinely beginning to consult – with only due diligence etc – under the terms of Section No 33 of the Act, or – for that matter – section No.34 thereof, either, not to mention then, her neglecting – or otherwise determining (quietly) – at the very outset – not to have regard for, the very caselaw – … in respect of the ordinary meaning (in context) of the terms of "personal information" …*

38. I consider that the Department's letter dated 24 September 2018 clearly explained to the applicant why the Department was considering refusing to deal with his application. I am satisfied that the Department discharged its obligation under section 33(3) of the RTI Act by providing the applicant with a reasonable opportunity to consult with a view to making his application in a compliant form. The applicant confirmed that his application was made under the RTI Act. He was informed of the requirement under section 24(2)(a) of the RTI Act to pay the application fee in order to make it compliant and was afforded two opportunities to do this. He did not do so, but instead affirmed that his application was intended to be made under the RTI Act and wrote to the Department disputing the validity of the application fee provision. The Department did not accept the arguments he raised and therefore gave him a prescribed written notice under section 33(6) of the RTI Act.

39. I consider that the Department's interactions with the applicant constituted a reasonable consultation opportunity within the meaning of section 33(3) of the RTI Act.

(d) & (e) 'Must' versus 'may' and the overall legislative scheme

40. I accept that the repealed FOI Act had, as an objective, the provision of information at little or no cost. However, it required the payment of an application fee where the document applied for did not concern the applicant's personal affairs.[10] The application fee could not be waived.[11] The same scheme has continued in the RTI Act and IP Act. The RTI Act includes a detailed and prescriptive scheme of costs for accessing information. An application fee must be paid where the information applied for is not the applicant's personal information. In contrast, applications to access personal information under the IP Act attract no application fee and there are no charges for processing the application.

41. I reject the applicant's assertion that Parliament's imposition of a mandatory requirement to pay a fee under the RTI Act is *'an impermissible abuse of legislative power or contrary to the true spirit of the overall legislative scheme'*. From the inception of freedom of information legislation in Queensland, Parliament has drawn a clear distinction between accessing personal and non-personal information. It evinced a clear intention both in the repealed FOI Act, and in the plain and unambiguous words used in section 24(2)(a) of the RTI Act (as set out above) that persons wishing to access non-personal information must pay an application fee. Furthermore, it expressly provided under section 24(4) that the requirement to pay the fee cannot be waived.

42. I also reject the applicant's submission that the purposive approach to statutory interpretation means that 'must' in section 24(2) should be read down to 'may', in order to accord with the *'overarching legislative scheme'*. As I have noted, the clear intention of the legislative scheme enacted by Parliament is to distinguish between applications for personal and non-personal information, and to impose a mandatory requirement to pay an application fee in relation to the latter. While there may be occasions where it is appropriate in specific legislative provisions to interpret 'must' as 'may', I do not consider that section 24(2)(a) is such an occasion. As noted, the RTI charging regime is clearly prescribed in the RTI Act and RTI Regulation. Parliament's intention to impose a mandatory requirement to pay an application fee is clearly expressed. There is no ambiguity or uncertainty such as to justify the applicant's contention that the fee was in fact intended to be discretionary and to therefore read 'must' as 'may'. The fact that Parliament made specific provision that the fee could not be waived is a clear indication to the contrary. The mandatory nature of the provision is consistent with the Explanatory Notes[12] and historical developments in FOI/RTI legislation in Queensland.

43. The applicant argues that further support for his submission that 'must' should be read down to 'may' can be found in section 32CA of the *Acts Interpretation Act 1954* (Qld). However, this provision simply makes clear that, where 'must' is used in relation to the exercise of a statutory power, it indicates that the power is required to be exercised. Firstly, the requirement in section 24(2)(a) of the RTI Act to pay an application fee is not a statutory power, to be exercised or not. Secondly, section 32CA supports the position that the use of 'must' indicates a mandatory requirement to perform the prescribed act. I am unable to see how this is supportive of the applicant's case.

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[10] Section 35B.
[11] Section 35C(1).
[12] See the *Right to Information Bill 2009* (Qld).

44. The applicant relies upon the 1976 Californian Court of Appeals decision in *Governing Board v Felt*. This decision discusses the interpretation to be given to 'shall' and 'may' when considering mandatory time limits. I do not consider that it has any application to the issue under consideration in this review.

45. The applicant also relies upon the High Court's decision in the case of *Project Blue Sky*. This decision sets out the approach to determine whether a failure to comply with a statutory requirement affects the validity of an administrative decision. The High Court found that the test for determining the issue of validity is to ask whether it was the purpose of the legislation that an act done in breach of the provisions should be invalid.

46. Again, I do not regard this case as having any relevance to the issue for determination in this review. In *Project Blue Sky*, the issue was whether a failure by the decision-maker (the Australian Broadcasting Authority) (**ABA**) to comply with section 160(d) of the *Broadcasting Services Act 1992* (Cth) invalidated an Australian content standard made by the ABA. In this review, there has been no failure by a decision-maker to comply with a statutory requirement. Section 24(2)(a) does not regulate the exercise of a statutory power. Rather, it imposes a mandatory obligation on an applicant to pay an application fee in order to make a valid application.

47. Furthermore, the High Court confirmed that the primary object of statutory construction is to read the relevant provision in a way that is consistent with the purpose of the legislation. As I have noted, a clear purpose of Parliament in enacting the relevant provisions in the RTI Act was to require payment of an application fee where the information sought to be accessed is not the applicant's personal information.

(f) Pro-disclosure bias

48. Section 44(1) of the RTI Act (*Pro-disclosure bias in deciding access to documents*) provides that it is Parliament's intention that, if an access application is made to an agency for a document, the agency should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.

49. Section 44 concerns the decision-maker's considerations for deciding access to documents. This provision is relevant only when an agency is dealing with a compliant application. Section 33(1) refers to a person who 'purports' to make an access application. Section 33(4) provides that an applicant is taken to have made an application under the RTI Act **if and when** the application is made in a form complying with all relevant application requirements. As section 24(2)(a) has not been complied with in this case, no access application has been made, and section 44(1) has no relevance. The RTI Act's pro-disclosure bias has relevance only once an agency is considering a valid access application.

50. I reject the applicant's argument that his application is non-compliant only on a technical basis and should nevertheless be regarded as *'on foot, ab initio'*. Such an interpretation is clearly contrary to section 33(4).

(g) Anomalous oversight

51. I do not accept the applicant's argument that the *'failure'* by Parliament to include a power to waive payment of the application fee should be regarded as 'an anomalous oversight' given that it made provision for waiver of processing and access charges in specific circumstances. The fact that Parliament decided to include a provision specifically prohibiting waiver of the application fee indicates that there was no unintentional oversight regarding this matter.

(h) Impecunious applicant

52. The applicant has raised his impecuniosity as a reason why waiver of the application fee would be justified. However, the RTI Act takes account of an applicant's financial position and whether they are suffering financial hardship **only** in respect of payment of processing and/or access charges. Chapter 3, part 6, division 3 allows for an agency to waive payment of processing or access charges where an applicant is the holder of a relevant concession card.[13] However, as I have noted, section 24(4) specifically provides that an application fee may not be waived. While I acknowledge and empathise with the applicant's position, the RTI Act does not permit the state of an applicant's finances to be taken into account in relation to the mandatory requirement to pay the application fee.

(i) 'Double-dipping'

53. The applicant refers to the term *'double dipping'* throughout his submissions. He clearly regards as unfair a charging regime which can require payment of an application fee as well as, if relevant, processing and access charges. However, that is the regime that has been enacted by Parliament, and OIC has no role in deciding its fairness or otherwise. OIC's role is limited to reviewing an agency's decision and determining whether the agency correctly applied the provisions of the RTI Act.

(j) Authority, power and jurisdiction of the Department and OIC

54. An agency has a discretion to give a person administrative access to documents outside the scope of the RTI Act. Section 4 of the RTI Act provides that the RTI Act is not intended to prevent or discourage the publication of information or the giving of access to documents otherwise than under the RTI Act if the publication or giving of access can properly be done or is permitted or required to be done by law. However, where the information sought is the personal information of someone other than the applicant, administrative access is often not appropriate due to the likely need to consult with affected persons regarding disclosure of their personal information. In any event, the discretion is solely the agency's to exercise. OIC has no power to direct an agency to exercise its discretion. The Department has chosen not to exercise its discretion in this case.

55. As I have explained, OIC's role on external review is limited to reviewing the agency's decision and determining whether it was correctly made under the provisions of the RTI Act. At the conclusion of a review, if it has not been possible to achieve informal resolution, OIC must give a decision affirming, varying or setting aside an agency's decision. It has no authority or power under the RTI Act to direct an agency to deal with a purported application that does not comply with all application requirements.

56. I reject the applicant's allegation that OIC has engaged in an oppressive abuse of the 'very superior resources of the public purse' by denying him a fair hearing. The applicant has been provided with a number of opportunities to put forward arguments in support of his case in this review. He has made multiple submissions which have been considered and responded to, where relevant. I am satisfied that this review has been handled in a fair and reasonable manner and that the applicant has been afforded procedural fairness.

[13] Chapter 3, part 6, division 3.

Decision

57. I affirm the Department's decision made under section 33(6) of the RTI Act that the applicant has not made a valid access application under the RTI Act because he has failed to comply with the relevant application requirement set out in section 24(2)(a) of the RTI Act, namely, payment of the prescribed application fee. The Department was therefore not required to deal with the applicant's request.

58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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Louisa Lynch
Right to Information Commissioner

Date: 26 August 2019

APPENDIX

Significant procedural steps

Date	Event
10 December 2018	OIC received the applicant's external review application and accompanying submissions dated 30 November 2018.
13 December 2018	OIC notified the applicant and the Department that the review application had been received and requested procedural documents from the Department. OIC received the procedural documents from the Department.
18 January 2019	OIC wrote to the applicant to provide a progress update.
7 February 2019	OIC received submissions from the applicant dated 4 January 2019.
26 February 2019	OIC notified the Department that the application for external review had been accepted. OIC wrote to the applicant, advising him of the same, and also communicating the preliminary view that the Department was entitled to refuse to deal with his access request.
6 March 2019	OIC received submissions from the applicant dated 28 February 2019.
30 May 2019	OIC responded to the applicant's submissions with a second preliminary view.
11 June 2019	OIC received final submissions from the applicant dated 3 June 2019.