



Decision and Reasons for Decision

Citation:	<i>G98 and Department of Child Safety, Youth and Women [2019] QICmr 59 (12 December 2019)</i>
Application Number:	314845
Applicant:	G98
Respondent:	Department of Child Safety, Youth and Women
Decision Date:	12 December 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - PREVIOUS APPLICATION FOR SAME DOCUMENTS - child application for a record of interview - document sought in previous access applications - whether Information Commissioner can refuse to deal with application - section 62 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Child Safety, Youth and Women (**Department**) for access under the *Information Privacy Act 2009* (Qld) (**IP Act**) to a record of interview.
2. The Department located 42 pages and refused access to them on the ground disclosure would be contrary to the best interests of a child.²
3. The applicant sought internal review of the decision.³ The Department decided to vary its original decision and release one page and parts of nine pages.⁴ However, the Department refused access to the remaining information on the grounds it comprised exempt information as its disclosure is prohibited by the *Child Protection Act 1999* (Qld) and disclosure would be contrary to the best interests of a child.
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁵
5. For the reasons set out below, I vary the Department's decision and find that the Department may refuse to deal with the application under section 62(3)(b) of the IP Act, as the application seeks access to a document that was the subject of a previous access application by the applicant which was the subject of an agency decision.

¹ By email dated 12 July 2019.

² By decision notice letter dated 19 August 2019.

³ Application for internal review dated 21 August 2019.

⁴ Internal review decision notice dated 17 September 2019.

⁵ External review application dated 17 September 2019.

Background

6. The decision under review is the Department's internal review decision dated 17 September 2019.
7. The significant procedural steps taken during the external review process are set out in the Appendix.
8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).

Issue for determination

9. The issue for determination is whether the Department may refuse to deal with the access application under section 62(3)(b) of the IP Act, on the basis the applicant has previously sought access to the same information under the IP Act.
10. I acknowledge the applicant's submission that this is not the issue for determination as the Department decided to deal with the access application and refuse access to information under the relevant provisions of the *Right to Information Act 2009* (Qld) (**RTI Act**) and IP Act. The applicant submitted:⁶

The Department chose to deal with it and the decision made was contrary to evidence and law.

I object for you to use that as an excuse "that they could have refused to deal with it" when they have not refused and have dealt with it.

For you to do that is Bias and siding on the Department and giving another excuse to get around the fact that the decision made on dealing with it was wrong and contrary to evidence, law and the best interest of [the applicant].

Your role is suppose [sic] to be pro release, not siding with the government and using an excuse to cover a wrong decision.

11. However, external review by the Information Commissioner⁷ is merits review, which is an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency under the IP Act.⁸
12. The applicant provided numerous submissions to me, by email, in support of their case.⁹ I have carefully reviewed those submissions and taken into account the parts of those submissions which are relevant to the issues for determination. The applicant also seeks to raise concerns beyond the jurisdiction of the Information Commissioner and which fall outside the scope of this review (for example, they relate to concerns about actions not taken by the Department and information the Department may have provided to another government agency). In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination.

⁶ Applicant's submissions dated 27 November 2019.

⁷ Or delegate under section 139 of the IP Act.

⁸ Section 118(1)(b) of the IP Act. However, this does not apply to the discretion in section 64(4) of the IP Act to give access to a document to which access can be refused, as the Information Commissioner does not have power to direct that access be given to a document which is exempt or contrary to public interest to disclose: section 118(2) of the IP Act.

⁹ As set out in the Appendix.

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information,¹⁰ however, this right of access is subject to a number of exclusions and limitations.
14. The IP Act is to be administered with a pro-disclosure bias and an agency or minister should deal with an application unless this would not be in the public interest.¹¹
15. Where an applicant has made an access application under the IP Act or the RTI Act, and then makes a later application under the IP Act or the RTI Act to the same agency seeking access to one or more of the same documents,¹² section 62 of the IP Act enables the agency to refuse to deal with the later access application if:
 - the agency's decision in respect of the first application was to give access to some or all of the documents sought, refuse access to the documents sought under section 67 of the IP Act or refuse to deal with the application under Chapter 3, Part 4 of the IP Act;¹³ and
 - the later application does not on its face disclose a reasonable basis for seeking access to those same documents.¹⁴

Findings

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

16. Yes, for the following reasons.
17. On 21 October 2016, the applicant applied to the Department for access to a particular record of interview (**First Application**), being:

Transcript and report from interview of [the applicant] at [address] by Child Protection Mackay between 1 June 2015 and 31 July 2015.
18. The Department located 42 pages as relevant to the First Application and decided¹⁵ to refuse access to most of that information under section 67(1) of the IP Act, on the grounds that information comprised exempt information¹⁶ or disclosure would not be in the best interests of the child.¹⁷
19. The applicant made a second application to the Department seeking access to '*Transcript and report from interview of [the applicant] at [address] by Child Protection Mackay in July 2015*' (**Second Application**), which became compliant on 22 June 2017. The Department decided to refuse to deal with the Second Application under section 62 of the IP Act, on the basis there had been a previous application for the same documents.
20. The access application which is the subject of this review was received by the Department on 12 July 2019 (**Current Application**) seeking:

¹⁰ Section 40 of the IP Act.

¹¹ Under section 58 of the IP Act.

¹² Section 62(1) of the IP Act.

¹³ Sections 62(3)(b)(i), 62(3)(b)(iii) and 62(3)(b)(iv) of the IP Act.

¹⁴ Section 62(1)(b) of the IP Act.

¹⁵ Decision dated 23 November 2016.

¹⁶ Under section 47(3)(a) and schedule 3, section 12(1) of the RTI Act.

¹⁷ Under sections 47(3)(c) and 50 of the RTI Act.

42 page record of interview of [the applicant and date of birth] for the interview conducted on July 23, 2015 at [address] by Child Safety, Youth & Women Queensland, formerly Community Service Queensland.

21. The Current Application seeks access to the same record of interview requested in the First and Second Applications.
22. On external review, the applicant has not contested that they seek the same information requested in their prior applications. Rather, the applicant seeks to make submissions to explain why they have sought access to the same information again and why it is important that this information be disclosed. During the course of the review, the Department confirmed that it was aware of the applicant's previous applications and issued a considered decision, rather than 'refusing to deal', in an effort to afford the applicant greater understanding of the basis on which access to the record of interview was refused.¹⁸ The Department also confirmed to me that the information requested in the Current Application was identical to the information dealt with in the First and Second Applications.
23. On this basis, I am satisfied that the Current Application seeks access to the same documents sought in the First and Second Applications.

Were the Department's decisions in respect of the First and Second Applications of the type referred to in section 62(3)(b) of the IP Act?

24. Yes, for the following reasons.
25. As noted above:
 - the Department provided a written decision to the applicant in respect of the First Application, refusing access to most of the requested information; and
 - the Department provided a written decision to the applicant refusing to deal with the Second Application under section 62 of the IP Act.¹⁹
26. Accordingly, I am satisfied the First and Second Applications were the subject of decisions of the type specified in section 62(3)(b) of the IP Act.

Does the Current Application, on its face, disclose any reasonable basis for again seeking access to the record of interview?

27. No, for the following reasons.
28. The Current Application did not refer to the applicant's prior applications, although the Current Application restated the scope and timeframes from the First and Second Applications. I have carefully considered the terms of the Current Application. There is nothing *on the face* of the Current Application which discloses a reasonable basis for the applicant to again seek access to the record of interview. The applicant submitted:²⁰

¹⁸ Telephone conversation between the Department and OIC on 21 October 2019.

¹⁹ On 23 June 2018, the applicant applied, outside the statutory timeframe specified in section 101(1)(d) of the IP Act, for external review of the Department's decisions concerning the First and Second Applications. The Information Commissioner decided on 17 August 2018 not to exercise discretion to accept the applicant's external review applications out of time. The Department's decisions in respect of the First and Second Applications and the Information Commissioner's decision not to accept the applicant's external review applications in respect of those documents are not the subject of this external review.

²⁰ Submissions dated 22 October 2019.

2. I made an Application which was accepted and dealt with by CSYW, and full access was refused based on assumptions by non-qualified persons vs reports and psychological testing by professional and qualified medical practitioners;

3. I requested an Internal Review by CSYW and it was still refused based on the same.

4. Both my Application and request for Internal Review by CSYW were accepted and not refused under Section 47 (3)(a) and 48, rather dealt with and refused under "not in the best interest of the child" contrary to professional reports and harm the cover-up was doing!

29. The applicant also purported to forward:²¹

*Evidence CSYW lied to the Australian Federal Police and lied to [another policing agency] when they followed all directions from CSYW Director to obtain the Transcript;
Evidence the decision maker is not medically qualified to say it is not in [the applicant's] best interest contrary to medical proof the non-release is causing [the applicant] harm!*

30. I acknowledge that, in these submissions, the applicant is seeking to better explain why there was a reasonable basis for making the Current Application. However, the terms of section 62(1)(b) of the IP Act are clear – a reasonable basis for making the Current Application must be disclosed on the face of the application itself.

31. I have carefully considered the applicant's submissions about the basis for again seeking access to the record of interview. In particular, I acknowledge the applicant's belief that nondisclosure of the record of interview will negatively impact the applicant's welfare. However, I note that the Department initially found that access to the record of interview may be refused on the grounds set out in paragraph 17 above, which include that information comprised exempt information.

32. The Information Commissioner does not have the discretion to decide that access be granted to information that is exempt under the IP Act.²² Accordingly, even if there was some reasonable basis that could be drawn from the face of the Current Application to merit again seeking access to the information, there has been no evidence advanced by the applicant which reasonably indicates that the record of interview does not comprise exempt information.

33. On this basis, there is nothing in the applicant's submissions on external review that persuades me there is any reasonable basis to again seek access to the record of interview.

DECISION

34. For the reasons set out above, I vary the Department's decision and find that the Department may refuse to deal with the Current Application under section 62(3)(b) of the IP Act.

35. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 12 December 2019

²¹ Submissions dated 23 October 2019.

²² Section 118(2) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
17 September 2019	OIC received the application for external review.
6, 8, 11 and 15 October 2019	OIC received the applicant's submissions.
22 October 2019	OIC notified the applicant and the Department that the application for external review had been accepted. OIC conveyed a preliminary view to the applicant that the Department was entitled to refuse to deal with the application.
22 and 23 October 2019	OIC received the applicant's further submissions.
15 November 2019	OIC confirmed the preliminary view to the applicant. OIC received further submissions from the applicant.
27 November 2019	OIC received further submissions from the applicant.