



## Decision and Reasons for Decision

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Citation:	<i>Lindeberg and Department of Children, Youth Justice and Multicultural Affairs [2022] QICmr 39 (15 August 2022)</i>
Application Number:	316319
Applicant:	Lindeberg
Respondent:	Department of Children, Youth Justice and Multicultural Affairs
Decision Date:	15 August 2022
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - EXEMPT INFORMATION - application for report of an inquiry into a death in custody - whether application expressed to relate to all documents containing information of a stated kind or relating to a stated subject matter - whether all documents to which application relates appear to be comprised of exempt information - whether agency may refuse to deal with application - whether disclosure of information prohibited by section 288 of the <i>Youth Justice Act 1992 (Qld)</i> - section 40 and schedule 3, section 12 of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Department of Children, Youth Justice and Multicultural Affairs (**Department**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to a January 1999 report of an inquiry into a death in custody conducted by a Senior Policy Adviser, Independent Indigenous Representative and Independent Community Representative (**Report**).
2. The Department refused to deal with the application under section 40 of the RTI Act on the basis that the report would be comprised of exempt information prohibited from disclosure under section 288 of the *Youth Justice Act 1992 (Qld)* (**YJ Act**).
3. The applicant applied<sup>2</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. For the reasons set out below, I affirm the Department's decision to refuse to deal with the application under section 40 of the RTI Act.

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<sup>1</sup> On 19 July 2021.

<sup>2</sup> On 13 September 2021.

## Background

5. The applicant's access application refers to the following passage in the Forde Inquiry Report which references the Report in issue in this review:<sup>3</sup>

*On the evening of 28 December 1998, a 16-year-old indigenous boy committed suicide by hanging himself from a sheet tied to a ventilation grate. **The Department conducted an immediate inquiry into the suicide and prepared a report.** [Footnote: **Report of an Inquiry into a Death in Custody, Parts I and II, January 1999**, conducted by T Macdermott, Senior Policy Adviser, Juvenile Justice, DFYCC, L Watson (independent indigenous representative) and L Burgess (independent community representative).] The ventilation grates have long been recognised as a potential hanging point. In fact, the same boy attempted suicide in the same room from the same grate in 1997. Although the inquiry into his death recommended specifically that residents' cells be air-conditioned so that the ventilation grates could be removed, and that work should commence promptly, information was received in early April 1999 that the grates are still in existence at the Centre. A coronial inquiry is yet to be held.*  
[my emphasis]

6. The applicant seeks the report in relation to his concerns about the destruction of Heiner Inquiry documents.<sup>4</sup> The applicant submits that the nature of the material under review:<sup>5</sup>

*... concerns an alleged unresolved systemic criminal cover-up of serious wrongdoing in public office. It involves many elected and appointed public officials [footnote omitted] which brings referral obligations at law on public officials who become directly acquainted with the facts and various acts and acts of omission by certain public officials at particular times while holding particular public positions and come to a suspicion of corrupt conduct in their minds.*

7. The applicant submits that his application:<sup>6</sup>

*... SPECIFICALLY concerns the JOYDC's [John Oxley Youth Detention Centre's] "hanging points", and related structure and design... They are undoubted matters of highly significant 'public interest' regarding safety obligations owed by the State/Crown to citizens (i.e. children) forced by law to be housed therein for various periods of time, and hence, be accessible information under the RTI Act as the public's 'right to know', and not be concealed.*

8. The applicant submits that the Report:<sup>7</sup>

*... ought to be a detailed history of how these hanging points came to be, who knew about them and when, and what happened and/or did not happen concerning those in positions of responsibility and duty of care which ought to have seen their removal well **before** [named person] tragically hanged himself on one in his cell on 28 December 1998.*

*33. By reason of this clear warning of grave danger to life being lawfully lodged within the proper processes of government to be actioned but deliberately was not, I submit that it may be open to conclude that, by the presence of compellingly clear reckless indifference to a duty of care, the criminal law may have been breached in a most serious way. That is, the tragic, avoidable death of a 16-year-old child. To be precise, in conduct pertaining to sworn duty-of-care obligations owed by the State of Queensland (i.e. responsible Ministers of the Crown and appointed public officials) to children in its care and protection, an avoidable*

<sup>3</sup> Forde, L, 'Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions', (Queensland: 31 May 1999), pages 167 and 177 (**Forde Inquiry Report**).

<sup>4</sup> Events referred to in the Queensland Child Protection Commission of Inquiry '3(e) Report' dated June 2013.

<sup>5</sup> Applicant's submission dated 7 January 2022.

<sup>6</sup> Access application dated 19 July 2021.

<sup>7</sup> Applicant's submission dated 7 January 2022.

*death became foreseeably unavoidable, and ultimately, on 28 December 1998, by doing nothing, became an irreversible reality.*  
[applicant's emphasis]

9. The applicant also referred to various newspaper articles disclosing the name of the deceased indigenous boy about whose death the inquiry was conducted.<sup>8</sup>
10. Significant procedural steps relating to the external review are set out in the Appendix.

### **Reviewable decision**

11. The decision under review is the Department's decision dated 30 August 2021.

### **Evidence considered**

12. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>9</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.<sup>10</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>11</sup> '*it is perfectly compatible with the scope of that positive right in the Charter of Human Rights and Responsibilities Act for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>12</sup>

### **Information in issue**

14. The information in issue is the Report.

### **Issue for determination**

15. The issue for determination is whether the Department is entitled to refuse to deal with the application under section 40 of the RTI Act.

### **Allegation of bias and matters outside OIC's jurisdiction**

16. At the time of making this decision, the applicant has two matters on external review with OIC. He raised concerns about apprehended bias if the same decision-maker was appointed both reviews:<sup>13</sup>

*...I would suggest that on the face of the evidence and its clear interconnectedness, a decision on your part to remain as the final decision-maker in both, would not be supportable in the impartial administration of justice... This is because an apprehension of bias, namely the absence of impartiality and presence of possible pre-judgement (as might be able to be drawn from the answers to the test), would, I suggest, reasonably and immediately support*

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<sup>8</sup> Application for external review dated 13 September 2021. Due to their age, OIC has not accessed these newspaper reports and cannot confirm whether these articles contain the name of the deceased in the Report.

<sup>9</sup> Section 21 of the HR Act.

<sup>10</sup> *XYZ v Victoria Police (General)* (2010) 33 VAR 1 (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 at [111].

<sup>11</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>12</sup> *XYZ* at [573].

<sup>13</sup> Applicant's submission dated 7 January 2022.

(i.e. in the mind of any fair-minded reasonable observer informed of these facts) that a tendency towards pre-judgement and bias may affect your mind to warrant a recusal that having made a decision in one of my **interconnected** RTI applications, the integrity of a following decision in the other may be effected by the first.  
[applicant's emphasis]

17. The procedure to be followed on external review is, subject to the RTI Act, within the discretion of the Information Commissioner.<sup>14</sup> The applicant has not provided any specific reason for an apprehension of bias other than that having made a decision on one file, I might be unable to bring an impartial mind to a consideration of the second file. This matter has been handled at various times by different Assistant Commissioners. The issues of law I am considering in each external review involving the applicant are separate and require different assessments. In any event, it is not certain that both applications will proceed to a formal decision. In these circumstances, and having no personal connection to the subject matter of interest to the applicant, I am satisfied that I am capable of determining this application with detachment and objectivity, and that there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to reaching a decision on this matter.<sup>15</sup>
18. The applicant also alleges that I will be biased if I do not address his concerns about the interpretation of section 129 of the *Criminal Code Act 1899* (Qld) (**Criminal Code**) by the Queensland Cabinet and former Crime and Justice Commission (**CJC**):

*If you believe that the CJC's 1993 interpretation (now known to be unarguably erroneous – see Queensland Court of Appeal re R v Ensbeys) does not give rise to a suspicion of wrongdoing, then both in the public interest as well as to allay obvious concerns of apprehended bias being present (which may need to be brought against you), I call on you to state your reasons in writing...*

19. OIC's jurisdiction is set out in the RTI Act and does not extend to considering the former CJC's interpretation of the *Criminal Code*.<sup>16</sup> In this matter, I am required to review the decision about access to documents made by the Department under the RTI Act and whether it should be affirmed, varied or set aside.<sup>17</sup> I do not consider that limiting myself to a consideration of issues within OIC's jurisdiction would cause a fair-minded lay observer to reasonably apprehend that I am not bringing an impartial and unprejudiced mind to reaching a decision on this matter.

## Relevant law

20. Under the RTI Act, a person has a right to access documents of an agency,<sup>18</sup> however, this right is subject to certain exclusions, including particular circumstances where an agency may refuse to deal with an application.<sup>19</sup>
21. If an access application is made to an agency under the RTI Act, the agency should deal with the application unless this would, on balance, be contrary to the public interest.<sup>20</sup> One of the few circumstances in which Parliament considers it would, on

<sup>14</sup> Section 95 of the RTI Act.

<sup>15</sup> Paraphrasing the test for assessing apprehended bias: *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

<sup>16</sup> The applicant raised a number of matters outside OIC's jurisdiction in his correspondence during this external review. I am limited to reviewing access and amendment decisions of an agency or Minister under the RTI Act or the *Information Privacy Act 2009* (Qld) and therefore I did not address submissions outside of this jurisdiction.

<sup>17</sup> Section 110(1) of the RTI Act.

<sup>18</sup> Section 23(1)(a) of the RTI Act.

<sup>19</sup> Part 4 of the RTI Act.

<sup>20</sup> Section 39(1) of the RTI Act.

balance, be contrary to the public interest to deal with an access application is set out in section 40 of the RTI Act, which provides:<sup>21</sup>

**40 Exempt information**

(1) *This section applies if—*

- (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
- (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*

(2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

- 22. Exempt information is information the disclosure of which Parliament considers would, on balance, be contrary to the public interest as set out in schedule 3 of the RTI Act.<sup>22</sup> Relevantly, information is exempt if its disclosure is prohibited by section 288 of the YJ Act, unless it is only personal information of the access applicant.<sup>23</sup>
- 23. Section 288 of the YJ Act (together with a number of surrounding provisions) provides that a person who has gained, gains, or has access to, confidential information relating to a child who is being, or has been, dealt with under the YJ Act through involvement in the administration of the Act must not intentionally disclose that information to anyone, other than in accordance with part 9, division 2 of the YJ Act.<sup>24</sup>
- 24. In considering whether to refuse to deal with an application, an agency is not required to identify any or all of the documents, and must assess whether the documents 'appear' to comprise exempt information.<sup>25</sup> In the circumstances of this review, I obtained a copy of the Report from the Department to assist in my consideration.

**Findings**

***Is the application expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter?***

25. Yes, for the reasons that follow.

26. The applicant applied for:

*DFYCC DEPARTMENT REPORT OF AN INQUIRY INTO A DEATH IN CUSTODY, PART I & II, JANUARY 1999 CONDUCTED BY TERRY MACDERMOTT, SENIOR POLICY ADVISER, DFYCC, L WATSON (INDEPENDENT INDIGENOUS REPRESENTATIVE), AND L. BURGESS (INDEPENDENT COMMUNITY REPRESENTATIVE)*

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<sup>21</sup> Section 39(2) of the RTI Act.

<sup>22</sup> Section 48(4) and schedule 3 of the RTI Act.

<sup>23</sup> Schedule 3, sections 12(1) and 12(2) of the RTI Act.

<sup>24</sup> Sections 283, 287 and 288 of the YJ Act.

<sup>25</sup> Sections 40(1)(b) and 40(2) of the RTI Act.

27. The Department confirmed to the applicant that the terms of his application would be construed as:<sup>26</sup>

*Report of an Inquiry into a Death in Custody, Parts I and II, January 1999, conducted by T Macdermott, Senior Policy Adviser, Juvenile Justice, DFYCC, L Watson (independent indigenous representative) and L Burgess (independent community representative).*

28. The application is for one document only—the Report. The Report concerns a stated subject matter—the inquiry into a specific death in custody. While section 40(1)(a) refers to ‘*all documents*’, the *Acts Interpretation Act 1954 (Qld) (AI Act)* provides that words in the plural include the singular.<sup>27</sup> In considering the equivalent provision in the *Information Privacy Act 2009 (Qld)*, Holmes CJ (with whom Fraser JA and Boddice J agreed) of the Supreme Court noted that ‘... *those provisions also manifest the legislative intent to carve out public interest exceptions, one of which is that relevant here: for exempt information.*’<sup>28</sup> I do not consider that the legislative intent would have been to allow an agency to refuse to deal with an application for an exempt class of documents on its face, but not allow the agency the same discretion where only one document was concerned. Therefore, I am satisfied that an application for a single document relating to a stated subject matter satisfies the first limb of section 40 of the RTI Act.

***Does it appear that all of the documents to which the application relates comprise exempt information?***

29. Yes, for the reasons that follow.
30. The Report will comprise exempt information under section 12, schedule 3 of the RTI Act if its disclosure is prohibited under section 288 of the YJ Act. Discussed at (a) to (e) below are the various criteria to be considered in order to determine whether section 288 of the YJ Act applies.

**(a) Is the Report confidential information?**

31. The prohibition on disclosure in section 288 of the YJ Act refers to ‘information’, which includes ‘confidential information’ as defined in section 284.<sup>29</sup> Therefore, I must consider whether the Report appears to contain ‘confidential information’.
32. Confidential information relating to a child includes ‘*a report about the child made for the department or another government department.*’<sup>30</sup>
33. A child is an individual who is under 18.<sup>31</sup> As set out in the Forde Inquiry Report extract at paragraph 5 above, and in the Report itself, a 16-year-old boy committed suicide.

<sup>26</sup> Letter to the applicant dated 27 July 2021.

<sup>27</sup> Section 32C(b) of the AI Act.

<sup>28</sup> *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [39].

<sup>29</sup> *Department of Youth Justice v Office of the Information Commissioner & Ors; Department of Youth Justice v Office of the Information Commissioner & Anor* [2019] QCATA 143 at [38]: ‘... *the section prohibits a number of forms of conduct in relation to information defined as confidential information, relating to a child*’ and at [39]: ‘*An examination of the text of the statute, including the definitions read in the context of the sections which draw on them, would show that the prohibition on disclosure found in s 288 would apply to confidential information, relating to a child, as the expression is defined, without further restriction.*’ Section 283(1) of the YJ Act: ‘*This part applies to confidential information relating to a child who is being, or has been, dealt with under this Act*’ and section 287 of the YJ Act: ‘*This division applies to a person who has gained, gains, or has access to, confidential information relating to a child through involvement in the administration of this Act.*’

<sup>30</sup> Subsection (c) of the definition of ‘confidential information’ in section 284 of the YJ Act. The Department’s decision relied on subsection (a) of the definition of ‘confidential information’ in section 284, however I have considered subsection (c) as it directly relates to the type of document in issue in this review.

<sup>31</sup> Schedule 1 of the AI Act.

The child is the subject of the Report as it concerns an inquiry into his death in custody, therefore, I am satisfied that the Report appears to be a report *about* the child.

34. While I am constrained in the level of detail I can provide about the Report,<sup>32</sup> I can confirm that it was prepared for the Department responsible for juvenile justice at the relevant time - the Department of Families, Youth and Community Care.<sup>33</sup> Therefore, I am satisfied that the Report appears to have been made for a government department.
35. On this basis, I am satisfied that the Report appears to be 'confidential information' as defined in section 284 of the YJ Act.

**(b) Does the confidential information relate to a child?**

36. The confidential information must relate to a child to be prohibited from disclosure by section 288 of the YJ Act.<sup>34</sup> As set out at paragraph 33 above, I am satisfied that the Report is 'about the child'. On this basis, I am also satisfied that it relates to a child.<sup>35</sup>

**(c) Is the child being, or has the child been, dealt with under the YJ Act?**

37. Part 9 of the YJ Act applies to confidential information relating to a child who is being, or has been, dealt with under the YJ Act.<sup>36</sup> The ways that a child may be dealt with under the YJ Act includes being detained.<sup>37</sup> As the Report was described in the Forde Inquiry Report, it is a '*Report of an Inquiry into a Death in Custody*' [my emphasis]. Therefore, it is evident that the child was being detained at the relevant time. On this basis, I am satisfied that the deceased child was dealt with under the YJ Act for the purpose of section 283(1) of the YJ Act.

**(d) Does a person have access to the Report through involvement in the administration of the YJ Act?**

38. The division of the YJ Act in which section 288 appears applies to a person who has gained, gains, or has access to, confidential information through involvement in the administration of the YJ Act.<sup>38</sup> A person is taken to have been involved in the administration of the YJ Act if they are an officer of the Department.<sup>39</sup> A person has access to information *through this involvement* (being an officer of the Department) if the person has access in the course of the involvement or because of opportunity provided by the involvement.<sup>40</sup> The Report is able to be accessed by officers of the Department performing functions in relation to the YJ Act. Therefore, I am satisfied that the Report appears to be accessible to a person involved in the administration of the YJ Act for the purpose of section 287 of the YJ Act.

**(e) Is disclosure authorised under the YJ Act?**

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<sup>32</sup> Under section 108 of the RTI Act, I must not disclose information that is claimed to be exempt in a decision or reasons for a decision on external review.

<sup>33</sup> Under section 33(7) of the AI Act, a reference to the department without specifying a particular department is a reference to the department of government that deals with the relevant matter.

<sup>34</sup> Sections 283(1), 284 and 287 of the YJ Act.

<sup>35</sup> Sections 283(1) and 287 of the YJ Act.

<sup>36</sup> Section 283(1) of the YJ Act.

<sup>37</sup> Section 283(2)(b) of the YJ Act. The child was being dealt with under the *Juvenile Justice Act 1992* (Qld) at the relevant time. The *Juvenile Justice Act 1992* (Qld) was renamed the *Youth Justice Act 1992* (Qld) by section 9 of the *Juvenile Justice and Other Acts Amendment Act 2009* (Qld).

<sup>38</sup> Section 287 of the YJ Act.

<sup>39</sup> Section 285(1)(a) of the YJ Act and 33(7) of the AI Act.

<sup>40</sup> Section 285(2) of the YJ Act.

39. Sections 289 – 297A of the YJ Act outline various authorised disclosures which are not prohibited by section 288 of the YJ Act.<sup>41</sup> Confidential information may be disclosed ‘... as expressly permitted or required under [the YJ Act] or another Act’.<sup>42</sup> The RTI Act overrides the provisions of other Acts prohibiting the disclosure of information<sup>43</sup> unless the disclosure is prohibited under a provision of an Act mentioned in schedule 3, section 12,<sup>44</sup> which is the case in this review.
40. As set out at paragraphs 7 and 8 above, the applicant raised some compelling public interest arguments in favour of disclosure of the Report. I have carefully considered these submissions, however none raise grounds that fall within the authorised disclosures in sections 289 – 297A of the YJ Act. Therefore, I am satisfied that disclosure of the Report is not authorised by the YJ Act.

### **Is the Report the personal information of the applicant?**

41. Information is not exempt for the purposes of section 12, schedule 3 of the RTI Act if it is only personal information of the applicant.<sup>45</sup> I have reviewed the Report and I did not identify any personal information of the applicant, therefore I am satisfied that this exception to the exemption does not apply.

### **Conclusion**

42. Although the applicant raised some compelling public interest arguments in favour of releasing the Report, these arguments are not relevant to a consideration of whether the exemption under schedule 3, section 12 of the RTI Act is made out. I am satisfied that section 288 of the YJ Act prohibits disclosure of the Report and therefore the Report appears to comprise exempt information. Accordingly, I find that the second limb of section 40 of the RTI Act is also satisfied and the Department correctly refused to deal with the application under section 40 of the RTI Act.

### **Relationship with other Acts prohibiting disclosure**

43. The applicant submits that ‘section 288 does not and cannot stand alone above all other laws in all contexts to block access’.<sup>46</sup> Specifically, the applicant refers to:<sup>47</sup>
- a. *when taking into account the binding obligation on public officials to refer all suspicions of corrupt conduct which they become aware of in the course of performing their public duties to the CCC pursuant section 38 and 39 of the Crime and Corruption Act 2001, the ‘preservation of confidentiality’ (of contents) pursuant to section 288 of the Youth Justice Act 1992, loses its force; and*
  - b. *just because a document’s initial creation by and for a department purpose, namely to investigate the circumstances surrounding the death by suicide of a youth in State detention may attract ‘preservation of confidentiality’ pursuant to section 288 of the Youth Justice Act 1992, does not mean such a non-access definition (although correct in law at that time) remains forever unaltered. This is to say, when another context (still relevant to the creation and purpose of the document) comes into lawful existence, namely a related coronial inquest, i.e. under the Coroner’s Act 2003, which accepts the said document into evidence as relevant under its aforesaid head of power on whose contents its public official/author is then permitted to be publicly cross-examined in court*

<sup>41</sup> Section 288 of the YJ Act prohibits disclosure ‘other than under this division’ being division 2, part 9 of the YJ Act.

<sup>42</sup> Section 289(1)(h) of the YJ Act.

<sup>43</sup> Section 6 of the RTI Act.

<sup>44</sup> See note 1 to section 6 of the RTI Act.

<sup>45</sup> Schedule 3, section 12(2) of the RTI Act.

<sup>46</sup> Applicant’s submission dated 7 January 2022.

<sup>47</sup> Applicant’s submission dated 7 January 2022.



*under oath by counsel representing the dead youth and his family, and counsel assisting the Coroner, its previous 'preservation of confidentiality' is obviously ruptured, if not irretrievably, and the Coroner's Act 2003 prevails regarding how it treats its evidence.*

44. The applicant submits that '*... Mr Macdermott gave evidence on behalf of the Department in the witness box and was questioned under oath about the contents of his Report by counsel assisting the Coroner and counsel for the [named] family.*'<sup>48</sup>
45. The applicant is correct that section 288 does not stand above all other laws in all contexts. For example, sections 289 to 297A of the YJ Act provide various authorised purposes for disclosure of confidential information, which I have considered at paragraph 39 above. The RTI Act specifically acknowledges that information may be released otherwise than under the RTI Act, even if the information is exempt.<sup>49</sup> That is, information may be prohibited from release under the RTI Act, but otherwise permitted or required in other contexts to be released. However, my role on external review under the RTI Act is to consider whether section 288 of the YJ Act applies in the context of an application made under the RTI Act. As set out above, the RTI Act overrides the provisions of other Acts prohibiting the disclosure of information *unless* the disclosure is prohibited under a provision of an Act mentioned in schedule 3, section 12, which is the case in this review.
46. The applicant also referred to his application to the Coroner for the Report. Although he was refused access on the basis of '*... not having sufficient interest in the investigation documents*'<sup>50</sup>, he submits that it is arguable that he should be provided with access under section 53(1) of the *Coroner's Act 2003 (Qld) – Access to investigation documents for research purposes*. On this basis, he submits that:

*This state of being regarding two identical documents (i.e. the original and the copy) residing in two places, namely the Department and the Court of the Queensland Coroner, cannot live side by side in the framework of government and be oblivious or in disharmony of and with each other regarding access otherwise it brings the law into conflict and disrepute. Accordingly, these applications may warrant a judicial ruling to declare what the law is.*

47. The RTI Act is only one of many information access schemes. These different schemes take into account different considerations, and the interaction of the RTI Act with these schemes is clearly set out in the RTI Act.<sup>51</sup> If the applicant was able to access the Report through another scheme, this would be a basis to refuse access under the RTI Act.<sup>52</sup> I do not consider the applicant's submission in this regard is relevant to the determination of whether the Department was entitled to refuse to deal with his application under the RTI Act.

## DECISION

48. 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 under section 40 of the RTI Act.
49. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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<sup>48</sup> Applicant's submission dated 7 January 2022.

<sup>49</sup> Section 4 of the RTI Act.

<sup>50</sup> Applicant's submission dated 7 January 2022.

<sup>51</sup> Sections 4 - 6 of the RTI Act.

<sup>52</sup> Sections 47(3)(f) and 53 of the RTI Act.

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**Assistant Information Commissioner Corby**

**Date: 15 August 2022**

## APPENDIX

### Significant procedural steps

Date	Event
13 September 2021	OIC received the application for external review. OIC requested initial documents from the Department.
22 September 2021	OIC received the initial documents from the Department.
12 October 2021	OIC advised the parties that the application for external review had been accepted and conveyed a preliminary view to the applicant.
22 October 2021	Applicant requested an extension of time to respond to the preliminary view. OIC granted the applicant an extension of time.
19 November 2021	Applicant requested a further extension of time to respond to the preliminary view.
22 November 2021	OIC granted the applicant a further extension of time.
7 January 2022	OIC received submissions from the applicant.
25 January 2022	OIC provided an update to the Department.
7 March 2022	OIC provided an update to the applicant.
27 May 2022	OIC provided an update to the Department and requested further documents.
30 May 2022	OIC received further documents from the Department.
4 July 2022	OIC provided an update to the applicant.