



11 April 2019

Mr Greg Smith  
PO BOX 105  
COOLUM BEACH QLD 4573

Email: [president@oscar.org.au](mailto:president@oscar.org.au)  
CC: [secretary@oscar.org.au](mailto:secretary@oscar.org.au)

Dear Mr Smith

**External review of decision under the *Right to Information Act 2009* (Qld)  
Applicant: Organisation Sunshine Coast Association of Residents**

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I refer to Ms Melva Hobson's email dated 10 April 2019. I have included Ms Hobson as a 'CC' to this correspondence.

I confirm that OSCAR accepts my preliminary view. Thank you for your advice in this regard. Given this, I have today finalised this external review, and closed my file.

In relation to the question posed in Ms Hobson's email, there is nothing to prevent OSCAR from making a fresh RTI access application at some point in the future, any decision on which would be subject to rights of internal and external review.

Section 43 of the *Right to Information Act 2009* (Qld) (**RTI Act**) does allow an agency to refuse to deal with a 'repeat' application, where the applicant has previously made an application for the same documents, **and** the fresh application does not, on its face, disclose any reasonable basis for again seeking access to those documents.

However, and while it is not possible for me to offer definitive advice on an issue that is at this stage only hypothetical, it would seem from Ms Hobson's email that any application OSCAR may make in the future would be for different documents – ie documents concerning any new proposals – rather than the same documents that were subject to OSCAR's recent application.

I trust the above addresses Ms Hobson's query. If and when OSCAR is contemplating any future application, you may wish to consult with OIC's Enquiries service prior to lodging any such application. Enquiries may be contacted on 3234 7373, or via email: [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au). I have also enclosed, for your information, a copy of OIC's Information Sheet regarding section 43 of the RTI Act.

This letter serves as notice of completion of external review 314376, as required under section 90(4)(a) of the *Right to Information Act 2009* (Qld).

Thank you for your assistance during the course of the review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louisa Lynch'.

Louisa Lynch  
**Right to Information Commissioner<sup>1</sup>**

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<sup>1</sup> As a delegate of the Information Commissioner under section 145 of the *Right to Information Act 2009* (Qld).



Office of the Information Commissioner  
Queensland

## Information Sheet

*Right to Information Act 2009 and Information Privacy Act 2009*

### Previous application for same documents – a guide for applicants

An agency is permitted to refuse to deal with your application (or part of your application) if you apply for access to documents you have previously applied for under the *Right to Information Act 2009 (RTI Act)* or the *Information Privacy Act 2009 (IP Act)*.

There are some limited exceptions to this ground of refusal.

#### Documents are still being considered by the agency

If you make an application (**the first application**) and then make another application (**the later application**) while the first application is being considered the agency can refuse to deal with the later application to the extent it covers the same documents as the first application.<sup>1</sup>

#### Example

You apply for all documents about your residential property created between 1 January 2010 and 30 June 2010. While the agency is deciding your first application you make a later application to the same agency for all documents about your residential property created between 1 June 2010 and 1 December 2010.

The agency can refuse to deal with the part of your later application that covers documents created between 1 June 2010 and 30 June 2010 because you already applied for those and they haven't made a decision on providing access to them. The rest of your later application would be processed.

#### Documents subject to review

If you apply for access to documents and the agency makes a decision you are not happy with you are generally entitled to seek a review of the decision. You have rights of internal review—carried out by the agency—and rights of external review—carried out by the Office of the Information Commissioner. The agency is permitted to refuse to deal with an application to the extent any of the documents are still being considered on internal review by the agency in relation to a previous application you have made to the agency.<sup>2</sup>

<sup>1</sup> For simplicity, the legislation refers the 'first application', however it is not actually limited to the first application you ever made to the agency (for example, it may be in relation to your third or fourth application). The ground for refusal may still apply if you seek access to the same documents in a later application to the agency.

<sup>2</sup> This does not apply when an internal review is finalised (however one of the other grounds of refusal listed in this Information Sheet may still apply).



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The agency can also refuse to deal with part of your later application if any of the documents were previously, or are currently being, considered as part of:

- an external review; or
- a review by the Queensland Civil and Administrative Tribunal (**QCAT**).

If you make another application to the same agency when your first application is or was the subject of either review process listed above the agency can refuse to deal with that part of your later application. They will process the part of your later application that applies for access to any other documents.

### **Some or all of the documents were considered in a previous application**

The agency is allowed to refuse to deal with your application, or parts of your application, if you have previously applied for the same documents under the RTI Act or the IP Act and as a result of that application the agency:

- issued you with a decision notice advising that the access was to be given to some or all of the documents
- decided the Act did not apply to the requested document/s
- refused access to the documents under section 47 of the RTI Act or section 67 of the IP Act; or
- refused to deal with it because you had previously applied for those documents (ie, as outlined in this Information Sheet)

### **Exceptions to the ground for refusal**

There are some situations when the agency cannot refuse to deal with your later application. The exceptions include where:

- your first application was considered withdrawn because you did not respond to a charges estimate notice
- your first application was considered withdrawn because you did not respond in writing during the consultation period after the agency advised you that it would be a substantial and unreasonable diversion of resources so it intended to refuse to deal with it
- your first application was made under the repealed *Freedom of Information Act 1992*
- your previous request was for *informal* access to the documents, whether or not you were actually given access (ie you did not make a formal application under the RTI Act or the IP Act); or
- there is a *reasonable* basis for again seeking access to the same documents.

### **Is there a 'reasonable basis' for applying for documents again?**

If the agency decides there is a 'reasonable basis' for you to again request access to the same documents they may decide to deal with your application.



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There is no standard list of reasons or situations which would result in a reasonable basis for reapplying for documents. It will be decided by the agency on a case by case basis.

If you believe you have a reasonable basis to apply for documents again then you should explain this in your application.

Some examples where there could be a reasonable basis for reapplying include:

- the documents you were given access to were destroyed in a natural disaster
- you were refused access on your first application because there was an ongoing investigation that the agency believed would be prejudiced by releasing documents but the investigation is now complete; or
- the section of the Act relied on to refuse you access on your first application has changed substantially.

### Review rights

If the agency refuses to deal with your application, either in full or in part, then you can apply for an internal and/or external review within 20 business days of the date of the written decision. See the Guideline '[Explaining your review rights – a guide for applicants](#)' for more information about the review processes.<sup>3</sup>

For additional information and assistance please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au).

This information sheet is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

If you have any comments or suggestions on the content of this document, please submit them to [feedback@oic.qld.gov.au](mailto:feedback@oic.qld.gov.au).

**Published 8 October 2015 and Last Updated 8 October 2015**

*Changes to legislation after the update date are not included in this document*

<sup>3</sup> <http://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/explaining-your-review-rights-a-guide-for-applicants>