

Our ref RTI-4013
Enquiries Catherine Troccaz

Department of
Transport and Main Roads

22 January 2024

Ms Leslie Haighway

By email only: foi+request-10969-2c1254e1@righttoknow.org.au

Dear Ms Haighway

RTI Access Application - Decision on non-compliant application - RTI-4013

I refer to your access application to the Department of Transport and Main Roads (**department**) requesting access to information under the *Right to Information Act 2009* (Qld) (**RTI Act**).

I also refer to the department's letter dated 5 January 2024, in which Principal Advisor, Helen Adcock (**Ms Adcock**) advised that in order for your request to be considered as a compliant application under section 24(2) of the RTI Act, you would be required to pay the statutory application fee of \$55.75.

Ms Adcock also advised in her letter that until the noncompliance described above was corrected, the application could not be progressed as a valid application. She further advised that a response was due by 19 January 2024 and that if a response was not received by that date, a decision will be made to refuse to further deal with the application.

Decision

By delegation under section 30(1) of the RTI Act and pursuant to section 33(6) of the RTI Act, on **22 January 2024**, I made the decision to refuse to deal with your access application as it does not comply with all relevant legislative requirements.

Details of my decision are provided in my Statement of Reasons at **Attachment A**.

Human rights

I had regard to the *Human Rights Act 2019* (**HR Act**) including the right to seek and receive information in section 21 of that Act. I consider that in applying the RTI Act to your application, I am acting compatibly with human rights as required by section 58 of the HR Act.

Review rights

If you are not satisfied with this decision, you can apply for a review under the RTI Act. Please refer to **Attachment C** for complete details regarding your rights of review.

Additional information

If, based on the information available to you to date, you have concerns about the location of the camera, you may wish to consider lodging a complaint with the department. Information about how to lodge a complaint is available at:

<https://www.tmr.qld.gov.au/about-us/contact-us/compliments-and-complaints>

Contact

If you have any queries about this decision notice, please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Catherine Troccaz', with a long horizontal line extending to the right.

Catherine Troccaz
Advisor (RTI and Privacy)

**Statement of Reasons
for a decision under the
*Right to Information Act 2009 (Qld)***

Reference Number: RTI-4013

Applicant: Leslie Haighway

Decision Maker: Catherine Troccaz
RTI, Privacy and Complaints Management Team
Department of Transport and Main Roads

Authority: By delegation under section 30(2) of the *Right to Information Act 2009 (Qld)*

Date of Decision: 22 January 2024

The following is a Statement of Reasons for the decision to refuse to deal with an access application under the *Right to Information Act 2009 (Qld)* (**RTI Act**).

Legislation references

Sections of legislation referenced in this Statement are provided in **Attachment B**.

Background information

On 13 December 2023, the Department of Transport and Main Roads (**department**) received an application for access to:

Dear Queensland Department of Transport and Main Roads, I would like to know in the last 5 years the serious accidents east of Torrens Creek to warrant a speed camera on the edge of town. It detected me doing 90kph in a 60kph zone where as a Melbourne ion I thought I was in the 100kph zone.

Based on the scope of the request, the department interpreted that the applicant was requesting information on road crash data only. Therefore, by email dated 18 December 2023, the applicant was provided with links to publicly available road crash data as well as details on how to access administratively road crash data not already published.

In response to the above, on 29 December 2024, the applicant emailed the department seeking an:

... internal review of Queensland Department of Transport and Main Roads's handling of my FOI request 'Torrens Creek serious accidents east of Torrens Creek'. I would like to know why this mobile speed camera was in this position, nearly on the edge of town (population 70 +) when there have been no serious accidents in the last 5 years. I would also like the fines and demerit points squashed or reduced.

By letter dated 5 January 2024, Right to Information and Privacy Principal Advisor Helen Adcock (**Ms Adcock**) explained why the department's response dated 18 December 2023 was not considered a 'reviewable decision' and therefore not capable of an internal review.

Ms Adcock also explained that the RTI Act does not grant an applicant a right to obtain answers to questions asked of a government agency; however, that an agency may consider providing (if and where practicable) access to documents already in its possession that may contain answers to questions.

In her letter, Ms Adcock also advised that given the contents of the applicant's email dated 29 December 2023, she had formed the view that they still wished to continue with their request under the RTI Act.

Requirements for a valid application

Section 23 of the RTI Act gives a person a right to access documents held by the department subject to other requirements as set out in Chapter 3, Part 2 of the RTI Act.

Part 2, Section 24(2) of the RTI Act sets out the minimum requirements for a valid application, more specifically:

(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*

Example for paragraph (d)(ii)-
A journalist makes an access application for a document for use of the document by an electronic or print media organisation.
- (e) if access to the document is sought for the benefit of, or use of the document by, another entity other than the applicant – the name of the other entity.*

Prerequisites before refusal to deal with an application

Section 33 of the RTI Act sets out the requirements for what an agency must do when dealing with an invalid application. More specifically, section 33(2), (3) and (7) of the RTI Act state:

(2) The agency or Minister 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.

(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.*

Consultation

On 5 January 2024, Ms Adcock wrote to the applicant stating that for their request to be considered as a valid application in accordance with section 24(2) of the RTI Act, they would be required to pay the statutory application fee of \$55.75. The letter provided details of the two methods by which payment could be made.

Ms Adcock also advised in her letter that a response was due by 19 January 2024 (that is, within 10 business days of the applicant receiving the letter) and that if a response was not received by that date, a decision will be made to refuse to further deal with the application.

I note the applicant emailed the department on 16 January 2024 stating that they were:

... very disappointed with your response to the speed camera at Torrens Creek as we all know there have been no serious accidents or deaths to warrant that camera, also putting extra 60kph signs very close to where the camera was shows something not quite right. Me and many other motorists will have to pay the fine because the system is geared for you, it's too expensive to fight it.

I appreciate the applicant may be disappointed, however, as outlined above, it is a requirement under section 24(2) of the RTI Act that the application fee be paid in order for an application to continue to be dealt under the RTI Act.

Refusal to deal with an application

I consider that by the steps set out above, the department has satisfied the requirements set out in section 33(2) and (3) of the RTI Act prior to making a decision on this access application.

Section 33(6) of the RTI Act sets out the time frame within which an applicant must be notified of the agency's decision. More specifically:

(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.

Section 191 of the RTI Act sets out the requirements for a prescribed written notice and I consider these requirements have been met in this statement of reasons.

Decision

After consideration of the above, I have decided under section 33(6) of the RTI Act to refuse to further deal with the access application as it does not comply with all relevant requirements under section 24(2) of the RTI Act.

Right to Information Act 2009 (Qld)

23 Right to be given access to particular documents

(1) Subject to this Act, a person has a right to be given access under this Act to—

- (a) documents of an agency; and
- (b) documents of a Minister.

Notes—

- 1 See part 2 for how to exercise this right to access.
- 2 Exclusions of the right are provided for under part 4 (which provides particular circumstances where an entity may refuse to deal with an application) and section 47 (which provides grounds on which an entity may refuse access).
- 3 A limitation on the right is set out in section 73 (which provides that, in particular circumstances, an entity may delete irrelevant information from a document before giving access).

(2) Subsection (1) applies to documents even if they came into existence before the commencement of this Act.

Note—

Section 27 deems an access application to apply only to documents that are, or may be, in existence on the day the application is received.

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.

Notes—

- 1 Minister is defined to include a Parliamentary Secretary—see schedule 6.
- 2 Section 25 provides for access applications by parents for children and section 190 clarifies the powers of those acting for others.
- 3 For an application made for a person, the person (and not the agent) is the applicant—see schedule 6, definition applicant. This may be particularly relevant for section 66 (Applicant under financial hardship).

(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

Example for paragraph (d)(ii)-

A journalist makes an access application for a document for use of the document by an electronic or print media organisation.

- (e) if access to the document is sought for the benefit of, or use of the document by, another entity other than the applicant – the name of the other entity.

(3) Also, if the application is for access to a document containing personal information of the applicant, the applicant must provide with the application or within 10 business days after making the application—

- (a) evidence of identity for the applicant; and
- (b) if an agent is acting for the applicant—evidence of the agent's authorisation and evidence of identity for the agent.

Examples of an agent's authorisation—

- the will or court order appointing the agent to act as the applicant's guardian
- the client agreement authorising a legal practitioner to act for an applicant
- if the application is made in reliance on section 25, evidence the agent is the child's parent

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

Note—

However, an application fee must be refunded if a deemed decision is made—see section 46(1).

(5) In this section—

evidence of identity means the evidence of identity prescribed under a regulation.

30 Decision-maker for application to agency

(1) An access application to an agency must be dealt with for the agency by the agency's principal officer.

(2) The agency's principal officer may delegate the power to deal with the application to another officer of the agency.

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 or Minister 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 application requirements.

(5) 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.

(6) 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.

191 Contents of prescribed written notice

If an agency or Minister must give a person a prescribed written notice of a decision under this Act, the notice must be in writing and state the following details—

(a) the decision;

(b) the reasons for the decision;

Note—

See the Acts Interpretation Act 1954, section 27B (Content of statement of reasons for decision).

(c) the day the decision was made;

(d) the name and designation of the person making the decision;

(e) if the decision is not the decision sought by the person—any rights of review under this Act in relation to the decision, the procedures to be followed for exercising the rights and the time within which an application for review must be made.

Right to Information Act 2009 (Qld)

REVIEW RIGHTS

If you are dissatisfied or aggrieved with the decision of this department made under the *Right to Information Act 2009* (Qld) (RTI Act), you can apply for an internal or external review of the decision.

An application for internal review must be in writing (detailing your grounds for appealing), state an address to which notices under the RTI Act may be sent and be lodged with the Department within **20 business days** of the date of the written notice of this decision. Any personal information you provide in your application for an internal review will be managed in accordance with the *Information Privacy Act 2009* (Qld). Applications for **internal review** should be forwarded:

By Post to:

Director
RTI, Privacy and Complaints Management
Department of Transport and Main Roads
GPO Box 1549
BRISBANE QLD 4001

OR

By Email to:

Director
RTI, Privacy and Complaints Management
Department of Transport and Main Roads
contactrti@tmr.qld.gov.au

Your internal review application will be referred to another officer of this agency who is at least as senior as the original decision-maker and who will consider the matter afresh. You will be notified of the decision within 20 business days after the agency receives your internal review application. Using the internal review option gives the agency an opportunity to consider additional evidence or information that is raised in an internal review application and conduct any necessary further searches.

You do not have to request an internal review to be eligible to apply for an external review by the independent Information Commissioner. You may apply for external review by the Information Commissioner under section 85 of the RTI Act. External reviews may take 4-5 months to complete.

An application for external review must be in writing (detailing your grounds for appealing), state an address to which notices under the RTI Act may be sent and be lodged with the Information Commissioner within **20 business days** of the date of the written notice of this decision. Under the RTI Act and the *Acts Interpretation Act 1954* (Qld), you are taken to "receive" this decision on the day on which you should receive it in the ordinary course of post.

An application for **external review** can be forwarded to the Office of the Information Commissioner by the following methods:

In person: Level 11, 53 Albert Street, Brisbane 4000
Post: PO Box 10143, Adelaide Street, Brisbane Qld 4000
Email: administration@oic.qld.gov.au
Online: <https://www.oic.qld.gov.au/about/right-to-information/apply-for-external-review-of-an-access-or-amendment-decision>

If you have any questions about submitting an external review, you can contact the Office of the Information Commissioner on 07 3234 7373.