



Decision and Reasons for Decision

Citation:	<i>T13 and Whitsunday Regional Council; Queensland Police Service (Third Party) [2025] QICmr 89 (3 December 2025)</i>
Application Number:	318644
Applicant:	T13
Respondent:	Whitsunday Regional Council
Third Party:	Queensland Police Service
Decision Date:	3 December 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT - request for closed circuit television footage of a police incident that occurred in a public place - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009 (Qld)</i> - whether the exception in schedule 3, section 10(6) of the <i>Right to Information Act 2009 (Qld)</i> applies - whether access to information may be refused under section 47(3)(a) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Background

1. The applicant applied¹ to Whitsunday Regional Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**)² for access to specified portions of closed circuit television footage, of an incident involving their adult son and officers of Queensland Police Service (**QPS**).³
2. Council decided to refuse access to all requested footage (**Footage**) on the basis that disclosure would be contrary to the public interest.⁴ The applicant applied to OIC for external review⁵ of Council's decision, submitting as follows:

¹ Access application dated 24 April 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the RTI Act. As the applicant's application was made before this change, the RTI Act as in force prior to 1 July 2025 remains applicable to it in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act in this decision is to that Act as in force prior to 1 July 2025.

³ Hereafter referred to as the **Incident**. In these reasons for decision, I have elected not to include any further details of the Incident to protect the privacy of the individuals involved.

⁴ Decision dated 12 May 2025. This is the reviewable decision for the purpose of this review.

⁵ Application dated 20 May 2025.

In order to progress our RTI application we drastically reduced the scope to only 4 cameras of the most important and significant periods. Our RTI was denied claiming it is not in the public's interest despite our proof that the shorts snips provided to us have been digitally altered and therefore raises suspicion of corruption. Denying full disclosure undermines natural justice and procedural fairness and violates principles of transparency and accountability. A miscarriage of justice is being allowed because all the evidence in our favour is being suppressed.

3. On external review, OIC obtained a copy of the Footage from Council.⁶ In providing a copy of the Footage to OIC, Council advised that a copy of the Footage had been sent to QPS at the relevant time for the purpose of an investigation into the Incident.⁷ OIC therefore, sought QPS's views on disclosure of the Footage.⁸ QPS raised objections to disclosure of the Footage on the basis that it comprised exempt information under schedule 3, section 10(4) of the RTI Act.⁹ QPS also requested that it be formally joined as a participant in the review.¹⁰
4. Following receipt of QPS's submission, I conveyed a preliminary view to participants¹¹ that:
 - the Footage was obtained, used or prepared for an investigation by QPS's Ethical Standards Unit (**ESU**) in the performance of the Crime and Corruption Commission's (**CCC**) prescribed functions
 - the exception to the exemption in schedule 3, section 10(6) of the RTI Act does not apply as neither the applicant nor their son was the subject of the investigation; and
 - Council may refuse access to the Footage under section 47(3)(a) and schedule 3, section 10(4) of the RTI Act.
5. Council and QPS accepted the preliminary view.¹² However, the applicant contested the view and provided submissions outlining their case for disclosure of the Footage.¹³ The applicant's submissions are outlined in paragraph 16 below.
6. The issue for determination in this review is whether access to the Footage can be refused on the basis that it is exempt information under schedule 3, section 10(4) of the RTI Act (**Prescribed Crime Body Exemption**).
7. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as referred to in these reasons (including footnotes).¹⁴

⁶ Received on 25 July 2025.

⁷ Submission to OIC dated 2 July 2025.

⁸ Correspondence to QPS dated 1 August 2025.

⁹ Submission to OIC dated 10 August 2025.

¹⁰ This request was allowed under section 89 of the RTI Act.

¹¹ Correspondence dated 21 August 2025.

¹² Council was deemed to accept on 5 September 2025. QPS accepted in correspondence dated 10 August 2025.

¹³ Submissions dated 2 September 2025.

¹⁴ Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**). However, given section 11(1) of the HR Act provides that '[a]ll individuals in Queensland have human rights' (my emphasis), and given the applicant resides in a State other than Queensland, I have not had direct regard to the HR Act in this review. I have, of course, observed and respected the law prescribed in the IP and RTI Acts in making this decision. Where the HR Act applies, doing so is construed as 'respecting and acting compatibly with' the rights prescribed in the HR Act (*XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]). Accordingly, had it been necessary for me to have regard to the HR Act in this review, the requirements of section 58(1) of that Act would be satisfied, and the following observations of Bell J about the interaction between the Victorian analogues of Queensland's IP and RTI Acts and HR Act would apply: 'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act' (*XYZ* at [573]).

8. For the reasons set out below, I have decided to vary Council's decision by finding that access may be refused to the Footage under section 47(3)(a) of the RTI Act on the basis that it is exempt information under schedule 3, section 10(4) of the RTI Act.

Relevant law

9. The RTI Act provides individuals with a general right to access documents held by a Queensland government agency.¹⁵ The right of access is subject to certain limitations, including grounds for refusing access.¹⁶ However, it is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias¹⁷ and that the grounds for refusing access to information are interpreted narrowly.¹⁸
10. Access may be refused to exempt information.¹⁹ Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is contrary to the public interest.²⁰ Where it is established that a document contains exempt information, the Information Commissioner does not have power to direct that access be given.²¹
11. One category of exempt information is set out in the Prescribed Crime Body Exemption.²² Information will be subject to this exemption if:
- it was '*obtained, used or prepared for an investigation*'
 - the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
 - the exception in schedule 3, section 10(6) of the RTI Act does not apply.
12. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.²³ The term '*investigation*' as used in the Prescribed Crime Body Exemption has been defined expansively and includes the mere examination or consideration of information.²⁴
13. The ambit of the Prescribed Crime Body Exemption is well-settled.²⁵ The Information Commissioner has held that the CCC's functions are triggered by receipt and consideration of a complaint, notification and/or relevant material, and not determined retrospectively by the outcome of an assessment or investigation²⁶ either by the CCC or

¹⁵ Section 23 of the RTI Act.

¹⁶ Section 47 of the RTI Act.

¹⁷ Section 44 of the RTI Act.

¹⁸ Section 47(2)(a) of the RTI Act.

¹⁹ Section 47(3)(a) and section 48.

²⁰ Section 48(2) of the RTI Act.

²¹ Section 105(2) of the RTI Act.

²² Schedule 3, section 10(4) of the RTI Act.

²³ In *Springborg MP and Crime and Misconduct Commission; RZ (Access Applicant), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) at [27] the Information Commissioner noted the term 'prepared' was defined as '*compose and write out, draw up (a text or document) ... produce or form ... manufacture, make*'.

²⁴ *Springborg* contains a detailed analysis of the concept of an '*investigation*' as used in the provision of the repealed *Freedom of Information Act 1992* (Qld) that was the material equivalent of schedule 3, section 10(4) of the RTI Act. The Information Commissioner, in that decision, determined that it can encompass the process of examining, considering, 'dealing with' and 'assessing' a complaint, at [55]-[59]. Schedule 2 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) provides a non-exhaustive definition of 'investigate' as including 'examine and consider' – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

²⁵ *Springborg* analysed provisions equivalent to those contained in the CC Act and this reasoning has since been applied consistently by the Information Commissioner. See *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (**Cronin**) at [12]-[26], *P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2024] QICmr 59 (12 November 2024) at [25]-[33] and *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [32]-[39] and *G31 and Queensland Police Service* [2024] QICmr 20 (22 May 2024) at [22]-[29].

²⁶ *Springborg* at [44].

other agency.²⁷ The Information Commissioner has also held that ‘dealing with’ or ‘assessing’ a complaint, notification or other material falls within the broad meaning of ‘investigation’ by the CCC or other agency.²⁸

14. The exception to the Prescribed Crime Body Exemption has consistently been found to apply to information ‘*about*’ the subject officer in the investigation, as distinguished from information pertaining to a complainant.²⁹ The Information Commissioner has previously recognised that the purpose of the exception is to allow individuals who are the subject of a prescribed crime body investigation to obtain access to information regarding a finalised investigation, to the extent that information is ‘*about*’ them.³⁰ That is, the exception allows the subject of an investigation access to information such as ‘*allegations made against them ... and conclusions made about them in a report*’.³¹
15. The exemptions in schedule 3 to the RTI Act – including the Prescribed Crime Body Exemption – do not require or allow consideration of public interest factors. This is because Parliament has determined that disclosure of these categories of information would be contrary to the public interest.³² Accordingly, if information falls within one of the categories of exempt information in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration is permitted.³³

Submissions

16. The applicant provided submissions to OIC outlining their case for disclosure³⁴ which I have summarised below:
 - The Footage ‘*has already been provided in the brief of evidence, albeit corrupted*’.
 - They have made repeated attempts to access the Footage, including through the Coroner’s office, legal representatives and the ESU but each attempt has resulted in a ‘*corrupted or empty file*’.
 - The investigation is finalised and the Footage ‘*does not track the movements of police officers*’, it tracks their son.
 - As a parent, the applicant is a directly affected party with a legitimate interest in access.
 - ‘*It is unreasonable to now suggest that [the applicant’s son] was not the “subject” of the investigation*’.
 - ‘*Of particular concern is that the segment of footage showing [the applicant’s son’s] final walk has been tampered with, the date and timestamp have been removed. This coincides with witness statements that contradict the accounts of police officers*’.
 - ‘*The public interest in transparency could not be higher. Excuses have shifted repeatedly: first “not in the public interest,” then “exempt due to investigation,” and now [the applicant’s son] was not the subject of the investigation.” These shifting justifications amount to obstruction and fuel public perception of a cover-up.*’

²⁷ Schedule 3, section 10(4) of the RTI Act.

²⁸ *Springborg* at [55]-[59].

²⁹ *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) (**Darlington**) at [18]-[22] and *W52 and Crime and Corruption Commission* [2021] QICmr 57 (28 October 2021) at [44]-[48].

³⁰ *G8KPL2* at [28]-[33].

³¹ *G8KPL2* at [28]-[33].

³² Section 48(2) of the RTI Act.

³³ *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 (**Dawson-Wells**) at [17].

³⁴ Dated 2 September 2025.

- 'We put it to the OIC that refusing access in these circumstances risks further undermining public confidence and may amount to assisting in the concealment of potential criminal conduct.'
- 'To now deny [the applicant] access on technical exemption grounds is unjust, inconsistent, and contrary to the spirit of the RTI Act'.

Findings

17. Based on the information available to me, I accept that the QPS ESU was involved in reviewing and investigating the circumstances of the Incident and *obtained* a copy of the Footage from Council for the purpose of undertaking the ESU investigation.
18. Due to the particular nature of the Incident and the type of conduct of the involved QPS officers which was under investigation, I am satisfied that the the ESU, in assessing the allegations and undertaking the investigation, was performing the CCC's³⁵ corruption function.³⁶ In accordance with the process prescribed by the CC Act, I accept that the investigations were devolved³⁷ to the QPS ESU by the CCC, and would have remained subject to CCC's monitoring role.³⁸ For these reasons, I am satisfied that the requirements of the Prescribed Crime Body Exemption are met.
19. The exception to the Prescribed Crime Body Exemption will apply where the CCC investigation is finalised, and the information is *about* the applicant. Whether information is '*about*' a given applicant is a question of fact, to be resolved by reference to the information itself.³⁹ The word '*about*' in this provision has previously been referred to as '*a non-technical term defined according to its natural and ordinary meaning.*'⁴⁰
20. While I accept that the investigation has been finalised, I am not satisfied that that the Footage is '*about*' the applicant, nor their son, as neither individual was the subject of the investigation, rather, the *subjects* of the investigation were the QPS officers involved in the Incident. It is well settled that the exception to the Prescribed Crime Body Exemption is intended to allow *subject officers* access to information about a finalised investigation, not complainants, or other affected members of the community.
21. I acknowledge the applicant has made submissions outlining the public interest reasons as to why they consider the Footage should be disclosed. I also recognise that this matter is of great personal significance to the applicant. However, I am unable to take these reasons into account⁴¹ because Parliament has already determined that disclosure of exempt information would be contrary to the public interest in all circumstances.⁴² Also, the Information Commissioner does not have the power to direct that access is to be given to exempt information.⁴³ While Council decided to refuse access on public interest grounds, the Information Commissioner on external review stands in the shoes of the agency decision maker and makes a fresh decision on the merits of the case. In this case, I am satisfied that the correct and preferable decision is that the Footage comprises exempt information under schedule 3, section 10(4) of the RTI Act and access to it may therefore be refused under section 47(3)(a) of the RTI Act.

³⁵ The 'prescribed crime body' for the purposes of schedule 3, section 10(9) of the RTI Act

³⁶ Section 33 to 35 of the CC Act set out how the corruption functions are performed. *Corruption* is defined in schedule 2 of the CC Act to mean '*corrupt conduct or police misconduct*'.

³⁷ The principle of devolution is set out in section 34(c) of the CC Act and in practice, occurs under section 45(2) of the CC Act.

³⁸ Sections 45 and 46 of the CC Act set out the responsibility of the CCC to **monitor** how the commissioner of QPS deals with police misconduct, including by way of devolution.

³⁹ *Cronin* at [21].

⁴⁰ *Darlington* at [52]. The *Macquarie Dictionary* (7th ed, 2017) defines '*about*' as '*of; concerning; in regard to ... connected with*'.

⁴¹ This approach was approved in *Dawson-Wells* at [17]-[18] and *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [13] and [15].

⁴² Section 48(2) of the RTI Act.

⁴³ Section 105(2) of the RTI Act. See also *Minogue v Information Commissioner & Queensland Health* [2014] QCATA 98 at [25].

DECISION

22. For the reasons set out above, I vary the reviewable decision⁴⁴ and find that access to the Footage may be refused under section 47(3)(a) of the RTI Act on the basis it comprises exempt information under schedule 3, section 10(4) of the RTI Act.
23. I have made this decision as a delegate of the Information Commissioner.⁴⁵



Katie Shepherd
Assistant Information Commissioner

Date: 3 December 2025

⁴⁴ Under section 110(1)(b) of the RTI Act.

⁴⁵ Section 145 of the RTI Act.