Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***T34 and Queensland Police Service* [2020] QICmr 1 (28 January 2020)**
Application Number:	**314358**
Applicant:	**T34**
Respondent:	**Queensland Police Service**
Decision Date:	**28 January 2020**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information and privacy - accountability and transparency - whether disclosure would on balance be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - document not in agency's possession or under its control - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied[1] to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information regarding an interaction he had with QPS on a specified date, and a subsequent complaint made by him to QPS concerning that interaction.

2. QPS identified various documents, including a single recording of Body Worn Camera (**BWC**) footage of the relevant interaction. QPS decided[2] to disclose these documents to the applicant, subject to the redaction of information on a small number of hard copy pages, to which information QPS decided to refuse access.

3. The applicant applied[3] to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. Copies of the documents identified by QPS were obtained and examined. On review, the applicant did not contest QPS' decision to refuse access to

[1] Access application dated 8 October 2018.
[2] Decision dated 27 November 2018.
[3] Application dated 20 December 2018.

information within these documents. The key issue thus became whether QPS had taken all reasonable steps to locate all documents requested by the applicant.

4. At my request, QPS conducted further searches for relevant documents. Additional pages (**Additional Pages**) were located, many of which were released to the applicant through the course of the review.

5. QPS refused, however, to disclose eight Additional Pages located during the review. QPS also advised that, contrary to the applicant's contentions, it held no additional body worn camera footage of the applicant's interaction with police, beyond that identified and released to him.

6. I vary QPS' decision and find that access may be refused to parts of the eight Additional Pages located during the review, on the grounds disclosure of these parts would, on balance, be contrary to the public interest.

7. Access may also be refused to any additional BWC footage, on the grounds such footage is nonexistent or unlocatable.

Background

8. Significant procedural steps are set out in the Appendix.

Reviewable decision

9. The decision under review is QPS' decision dated 27 November 2018.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

Information in issue

11. The information in issue comprises eight of the Additional Pages located by QPS during the course of the external review,[4] ***excluding*** several segments of information concerning third parties (ie, persons other than the applicant and QPS officers with whom he interacted), to which the applicant advised he did not seek access[5] and which is therefore not in issue.

12. In summary terms, the information in issue consists of internal QPS documents, recording QPS' investigation into and resolution of the applicant's complaint about the conduct of certain of the officers with whom he interacted, and correspondence issued at the conclusion of that investigation. The information in issue identifies those officers (the **Subject Officers**), together with several other officers who assisted with the investigatory process (**Assisting Officers**). It also identifies the officers who investigated the applicant's complaint (**Investigating Officers**).

13. Copies of the eight Additional Pages, marked to depict both excluded information not in issue, and information to which I have decided QPS may refuse access, will accompany the copy of these reasons to be forwarded to QPS.

[4] Numbered by OIC as Additional Pages 26-33.
[5] Applicant's submissions dated 26 August and 2 October 2019.

Issues for determination

14. The issues for determination are whether QPS may refuse access to:

- the information in issue, on the ground disclosure of this information would, on balance, be contrary to the public interest; and

- BWC footage of the applicant's interaction with QPS officers on the date and time stated in the applicant's access application ***beyond*** that identified and disclosed to the applicant, on the ground any additional footage is nonexistent or unlocatable.

15. I will deal with these issues in turn.

Contrary to public interest

16. The IP Act gives people a right to access documents of government agencies such as QPS, to the extent they contain the individual's personal information.[6] This right is subject to a number of exclusions and limitations, including grounds for refusal of access.

17. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 47(3)(b) of the RTI Act permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.

18. QPS contends that access to the entirety of the information in issue may be refused on this basis – ie, that disclosure of any it would, on balance, be contrary to the public interest.

19. The applicant, on the other hand, argues the opposite: that he is entitled to full access to the information in issue.

20. The preferable position, in my view, lies somewhere in between. There is no basis for refusing the applicant access to *all* of the information in issue. I consider he is entitled to substantial parts of this information – which I will refer to as the '**Category A**' information.

21. I also consider that the applicant may access a signature appearing on two pages (**Signature**).[7]

22. There are, however, some segments of information, access to which may be refused under section 47(3)(b) of the RTI Act. Those segments – the '**Category B**' information – comprise the names and other particulars of the Subject Officers and Assisting Officers.

23. In deciding whether disclosure would, on balance, be contrary to the public interest,[8] the RTI Act requires a decision-maker to:[9]

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[6] Section 40 of the IP Act.
[7] I have dealt with this Signature discretely from the Category A information, as slightly different considerations apply in balancing the public interest.
[8] The term '*public interest'* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.
[9] Section 49 of the RTI Act.

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

24. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision.

25. Additionally, I have kept in mind the IP Act's pro-disclosure bias[10] and Parliament's requirement that grounds for refusing access to information be interpreted narrowly,[11] and have not taken into account any irrelevant factors.

26. I have also had regard to the *Human Rights Act 2019* (Qld),[12] particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,[13] and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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.'[14]

Findings

Category A information

27. As noted above, I consider the applicant is entitled to access the Category A information, for the following reasons.

28. Telling in favour of disclosure of the Category A information is, firstly, the general public interest in promoting access to government-held information.[15] Additionally, significant parts of this information comprise the applicant's own personal information[16] – an important public interest consideration weighing strongly in favour of release.[17]

29. Further, I am satisfied that disclosure of this category of information could also reasonably be expected to:[18]

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[10] Section 64 of the IP Act.
[11] Section 67(2) of the IP Act.
[12] **HR Act -** which came into force on 1 January 2020.
[13] *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 [11].
[14] *XYZ*, [573].
[15] Implicit in the object of the IP Act (section 3).
[16] Personal information is '*information or an opinion…whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*': IP Act, section 12.
[17] Schedule 4, part 2, item 7 of the RTI Act.
[18] The phrase 'could reasonably be expected to' calls for a decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (eg merely speculative/conjectural 'expectations') and expectations which are reasonably based, ie, expectations for the occurrence of which real and substantial grounds exist: *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [155] to [160]. A reasonable expectation is one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97.

- enhance QPS transparency and accountability for the manner in which it deals with complaints about officer conduct from members of the community;[19] and
- reveal background or contextual information that informed QPS' decision to take no further action in response to the applicant's complaint.[20]

30. These are also important public interests, deserving considerable weight.

31. Favouring nondisclosure, I can identify only one factor – the public interest harm factor arising where disclosure of information would disclose personal information (**Personal Information Harm Factor**),[21] which applies principally in relation to the names of the Investigating Officers. These specific names appear, however, in an entirely routine employment context.[22] Accordingly, I consider that the public interest harm the RTI Act automatically presumes arises from disclosure of personal information would, in these circumstances, be minimal, and displaced by the considerations favouring disclosure discussed above.

32. I am not otherwise persuaded that QPS has established the existence of factors favouring nondisclosure of the bulk of the Category A information.

33. Alternatively, should this conclusion be incorrect, then for reasons explained below I would afford any such nondisclosure factors minimal weight, which would be insufficient to tip the balance of the public interest in favour of nondisclosure.

34. QPS' position[23] is, in short, that all of the information in issue (including the Category A information) comprises the personal information of officers identified within that information – particularly the Subject Officers – and that disclosure would therefore give rise to a public interest harm,[24] and prejudice protection of these officers' right to privacy.[25] It also[26] argues disclosure could reasonably be expected to prejudice QPS' management function,[27] QPS' ability to obtain information from officers in future complaint enquiries,[28] and prejudice fair treatment.[29]

35. In support of its case, QPS cites several decisions of the Information Commissioner, in which it was found that disclosure of information concerning complaints about QPS officers comprised their personal information, disclosure of which, in those cases, would, on balance, have been contrary to the public interest.[30]

36. QPS' position can be characterised as something of a class claim – that as some of the information remaining in issue might be broadly described as concerning complaints against QPS officers, disclosure of any of it would, on balance, be contrary to the public interest.

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[19] Schedule 4, part 2, items 1 and 3 of the RTI Act.
[20] Schedule 4, part 2, item 11 of the RTI Act, and noting too the Information Commissioner's recognition of the public interest in ensuring complainants are given access to information that may assist them to better understand the actions taken by regulatory bodies in response to their complaints: *Watkins and Department of Equity and Fair Trading* (Unreported, Queensland Information Commissioner, 16 August 2001).
[21] Schedule 4, part 4, section 6 of the RTI Act.
[22] And QPS has not, as I understand its submissions, sought to argue otherwise.
[23] QPS submissions dated 2 July 2019 (received 8 July 2019) and 29 August 2019.
[24] Per the Personal Information Harm Factor.
[25] Schedule 4, part 3, item 3 of the RTI Act (**Privacy Nondisclosure Factor**). The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56.
[26] See particularly submissions dated 29 August 2019.
[27] Schedule 4, part 3, item 19 of the RTI Act.
[28] Schedule 4, part 3, item 16 of the RTI Act.
[29] Schedule 4, part 3, item 6 of the RTI Act.
[30] Eg, *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012); *Taggart and Queensland Police Service* [2015] QICmr 16 (29 June 2015); *Wolfe and Queensland Police Service* [2016] QICmr 27 (30 June 2016); and a decision set aside on appeal, *Kelson and Queensland Police Service* [2017] QICmr 7 (3 March 2017) (***Kelson***).

37. As I advised QPS during the review, such a class or blanket argument is, in the context of legislation to be administered with a pro-disclosure bias and containing the express requirement that grounds for refusing access be interpreted narrowly, unsustainable. While I am obviously conscious of previous decisions of the Information Commissioner, every application is to be assessed on a case-by-case basis, having regard to the particular facts and circumstances applicable in a given review. As Justice Daubney, President of the Queensland Civil and Administrative Tribunal, recently emphasised:[31]

> *[85]* ***In approaching a consideration of…***[a given access application]*,* ***the QPS should consider this particular access application by this particular applicant.*** *And the QPS must engage in that consideration on the footing that the IPA requires that access be given unless giving access would, on balance, be contrary to the public interest.* ***That is not a generic inquiry – it is whether giving this applicant access to this particular personal information is, on balance, contrary to the public interest.***
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> …
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> *[89] …the QPS is bound to observe the terms of the IPA and the RTIA according to their tenor, and to deal with* ***each access application under the IPA according to the circumstances and on the merits of that application****. To act otherwise would tend to subvert the statutory right of access conferred by the IPA on individuals and evince an attitude contrary to the prodisclosure bias required under the legislation.*

38. With the above observations in mind, I do not consider that QPS' position – essentially, that where information concerns a complaint about a public sector officer, it must automatically follow that its disclosure would be contrary to the public interest – is sustainable in the present case.

39. I am, in this *particular* case, instead of the view that disclosure of the Category A information to this *particular* applicant would not give rise to the public interest harms or prejudices claimed by QPS. Alternatively, if it did, the extent or weight of those harms or prejudices would be insufficient to justify nondisclosure.

40. Firstly, once relevant Subject Officer and Assisting Officer particulars are redacted,[32] I question whether the remaining information comprises their personal information. What is left is, generally speaking, innocuous administrative information, details of routine policing activities arising in the ordinary course of official duties, or, in some cases, information that cannot be characterised as anything other than *the applicant's* personal information, and no-one else's.[33] In these circumstances, the Personal Information Harm Factor cannot operate to favour nondisclosure.

41. For similar reasons, I am not persuaded that disclosure of the Category A information could reasonably be expected to prejudice any officers' right to privacy.[34] Insofar as information concerns those officers, it is, as noted, information concerning official actions undertaken by them in the course of their employment duties and, as regards the Subject Officers, formal (favourable) outcomes arising from investigation into those actions, rather than information relating to their private domains or 'personal spheres'.[35] Meanwhile, disclosure to the applicant of his *own* personal information will clearly not impact on any other person's privacy.

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[31] *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 (my emphasis).
[32] ie, the Category B information.
[33] As this information comprises information claimed to be contrary to the public interest information, I am precluded from detailing it in these reasons: section 121(3) of the IP Act. Examples of this information were, however, particularised at footnote 5 of my letter to QPS dated 4 September 2019.
[34] Ie, Investigating, Subject or Assisting Officers.
[35] See footnote 25.

42. Similarly, I cannot see how release of information, the broad contours – and in some key cases, specific particulars – of which are known to the applicant,[36] and/or reflect favourably on involved officers, could reasonably be expected to prejudice QPS' management functions, impair its ability to obtain confidential information, prejudice any person's fair treatment, or give rise to any other public interest harm or prejudice.

43. Alternatively, if some of this information could be said to comprise the Subject Officers'[37] personal information,[38] I do not consider its disclosure to this *particular* applicant in the *particular* circumstances of this case could reasonably be expected to occasion a public interest harm of any magnitude.

44. Equally, should it be that disclosure would enliven the Privacy Nondisclosure Factor, and/or one of the other several factors relied on by QPS, I consider each would attract only minimal weight.

45. The applicant, as the complainant, is aware of the circumstances leading to his complaint, the fact he made a complaint, the nature of that complaint, and the overall outcome of QPS' investigation into that complaint,[39] and at least some of the Category A is clearly known to him[40] or is, as noted, his own personal information. As also noted, section 121 of the IP Act precludes me from detailing that information in these reasons: examples of information of this kind were, however, particularised in my letters to QPS dated 25 July and 4 September 2019, referred to and footnoted above. For present purposes, it is sufficient to note that the Category A information does not seem to me to be particularly private or otherwise sensitive as against this particular applicant.

46. Accordingly, when all relevant considerations are borne in mind – including the nature of the Category A information, the identity of the applicant in this particular case, his intimate connection with considerable parts of the Category A information, and the favourable tenor of investigative conclusions embodied in this information – I consider that the weight to be afforded any of the factors favouring nondisclosure relied on by QPS should, in the event they apply, be afforded only minimal weight.

47. This is not to say that I completely reject QPS' public interest arguments: in the *particular* circumstances of this case, however, I am of the view that relevant public interest concerns are adequately accommodated by redacting the Category B information, as discussed further below. Redaction of this information will sufficiently safeguard relevant Subject Officer and Assisting Officer personal information and attendant privacy interests, and avoid any reasonable prospect that disclosure of the Category A information could prejudice QPS management function, its ability to obtain information from officers in future complaint enquiries, or to prejudice any person's fair treatment.

48. Beyond that, however, I do not consider it reasonable to expect that disclosure of the particular information comprising the Category A information – including the applicant's own personal information, information describing routine policing activity,[41] or information of which the applicant is aware – could reasonably be expected to give rise to the public interest harms or prejudices relied on by QPS, not least to a degree sufficient to justify nondisclosure.[42]

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[36] See in this regard discussed in my letter to QPS dated 25 July 2019 (fourth to sixth full paragraphs on the second page).
[37] Or Assisting Officers.
[38] Based on, for example, the applicant's existing knowledge of persons and events described in the Additional Pages.
[39] See QPS email to the applicant's solicitors dated 27 September 2018, and letter dated 4 October 2018, contained within the bundle of Additional Pages supplied by QPS on 14 May 2019.
[40] See footnote 36.
[41] A deal of which was witnessed by the applicant, and has been given to him in the form of the BWC footage released by QPS.
[42] Noting, in this regard, that one particular contention raised by QPS as favouring nondisclosure – the final sentence of the first paragraph at the top of page 2 of its 2 July 2019 submissions – seems directly contradicted by the actual information in issue, specifically, Additional Pages 32 and 33. I have preferred the position stated in the latter in evaluating competing public interest claims.

49. As for the fact that the applicant has, as QPS noted during the review, been given a letter and other communications outlining QPS' findings on his complaint: while this may attenuate the weight to be afforded relevant public interest factors favouring disclosure,[43] it does not negate them. The Category A information particularises the investigatory approach and conclusions that informed these 'outcome' communications, and disclosure of that information will therefore allow him to better comprehend that outcome.

50. I have identified several factors favouring disclosure of the Category A information, which warrant considerable weight. Conversely, I am not persuaded that any factors favour nondisclosure of the Category A information, apart from the personal information harm factor, principally in relation to the Investigating Officers' particulars – which factor I attribute only marginal weight.

51. Balancing relevant factors against one another, I am not satisfied that disclosure of the Category A information would, on balance, be contrary to the public interest. QPS has not discharged the onus it carries[44] of establishing that I should give a decision adverse to the applicant in relation to this information, and the applicant is therefore entitled to access the Category A information.

52. Alternatively, should I be wrong in my conclusion that one or more of the factors favouring nondisclosure of the Category A information raised by QPS do not apply, then for the reasons discussed above at paragraphs 45-48 above I would afford those factors limited weight. I consider that the factors favouring disclosure of this information, as identified in paragraphs 28-29, would still be sufficient to tip the balance of the public interest in favour of release.

53. As the passages from Daubney J's decision in *SJN* set out above emphasise, the IP Act requires disclosure of requested information, unless disclosure would, on balance, be contrary to the public interest. For reasons explained above, I am not satisfied that, as regards the Category A information, QPS has demonstrated that that requirement is in this case met.

Signature

54. Additional Pages 32 and 33 contain a signature. Signatures are personal information, and refusal of access will often be justified on public interest grounds.[45]

55. In this case, however, I do not consider that disclosure of the Signature would be contrary to the public interest. As the Signature is information claimed by QPS to be contrary to the public interest information, I am constrained in the detail I can give in these reasons for my view in this regard, although it was fully explained in my email to QPS dated 21 November 2019.

56. For the purposes of these reasons, it is sufficient to note that, in the particular circumstances of this case, disclosure of the Signature could not reasonably be expected to prejudice protection of any individual's right to privacy, and the Privacy Nondisclosure Factor does not apply to favour nondisclosure.

57. Further, while its release would involve a disclosure of personal information, the public interest harm arising from disclosure of the Signature to this particular applicant would

[43] Particularly those regarding disclosure of background/contextual information, and making available information to complainants.
[44] Section 100 of the IP Act.
[45] A signature being 'about' an identifiable individual, and inherently private information – in this regard, signatures have been recognised as being exclusive and private to the individual, circulation of which the individual is entitled to control: *Corkin and Department of Immigration and Ethnic Affairs* [1984] AATA 448, at [14].

be exceedingly minor – insufficient to displace the general public interest in promoting access to government-held information.

58. On balance, the general public interest consideration noted above warrants, in this particular case, a modest weight. That is, however, sufficient to displace the very minor or negligible weight I consider the Personal Information Harm Factor should be afforded.[46]

59. Disclosure of the Signature would not, on balance, be contrary to the public interest.

Category B Information

60. The remaining segments comprise the names, titles and associated identification numbers of the Subject Officers and names and titles of the Assisting Officers.

61. I find that disclosure of identifying particulars of the Subject Officers and Assisting Officers would, on balance, be contrary to the public interest.

62. These particulars comprise the personal information of identified officers.[47] Release in the specific context in which they appear within the particular pages in issue would result in disclosure of that personal information, which the RTI Act presumes would give rise to a public interest harm.[48] In this case, I consider that this public interest harm would be relatively weighty as regards the Subject Officers, given that this personal information appears in official records, in direct connection with what were, ultimately, unsubstantiated allegations. The Information Commissioner has previously found that unrestricted disclosure of information of this kind could reasonably be expected to give rise to relatively substantial public interest harm.[49] The personal information of the Assisting Officers is arguably not as sensitive, although as canvassed below, its disclosure would result in unrestricted disclosure of information identifying officers who provided information in the course of an internal QPS investigation. Taking all relevant circumstances into account – including the foregoing considerations, the applicant's direct interaction with the Subject Officers, and information known to him, I consider this factor warrants moderate weight.

63. Additionally, I consider it reasonable to expect that routine and unrestricted disclosure of the names of officers who are subject to or assist internal police investigations under a general information access scheme could cause disquiet among QPS personnel, and undermine staff confidence in the ability of QPS to conduct such investigations discreetly and with regard for staff privacy and confidentiality: thereby prejudicing QPS' management function.[50] I afford this consideration strong weight.

64. Favouring disclosure, I recognise the general public interest in promoting access to government-held information. I also acknowledge the public interest in QPS being accountable for and transparent in its operations,[51] including the way it deals with complaints about its officers. There are also the public interests, noted above, in disclosing background or contextual information, and ensuring complainants have sufficient information available to them to enable them to understand are adequately advised as to the outcomes of their complaints and the information on which those outcomes are based. These public interests, however, are sufficiently served by information disclosed (or which I consider should be disclosed) to the applicant. I cannot

[46] There being no other factors favouring nondisclosure of this signature that I can identity.
[47] As identifying information about these officers.
[48] Via the Personal Information Harm Factor.
[49] See, for example, *Kelson*, at [37]-[42]. While this decision was as noted above, set aside on appeal to QCAT (*Kelson v Queensland Police Service & Anor* [2019] QCATA 67), these particular findings were not disturbed.
[50] Schedule 4, part 3, item 19 of the RTI Act.
[51] Schedule 4, part 2, items 1 and 3 of the RTI Act.

see that release of specific particulars comprising the Category B information would significantly advance these public interest considerations, and I therefore afford them only low weight.

65. Balancing competing factors against one another, I find that disclosure of the Category B Information would, on balance, be contrary to the public interest. QPS may therefore refuse access to this information.

66. I have reached the above conclusion, having carefully considered and taken into account the applicant's submissions. To the extent they are relevant,[52] they appear in the main to contend that disclosure of relevant officer names may reveal whether there was some bias in dealing with him and his complaint, and that withholding this information '*denies* [the applicant] *the ability to trigger any internal disciplinary complaints that serve as a means of maintaining accountability between public and the QPS*.'[53]

67. Factors favouring disclosure of information will arise for consideration where disclosure could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official,[54]
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;[55] and/or
- advance the fair treatment of individuals, and/or contribute to the administration of justice.[56]

68. In this case, however, I am not satisfied that any of the above factors are enlivened. Despite the applicant's assertions to the contrary, there is nothing in the information before me suggesting any deficient or unlawful conduct by QPS or any other public officers, nor seeming to evidence any unfairness or actionable wrong that might stand to be substantiated, revealed or redressed by disclosure of the limited particulars comprising the Category B information. Accordingly, I cannot see that disclosure of the Category B information could reasonably be expected to further or advance any of the considerations listed above.[57]

69. Certainly, there is nothing before me to support a conclusion that QPS' investigation was affected by bias (or in any other way deficient). Even if there was, it would seem to me that information that would allow him to explore or further such an allegation – and therefore potentially advance the factors listed in paragraph 67 – is information identifying those who investigated and dealt with his complaint (the Investigating Officers), and the substantive information generated by them in the course of that investigation. This is information which, as discussed above, I consider he is entitled to access.

70. Similarly, I cannot see that refusing access to the names and particulars comprising the Category B information '*denies*' the applicant the opportunity to make a complaint to QPS: the very information in issue is information generated as a consequence of just

[52] Considerable parts of the applicant's principal submissions, dated 2 October 2019, concern matters either subsequently resolved or dealt with elsewhere in these reasons.
[53] Submissions dated 2 October 2019.
[54] Schedule 4, part 2, item 5 of the RTI Act.
[55] Schedule 4, part 2, item 6 of the RTI Act.
[56] Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.
[57] And nor, for the sake of completeness, do I consider that disclosure of the Category B Information could reasonably be expected to advance any other of the factors favouring disclosure listed in schedule 4, part 2 of the RTI Act. A large number of these were cited by the applicant in submissions made directly by him to OIC dated 26 August 2019; those 'blanket' submissions were, however, made in advance of my preliminary view dated 4 September 2019 clarifying and refining reviewable information and issues, and largely overtaken by targeted submissions dated 2 October 2019 made by him in reply to that preliminary view, discussed above.

such a complaint. Meanwhile, disclosure to him of the Category A information will arm him with information sufficient to explore the propriety of the investigatory process into that complaint, should it be his submission that he may wish to make a *further* complaint to QPS, ie, about that investigatory process. Disclosing the Category B particulars, however, will not further such inquiry in any way that I can identify.

71. I also note the applicant's submissions to the effect that the Category B information comprises no more than that ordinarily displayed by officers in dealing with the public (including, presumably, to the applicant during the incident the subject of his complaint). The difference here is the context in which relevant particulars appear – internal investigatory materials identifying officers in the context of ultimately unsubstantiated allegations of misconduct or improper conduct.[58]

72. The applicant's submissions on this issue also canvass a separate interaction, involving a third party and a QPS officer that occurred in the period after the applicant's own direct interaction with QPS officers. Relevant submissions appear to assert that the third party's recollections of that separate interaction establish QPS bias as regards the applicant. Having reviewed information concerning this further interaction – a BWC recording, which has been fully released to the applicant[59] – I do not consider it suggests bias or any other wrongdoing by QPS as against him, as he submits. This separate interaction and information relating to it give rise to no public interest considerations favouring disclosure of the Category B information.

Nonexistent/unlocatable information – further BWC recordings

73. QPS located one BWC recording of officer interactions with the applicant. This recording was released to the applicant. The applicant, contends, however, that there should exist further recordings, which QPS has failed to identify and deal with. The functions of the Information Commissioner include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.[60] Additionally, agencies such as QPS may refuse access to information, where it is non-existent or unlocatable.[61]

74. Dealing with 'missing' documents of this kind generally requires me to consider whether there are reasonable grounds for suspecting that further documents exist in an agency's possession or under its control, and/or that the agency has taken reasonable steps to identify requested documents.[62] While agencies such as QPS usually bear the formal onus in an external review, a practical onus will often fall on an applicant to put forward material establishing reasonable grounds to believe that the agency may not have discharged its obligation to locate all relevant documents.[63] A suspicion or mere assertion will not, of itself, generally be sufficient to satisfy this onus.

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[58] Noting here that, while disclosure under the IP or RTI Acts is not of itself taken to be to the world at large, once information is disclosed, its dissemination cannot be controlled: *Troiani and Queensland Police Service* (Unreported, Queensland Information Commissioner, 21 August 2012), [25]. I also note that the unsubstantiated allegations referred to here are allegations against QPS officers, not the applicant; the applicant's submissions dated 2 October 2019 misapprehend that relevant allegations are about him.

[59] As confirmed by communications from his representatives dated 25 November 2019. This correspondence contends that the first 32 seconds of audio was withheld from the applicant. As I explained to the applicant by letter dated 18 December 2019, this is a feature of the body worn camera systems used by QPS – they do not record the first 30 seconds of audio (which is what is missing from this recording – I have viewed a copy).

[60] Section 137(2) of the IP Act.

[61] Sections 47(3)(e) and 52 of the RTI Act (applicable, as with other grounds for refusing access, to applications under the IP Act section 67 of the latter). Principles generally applicable to these provisions and their analogue predecessors in the former *Freedom of Information Act 1992* (Qld) have been discussed in various OIC decisions, including *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21].

[62] *J6Q8CH and Office of the Health Ombudsman (No. 2)* [2019] QICmr 27 (6 August 2019) (***J6Q8CH***).

[63] *J6Q8CH*, [72].

75. The applicant's principal submissions on this point[64] are premised in the main on supposition, rather than objective evidence pointing to the existence of additional BWC recordings.

76. Nevertheless, I asked[65] QPS to conduct further searches, and provide me with its advice in this regard. Two officers, including a senior officer, conducted those searches,[66] which included interrogating the electronic database used by QPS to manage digital evidence such as BWC recordings – ie, to which BWC recordings captured 'in the field' are backed up for future retrieval.

77. QPS' inquiries, which involved it searching against BWC recordings logged by relevant officers, and, at my request,[67] further clarifying[68] the particulars of several recordings made in a broad window of time before and after the incident involving the applicant – disclosed no additional BWC recordings relevant to the applicant's IP access application.

78. I have carefully considered QPS' advice on this issue,[69] including evidence and records of the database interrogation noted above. This material includes:

- still images from the recording released to the applicant, and several other recordings noted in paragraph 77 (ie, those in relation to which I requested some further information),
- some text descriptions of those recordings,
- time/date/duration information; and
- various incident numbers – unique identifiers – each distinct from the number assigned to the incident involving the applicant and associated BWC footage released to him.

79. The search advice and supporting material supplied by QPS is also consistent with relevant aspects of the information remaining in issue.[70] While I am unable to detail this information,[71] I consider it corroborates QPS' advice that only one recording exists.

80. I am satisfied that, when taken as a whole, the material canvassed in the preceding four paragraphs justifies a conclusion that QPS has discharged search obligations in relation to this part of the applicant's request.

81. I am unable to identify any further searches that could reasonably be conducted, and consider that QPS has taken all reasonable steps to identify BWC footage responsive to the applicant's request. Any further BWC recordings do not exist[72] or are unlocatable.

82. QPS may refuse access to any further BWC recordings of the applicant's interactions with QPS officers on the date and time in question, on the basis they are nonexistent or unlocatable.

83. For completeness, during the review I asked QPS to clarify whether there existed certain additional documents, the potential existence of which was suggested by some of the

[64] Dated 2 October 2019.
[65] Letter to QPS dated 15 October 2019.
[66] QPS submissions dated 18 October 2019.
[67] By email dated 28 October 2019, a request made out of an abundance of caution, due to apparent inconsistencies in the way time of recording is 'stamped' to BWC footage, and separately logged by the electronic database.
[68] Submissions dated 1 November 2019.
[69] Collectively contained in QPS' email submissions dated 18 and 25 October 2019, and 1 November 2019, together with attachments.
[70] See particularly comments toward the top of Additional Page 29.
[71] As it is information QPS submits is contrary to public interest information: section 121 of the IP Act.
[72] Noting that relevant records contain nothing suggesting that any additional recordings were ever made, that might then have been 'kept in' any 'backup' system: section 52(2) of the RTI Act.

information in issue.[73] QPS ultimately confirmed that no such documents exist.[74] I accept QPS' explanations on this point.

DECISION

84. The decision under review did not deal with any of the information in issue addressed in these reasons, nor the question as to whether any additional BWC footage existed. I therefore consider it appropriate to vary the decision under review, under section 123(1) of the IP Act.

85. I find that access to the Category B Information may be refused under section 67 of the IP Act, on the grounds its disclosure would on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act. Access may be refused to additional BWC footage, on the grounds it is nonexistent or unlocatable under sections 47(3)(e) and 52 of the RTI Act.

86. There are no grounds for refusing access to the balance of the information in issue.

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

Louisa Lynch
Right to Information Commissioner

Date: 28 January 2020

[73] See my letters to QPS dated 25 July 2019, 4 September 2019 and 9 October 2019, and email dated 21 November 2019.
[74] Submissions dated 20 November and 16 December 2019, the latter noting possible further information alluded to in the information in issue had only been 'verbal'.

APPENDIX

Significant procedural steps

Date	Event
20 December 2018	OIC received the application for external review.
21 December 2018	OIC notified the applicant's solicitor and QPS that the application had been received, and requested procedural documents from QPS.
4 January 2019	OIC received the requested documents from QPS.
25 January 2019	OIC wrote to both QPS and the applicant advising that the external review application had been accepted.
18 February 2019	OIC requested from QPS documents dealt with in QPS' decision under review.
20 February 2019	QPS provided those documents to OIC.
1 April 2019	OIC requested QPS provide additional information.
14 May 2019	QPS provided requested information and documents to OIC, including the Additional Pages.
17 May 2019	OIC requested documents from the applicant. The applicant provided the requested documents to OIC.
28 May 2019	OIC communicated with the applicant's representative in relation to information redacted from documents the subject of the decision under review.
6 June 2019	OIC wrote to QPS conveying the preliminary view that QPS had not established grounds for refusing access to parts of the Additional Pages.
14 June 2019	OIC wrote to the applicant, confirming the applicant did not wish to contest QPS' decision to refuse access to information.
8 July 2019	QPS provided OIC with written submissions in reply to OIC's 6 June 2019 preliminary view. QPS further advised its preparedness to release certain of the Additional Pages.
25 July 2019	OIC wrote to QPS, requesting release of information and reiterating the preliminary view that QPS had not established grounds for refusing access to parts of the Additional Pages.
2 August 2019	QPS released some of the Additional Pages to the applicant.
26 August 2019	The applicant provided OIC with written submissions.
4 September 2019	OIC conveyed preliminary views to QPS and the applicant as to the status of the information in issue. The applicant wrote to OIC, objecting to OIC's preliminary view.
2 October 2019	The applicant provided submissions in response to OIC's preliminary view.
9 October 2019	OIC wrote to QPS requesting that the agency undertake searches for further information and provide OIC with that information, along with search details and accompanying submissions.
11 October 2019	QPS provided a partial reply to OIC's 9 October 2019 request for further information.

Date	Event
17 October 2019	QPS provided further information, as requested by OIC.
18 October 2019	QPS provided further information, as requested by OIC.
25 October 2019	QPS provided further information, as requested by OIC.
28 October 2019	OIC requested QPS clarify certain issues, including whether it was prepared to release further information.
1 November 2019	QPS provided further information as requested, including confirmation of its preparedness to release information.
13 November 2019	QPS advised OIC further information had been released to the applicant.
20 November 2019	QPS provided additional submissions on outstanding issues.
21 November 2019	OIC requested further information from QPS.
25 November 2019	The applicant wrote to OIC, contesting the adequacy of information recently released by QPS.
16 December 2019	QPS provided further information, as requested by OIC.
17 December 2019	OIC sought QPS' agreement to the release of further information. QPS agreed to release that information.
18 December 2019	OIC wrote to the applicant, explaining that QPS had agreed to the release of further information, and addressing his concern regarding the adequacy of previously released information. OIC requested QPS release additional information, as agreed.