



Decision and Reasons for Decision

Citation:	<i>I13 and Queensland Police Service [2024] QICmr 15 (18 April 2024)</i>
Application Number:	317659
Applicant:	I13
Respondent:	Queensland Police Service
Decision Date:	18 April 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - documents relating to involvement of third parties in police investigations - personal information and privacy - prejudice to future flow of information - government accountability - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) for access under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information about three named individuals and their interactions with QPS in connection with certain events described by the applicant.¹
2. QPS decided² to neither confirm nor deny the existence of the requested documents under section 55 of the RTI Act on the grounds that, if the requested documents existed, they would contain '*prescribed information*' as defined in schedule 5 of the RTI Act: that is, personal information of individuals the disclosure of which would, on balance, be contrary to the public interest.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.
4. During the course of the review, QPS withdrew its reliance upon section 55 of the RTI Act⁴ and provided OIC with copies of responsive information. QPS objected to disclosure of the information on the ground that its disclosure would, on balance, be contrary to the public interest.

¹ Application received by QPS on 20 September 2023.

² Decision dated 26 October 2023.

³ Application received on 15 November 2023.

⁴ Section 109 of the RTI Act therefore has no application.

5. For the reasons explained below, I set aside the decision under review. In substitution for it, I find that access to the requested information may be refused under the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

6. The applicant contends that, in January 2021, he raised a matter of concern with QPS, and with the Department of Child Safety,⁵ regarding certain family members. He says that this matter was referred to QPS by the Department in March 2021 and that QPS failed to act on the information for over a year. After agitating for QPS to take action, the applicant contends that an investigation was eventually conducted, but concluded with no action being taken. However, a second investigation took place some time later, which resulted in persons being charged with offences.
7. The applicant submits that there were '*obvious failings [by QPS] to perform their duties in an efficient and professional manner*'⁶ and that this placed one of his children in danger. He seeks access to information held by QPS concerning its dealings with the persons named in his access application.

Reviewable decision and issue for determination

8. The decision under review is the decision of QPS dated 26 October 2023.
9. Under section 105(1)(b) of the RTI Act, OIC has the power to decide any matter in relation to an access application that could have been decided by an agency. When conducting a merits review of an agency's decision, OIC '*stands in the shoes*' of the agency and makes the correct and preferable decision.
10. As QPS has withdrawn its reliance upon section 55 of the RTI Act, the only issue for OIC's determination is whether access to the requested information may be refused under the RTI Act on the grounds that its disclosure would, on balance, be contrary to the public interest.

Evidence considered

11. Significant procedural steps relating to the external review are set out in the Appendix.
12. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.⁷
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**).⁹ I have acted in this way in making this decision, in accordance with section

⁵ Currently, the Department of Child Safety, Seniors and Disability Services.

⁶ External review application dated 15 November 2023.

⁷ Contained in his application for external review and emails of 4 January 2024, 25 January 2024, 22 February 2024 and 20 March 2024.

⁸ Section 21(2) of the HR Act.

⁹ *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]. OIC's approach to the HR Act set out in this paragraph was considered and endorsed by Queensland Civil and Administrative Tribunal (**QCAT**) Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁰ *‘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.’*¹¹

Information in issue

14. The responsive information provided by QPS comprises QP9 Court Briefs, a search warrant, linked offence occurrences, street check summaries, and information concerning an intelligence referral from the Department of Child Safety to QPS on 8 March 2021 (**Information in Issue**).

Relevant law

15. The RTI Act’s primary object is to give a right of access to information in the government’s possession or under the government’s control unless, on balance, it is contrary to the public interest to give access.¹² The Act must be applied and interpreted to further this primary object,¹³ and is to be administered with a pro-disclosure bias.¹⁴
16. Section 23 of the RTI Act gives effect to the Act’s primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,¹⁵ including grounds on which access may be refused.¹⁶ One of these grounds (which are to be interpreted narrowly)¹⁷ 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.¹⁸
17. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest,¹⁹ are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
 - a) identify any irrelevant factors and disregard them
 - b) identify relevant public interest factors favouring disclosure and nondisclosure
 - c) balance the relevant factors favouring disclosure and nondisclosure; and
 - d) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
18. 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

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ XYZ at [573].

¹² Section 3(1) of the RTI Act.

¹³ Section 3(2) of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Section 23(1) of the RTI Act.

¹⁶ Section 47 of the RTI Act.

¹⁷ Section 47(2)(a) of the RTI Act.

¹⁸ Sections 47(3)(b) and 49 of the RTI Act.

¹⁹ The ‘public interest’ ‘...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals’: *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept 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.

had regard to these factors,²⁰ and to the applicant's submissions, in reaching my decision.

Applicant's submissions

19. On three occasions during the course of the review, OIC communicated to the applicant the preliminary view that disclosure of the Information in Issue would, on balance, be contrary to the public interest because the very strong public interest in protecting the personal information and right to privacy of the individuals named in his access application outweighed the public interest in the accountability of QPS that he argued for.²¹
20. In his various responses,²² the applicant did not acknowledge that strong public interest factors favouring nondisclosure applied to the Information in Issue, nor did he engage in any discussion about the balancing of the public interest. On each occasion, he simply reiterated his view that QPS had 'botched' its investigation and should be held accountable:

To put it succinctly Queensland Police botched the referral from Child Safety and the Minister ... The failure by the police to properly investigate this placed my child in danger. ... Further the failure to provide the requested information under the FOI would endanger the lives of future children as it would reinforce the current conduct of no accountability within the Queensland Police as it reverts to pre Fitzgerald conduct! ...

...

*The failure of the Queensland Police to provide the Information/documents etc. in relation to the above are unreasonable. Further it does not meet community standards and the standard of public accountability. There is an obvious failure by some Police officers to perform their duties to a satisfactory standard. **The failure to provide the requested documents can only be viewed by the community as a cover up and police reverting to the corrupt days before the Fitzgerald Inquiry.** ... [applicant's emphasis]*

...The discrepancy/outcome between the two investigations is difficult to reconcile... In conclusion the Queensland Police failed to act in [a] proficient manner expected by the community.²³

....

...The Qld Police did not investigate the referral for over a year. The police then conducted a SHAM investigation to cover up their failure. With no results, matter closed. Unfortunately for them police from a different branch raided the same address a few weeks later and found [deleted].

You express the view of holding the police accountable for their SHAM investigation as being contrary to public interest.

You are obviously not in touch with the public in Queensland. I believe it is absurd the public do not want the police held accountable for their actions. Please enlighten me as to why the public do not want police held accountable for their actions.²⁴

....

I do not accept OIC's view and require a formal decision. The need for the Queensland Police to be held accountable for their maleficence in regard to failing to investigate a

²⁰ Taking care to disregard irrelevant factors.

²¹ On 3 January 2024, 24 January 2024 and 20 March 2024.

²² On 4 January 2024, 25 January 2024 and 20 March 2024.

²³ Email of 4 January 2024.

²⁴ Email of 25 January 2024.

referral form [sic] Child Safety is of public interest! I am sorry the Office of the Information Commissioner does not agree when it comes to protecting children.²⁵

Discussion

Public interest factors favouring disclosure

21. Based on the applicant's submissions, I have identified the following relevant public interest factors favouring disclosure:
 - a) disclosure could reasonably be expected to promote open discussion of public affairs and enhance Government's accountability²⁶
 - b) disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;²⁷ and
 - c) disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.²⁸
22. Contrary to the applicant's assertions in his submissions, OIC acknowledged in its preliminary view letters to the applicant that there is indeed a public interest in the accountability of QPS regarding the discharge of its law enforcement obligations. However, that public interest in favour of disclosure must be weighed against relevant factors favouring nondisclosure, in order to determine where the balance of the public interest lies.
23. The applicant is aggrieved at what he considers to be an unreasonable delay in QPS acting on the referral it received from the Department of Child Safety in March 2021. He considers that his child (noting that his children were aged 17 and 18 at the time of the referral) were placed in danger as a result of QPS's inaction.
24. I am satisfied that QPS is accountable to the community for the manner in which it discharges its law enforcement obligations, and for the investigative decisions it makes in relation to information it receives. However, I note that the bulk of the Information in Issue relates to the execution of a search warrant by QPS and to subsequent charges brought against certain individuals, including QP9 Court Briefs. I am not satisfied that disclosure of this type of information, which is of a routine nature, would provide the applicant, or the community more generally, with any significant insight into the discharge by QPS of its functions in that regard.
25. In terms of QPS's decision not to act on the referral in March 2021, which is apparently the issue of primary concern to the applicant, I acknowledge that the Information in Issue contains a brief statement of the reasons for that decision, the disclosure of which would give the applicant some further insight into the decision. However, as regards the various other complaints against QPS that the applicant has made in his submissions, the Information in Issue does not respond to those complaints.
26. Taking account of the information of which the applicant is already aware concerning the interactions between QPS and the individuals named in his access application, as well as the specific contents of the Information in Issue to the very limited extent they relate to investigative decisions made by QPS about which the applicant has

²⁵ Email of 20 March 2024.

²⁶ Schedule 4, part 2, item 1 of the RTI Act

²⁷ Schedule 4, part 2, item 5 of the RTI Act.

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

complained, I decide to afford factors a) and c) moderate weight in the public interest balancing test. In determining this weight, I have also had regard to the applicant's submission that one of his children was a minor at the time and was placed in danger due to QPS's lack of action. However, I do not consider that this factor, of itself, is sufficient to elevate to any significant degree the weight of the public interest in QPS's accountability, having regard to the age of the individual at the time (17 years old) and the nature of the concerns raised about them. But in any event, even if I were to be satisfied that the public interest in the accountability of QPS regarding its decision about the referral was deserving of significant weight, I do not consider, for the reasons explained below, that this would be sufficient to outweigh the various public interest factors favouring nondisclosure.

27. In respect of the application of factor b), as I have noted, the Information in Issue briefly discloses QPS's reasons for not taking immediate action in respect of the referral. Given the nature of the reasons, I afford only low weight to factor b). I am not satisfied that disclosure of this information could reasonably be expected to contribute or assist in any significant way to an inquiry into possible deficiencies in the conduct of QPS.

Public interest factors favouring nondisclosure

28. It is clear that the Information in Issue, comprising information about police interactions with the individuals named in the access application, including allegations of wrongdoing, the execution of a search warrant, and the laying of charges, contains the personal information²⁹ of those individuals. The RTI Act automatically recognises the application to such information of the following public interest nondisclosure and harm factors:

- a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;³⁰ and
- b) disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.³¹

29. I also consider that the following nondisclosure public interest factor applies to the Information in Issue:

- c) disclosure could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.³²

30. I afford both factors a) and b) significant weight in the public interest balancing test in recognition of the context in which the Information in Issue was provided and recorded, as well as its highly personal and highly sensitive nature. The Information in Issue includes information about the personal circumstances of other individuals, including their interactions and relationships with others, aspects of their private lives, and their interactions with police in the context of police investigations into possible wrongdoing and the subsequent laying of charges. In affording these factors significant weight, I have taken into account the fact that there are no restrictions under the RTI Act upon

²⁹ 'Personal information' is defined in schedule 5 of the RTI Act and section 12 of the IP Act: '*information or an opinion, including information or an opinion forming part of a database, 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.*'

³⁰ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in either the IP Act or the RTI Act. It can, however, essentially 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).

³¹ Schedule 4, part 4, section 6 of the RTI Act.

³² Schedule 4, part 3, item 13 of the RTI Act.

what a person may do with information that is released to them, including the possibility of further disclosure.³³

31. I have acknowledged above that one of the individuals named in the access application was aged 17 at the time the applicant first raised his concerns in 2021. However, the bulk of the Information in Issue concerns that individual as an adult. In any event, I am satisfied that there is a strong public interest in the right of all individuals involved in the Information in Issue to protect their sensitive personal information from disclosure under the RTI Act, and in protecting their associated right to privacy, particularly where there are no restrictions on the further use and dissemination of that information.
32. In respect of factor c), I note that the Information in Issue indicates that those persons involved in the police investigation cooperated with police and volunteered information that assisted police to discharge their duties. I consider it is reasonable to expect that disclosing information of this type under the RTI Act may impact the future willingness of persons to voluntarily cooperate with investigations and the associated free flow of information to police, thereby prejudicing the ability of police to carry out their functions in an efficient and effective manner. Having regard to the particular nature of the information in question and the context in which it was volunteered, I decide to afford this factor moderate weight in the public interest balancing test.

Findings

33. For the reasons explained, I afford:
 - moderate weight to factors a) and c) in paragraph 21 that favour disclosure
 - low weight to factor b) in paragraph 21 that favours disclosure
 - significant weight to factors a) and b) in paragraph 28 that favour nondisclosure; and
 - moderate weight to factor c) in paragraph 29 that favours nondisclosure.
34. I am therefore satisfied that the factors favouring nondisclosure outweigh those favouring disclosure such that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
35. As I have noted, even if the public interest in QPS's accountability were to be given significant weight, as the applicant clearly contends for, I am satisfied, given the highly personal and highly sensitive nature of the Information in Issue, that the accountability factor would nevertheless be outweighed by the very strong public interest in protecting the personal information and right to privacy of the individuals named in the access application. While the applicant seeks accountability from QPS, it remains the fact that the matters he raised concerned the sensitive personal information of individuals other than himself. Given the sensitive family circumstances and context in which the applicant raised those concerns, there is nothing before me to indicate that those individuals have consented, or would likely consent, to disclosure of their personal information to the applicant under the RTI Act.

³³ As Judicial Member McGill SC of QCAT observed '*... the effect of the... [RTI Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

DECISION

36. I set aside QPS's decision under section 55 of the RTI Act. In substitution for it, I find that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) and section 49 of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

R Moss
Principal Review Officer

Date: 18 April 2024

APPENDIX**Significant procedural steps**

Date	Event
15 November 2023	OIC received the application for review. OIC requested preliminary information from QPS.
28 November 2023	OIC received preliminary information from QPS.
11 December 2023	OIC advised the parties that the application for review had been accepted.
3 January 2024	OIC communicated a preliminary view to the applicant.
4 January 2024	OIC received a response from the applicant.
24 January 2024	OIC communicated a further preliminary view to the applicant.
25 January 2024	OIC received a response from the applicant. OIC communicated a preliminary view to QPS regarding the application of section 55 of the RTI Act.
22 February 2024	OIC received a submission from QPS about the application of section 55 of the RTI Act and copies of responsive documents.
27 February 2024	OIC communicated a further preliminary view to QPS regarding the application of section 55 of the RTI Act.
12 March 2024	OIC received a further submission from QPS about the application of section 55 of the RTI Act and copies of responsive documents.
19 March 2024	OIC received confirmation from QPS that it withdrew its reliance upon section 55 of the RTI Act.
20 March 2024	OIC communicated a further preliminary view to the applicant. OIC received a response from the applicant.