



## Decision and Reasons for Decision

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**Citation:** *Harris and Queensland Police Service* [2014] QICmr 10 (18 March 2014)

**Application Number:** 311801

**Applicant:** Harris

**Respondent:** Queensland Police Service

**Decision Date:** 18 March 2014

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY - information held about the applicant, including allegations, complaints and crime reports - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure - whether exempt - section 67(1) of the *Information Privacy Act 2009* (Qld) - sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information held about the applicant and others, including allegations, complaints and crime reports - information identifying other individuals - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant sought access from the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to all information held about him, including allegations, complaints and crime reports.<sup>1</sup>
2. QPS located 30 pages and decided<sup>2</sup> to refuse access to 8 full pages on the basis that it was exempt from disclosure and 2 full pages and 13 part pages on the basis that its disclosure was, on balance, contrary to the public interest. The remaining information was released to the applicant in full.

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<sup>1</sup> Excluding traffic offences.

<sup>2</sup> Decision dated 28 October 2013.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision to refuse access.
4. For the reasons set out below, I affirm QPS's decision to refuse access under section 67(1) of the IP Act and:
  - section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) to 8 full pages on the basis that it is exempt from disclosure under section 48 and schedule 3, section 10(1)(f) of the RTI Act; and
  - section 47(3)(b) of the RTI Act to 2 full pages and 13 part pages on the basis that disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

### Background

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

### Reviewable decision

6. The decision under review is QPS's decision dated 28 October 2013.

### Evidence considered

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

### Information in issue

8. The information in issue in this review is:
  - 8 pages of information<sup>3</sup> about investigative methods and procedures (**Category A information**)
  - 2 pages of information and 11 part pages of information<sup>4</sup> which identifies suspects, complainants or other individuals related to occurrences dealt with by QPS (**Category B information**); and
  - 2 pages of information and 2 part pages of information<sup>5</sup> which identifies individuals who were evacuees as a result of a natural disaster (**Category C information**).

### Issues for determination

9. The issues for determination are:
  - whether access to the Category A information should be refused on the ground that it is exempt, because disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and

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<sup>3</sup> Identified as all of pages 23 to 30 in QPS's decision.

<sup>4</sup> Identified as parts of pages 1 to 9 and 21 to 22 in QPS's decision.

<sup>5</sup> Identified as all of pages 12 to 13 and parts of pages 11 and 14 in QPS's decision.

- whether disclosure of the Category B or Category C information would, on balance, be contrary to the public interest.

**Is the Category A information exempt from disclosure?**

10. Yes, for the reasons that follow.
11. An agency may refuse access to documents to the extent they comprise exempt information.<sup>6</sup> Information is exempt if its disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.<sup>7</sup> This exemption applies if the following requirements are met:
  - a) there exists an identifiable method or procedure
  - b) it is a method or procedure for the preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
  - c) disclosure of the information could reasonably be expected to prejudice the effectiveness of that method or procedure.

**Requirements a) and b) – Is there an identifiable method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law?**

12. The Category A information is described<sup>8</sup> by QPS as “*information relating to lawful investigative methods and procedures of the QPS, including methodologies related to covert operations and information provided to Police.*” I have carefully reviewed the Category A information and I am satisfied that it reveals an identifiable method or procedure used by QPS.
13. Given that the role of QPS includes<sup>9</sup> preventing and detecting crime, I am satisfied that the method or procedure of collecting information about criminal activity or suspected criminal activity is a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
14. Accordingly, requirements a) and b) are met.

**Requirement c) – Could disclosure of the Category A information reasonably be expected to prejudice the effectiveness of that method or procedure?**

15. To fulfil its role of preventing and detecting crime, the QPS collects information about criminal activity or suspected criminal activity. At the time of collecting the information, the person to whom it relates has not necessarily committed an offence and the use to which the information may be put will not necessarily be fully realised. Premature release of such information could have a prejudicial effect on the usefulness of the information. In addition, the disclosure of information collected by the QPS could result in the use of that information by third parties to further criminal activity and subvert the proper operation of the law.<sup>10</sup>

<sup>6</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the *Right to Information Act 2009 (Qld) (RTI Act)*. The twelve types of exempt information are set out in schedule 3 of the RTI Act.

<sup>7</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>8</sup> At page 4 of QPS’s decision dated 28 October 2013.

<sup>9</sup> For a description of the role of QPS, see [http://www.police.qld.gov.au/aboutUs/the\\_service/](http://www.police.qld.gov.au/aboutUs/the_service/).

<sup>10</sup> See *The Gold Coast Bulletin and Department of Police* (Unreported, Queensland Information Commissioner 23 December 2010) at paragraph 14 where the Right to Information Commissioner found that disclosing police rosters could result in the use of the information by third parties to further criminal activity and subvert the proper operation of the law.

16. By operation of the IP Act I am prevented from providing more detailed information about the content of the Category A information than that outlined in paragraph 12 above.<sup>11</sup> However, I have reviewed the Category A information and am satisfied that disclosure of the information would enable a person to ascertain the methods or procedures utilised by the QPS to obtain information about persons. This would prejudice the effectiveness of those methods or procedures. Accordingly, requirement c) is met.
17. As requirements a) to c) are met, the Category A information is exempt from disclosure.

### **Applicant's submissions**

18. The applicant submitted that the Category A information, to which he was refused access, is about him, comprises his personal file and as such he has a right to obtain its full contents. The applicant further submitted that it *"is in the public interest [to disclose the Category A information] as this information can be used to further civil liberties and freedoms, legal or otherwise."*
19. These submissions raise issues relative to public interest factors that may favour disclosure of the Category A information in the context of assessing under the RTI Act whether or not disclosure would, on balance, be contrary to the public interest.
20. I am not required to perform a public interest balancing test<sup>12</sup> to determine if, on balance, it would be contrary to the public interest to disclose the Category A information if the legal requirements of the exemption provision in Schedule 3, section 10(1)(f) of the RTI Act are met.
21. Where information falls into one of the twelve categories of information which Parliament has decided are exempt from release, set out in schedule 3 of the RTI Act, public interest factors favouring disclosure cannot be taken into account. This is because in creating exemptions for certain types of information, Parliament has already decided that it is contrary to the public interest for information of that type to be disclosed.
22. I note that while QPS has some discretion to release documents that it considers are exempt, I do not have the same discretion. I am bound by the provisions of the IP Act and the RTI Act and cannot exercise any discretion to release documents that I decide are exempt.<sup>13</sup> I am satisfied that the Category A information is exempt information and that access to it must be refused.

### **Is the Category B or Category C information, on balance, contrary to the public interest to disclose?**

23. Yes, for the reasons that follow.

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<sup>11</sup> Section 121 of the IP Act provides that the Information Commissioner must not, in a decision, or in reasons for a decision, on an external review, include information that is claimed to be contrary to public interest information.

<sup>12</sup> As set out in sections 47(3)(b) and 49 of the RTI Act.

<sup>13</sup> Section 118(2) of the IP Act states: (2) *If it is established that a document is an exempt document or a contrary to public interest document, or contains exempt information or contrary to public interest information, the commissioner does not have power to direct that access to the document, or the document to the extent of the information, is to be given.* Section 105(2) of the RTI Act is stated in identical terms.

24. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>14</sup> 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
25. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>15</sup> and explains the steps that a decision-maker must take<sup>16</sup> in deciding the public interest as follows:
- 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.<sup>17</sup>

***Where does the balance of the public interest lie in this matter?***

26. Unlike the Category A information, in determining whether the Category B or Category C information should be disclosed it is necessary to consider and balance any competing public interests.
27. In assessing the public interest in this matter, I have considered all of the applicant's submissions. I am satisfied that disclosing the Category B and Category C information to the applicant would, on balance, be contrary to the public interest, for the reasons set out below.

***Irrelevant factors***

28. No irrelevant factors arise in the circumstances of this case.

***Factors favouring disclosure***

**Personal information of the applicant**

29. The applicant contends that the information located by QPS is his personal file and that he "*should have a right to its full contents.*" This raises a public interest factor favouring disclosure where the information is the applicant's personal information.<sup>18</sup>
30. I have considered all of the pages located by QPS in response to the applicant's application, including the Category B and Category C information. There is no

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<sup>14</sup> Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act. Section 49 of the RTI Act sets out the steps to take in deciding the public interest. Schedule 4 of the RTI Act sets out various public interest factors for and against disclosure which may be relevant in deciding where the balance of the public interest lies.

<sup>15</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

<sup>16</sup> Section 49(3) of the RTI Act.

<sup>17</sup> As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

<sup>18</sup> Schedule 4, part 2, item 7 of the RTI Act. *Personal information* is information 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: Section 12 of the *Information Privacy Act 2009* (Qld).

information before me to suggest that these pages are contained within a personal file for the applicant. Rather, they comprise individual records of occurrences dealt with by QPS.

31. I find that the Category B and Category C information is comprised of names, addresses and contact numbers of persons other than the applicant in relation to certain occurrences dealt with by QPS. The Category B information also contains identities of suspects, complainants or other individuals related to complaints made by the applicant or other individuals. I find that the Category B and Category C information is not the applicant's personal information.
32. I therefore find that the public interest factor in relation to the applicant's personal information does not arise here.

### **Transparency and accountability**

33. Public interest factors in favour of disclosure will arise where disclosure of information could reasonably be expected to enhance government accountability or provide reasons or background information for government decisions.<sup>19</sup> QPS has released to the applicant information about the occurrences which surrounds the Category B information.
34. To the extent that information sets out issues relating to the occurrences and any associated actions taken by QPS, I consider the above public interests have been significantly discharged. However, I acknowledge that these factors may be further advanced through disclosure of the Category B information and therefore, I afford these factors moderate weight in favour of disclosure of the Category B information.

### **Factors favouring nondisclosure**

#### **Personal information of third party**

35. As noted above the Category B information identifies suspects, complainants or other individuals related to complaints made by the applicant or other individuals. The information surrounding the Category B information which has been released to the applicant shows the substance of those complaints. This raises factors favouring nondisclosure in relation to privacy and safeguarding personal information.<sup>20</sup>
36. The applicant has indicated that he is not seeking access to individual names, addresses and contact numbers.<sup>21</sup> However, the Category B information extends beyond this type of information and also includes information about, for example, relationships and descriptions which could identify where an individual resides.
37. Given that the Category B information is contained within complaints made by or about the applicant, I am satisfied that disclosure would result in an intrusion into the privacy of those individuals, either as complainants or respondents to a complaint. I consider harm would be caused to the public interest by disclosing the personal information of persons other than the applicant in relation to complaints. I therefore consider that significant weight should be given to these factors in favour of nondisclosure in relation to the Category B information.

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<sup>19</sup> Schedule 4, part 2, items 1, 10 and 11 of the RTI Act.

<sup>20</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

<sup>21</sup> Submission dated 17 February 2014.

38. As the Category C information identifies individuals who were evacuees as a result of a natural disaster, this also raises the factors favouring nondisclosure in relation to privacy and safeguarding personal information.<sup>22</sup> I am satisfied that disclosure of the Category C information would be an unwarranted intrusion into the privacy of those individuals who made use of an evacuation centre as a result of a natural disaster. I consider harm would be caused to the public interest by disclosing the personal information of persons other than the applicant who made use of the evacuation centre. I therefore consider that significant weight should be given to these factors in favour of nondisclosure in relation to the Category C information.

### ***Balancing the public interest***

39. In relation to the Category B information, the accountability and transparency factors carry moderate weight, however, the factors favouring nondisclosure carry significant weight.
40. In relation to the Category C information, I have not identified any factors favouring disclosure and the factors favouring nondisclosure carry significant weight.
41. Having carefully considered all of the information available to OIC and the relevant public interest factors discussed above, I am satisfied that the factors favouring disclosure are outweighed by the factors favouring nondisclosure. Accordingly, disclosure of the Category B and Category C information would, on balance, be contrary to the public interest.

### **DECISION**

42. I affirm QPS's decision dated 28 October 2013 to refuse access under section 67(1) of the IP Act and:
- section 47(3)(a) of the RTI Act to 8 full pages on the basis that it is exempt from disclosure under section 48 and schedule 3, section 10(1)(f) of the RTI Act; and
  - section 47(3)(b) of the RTI Act to 2 full pages and 13 part pages on the basis that disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
43. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Assistant Information Commissioner Corby**

**Date: 18 March 2014**

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<sup>22</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
21 October 2013	QPS received the access application.
28 October 2013	QPS issued a decision on the access application.
7 November 2013	OIC received the applicant's application for external review and sought processing information from QPS.
12 November 2013	QPS provided copies of documents relating to the processing of the access application.
15 November 2013	OIC notified the applicant and QPS in writing that the external review had been accepted. OIC sought copies of the documents to which full and partial access had been refused from QPS.
20 November 2013	QPS provided copies of the documents to which full and partial access had been refused.
22 January 2014	OIC sought a submission from QPS about its reasons for refusing access under schedule 3, section 10(1)(f) of the RTI Act.
10 February 2014	OIC received QPS's submission.
12 February 2014	<p>OIC wrote to the applicant conveying a preliminary view that:</p> <ul style="list-style-type: none"> <li>• disclosure of the Category A information could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and</li> <li>• disclosure of the Category B information would, on balance, be contrary to the public interest.</li> </ul> <p>The applicant was invited to provide a submission supporting his case by 26 February 2014.</p>
17 February 2014	OIC received the applicant's submission.
24 February 2014	OIC received the applicant's further submission.