



Decision and Reasons for Decision

Citation:	<i>SW5Z7D and Queensland Police Service [2016] QICmr 1 (15 January 2016)</i>
Application Number:	312535
Applicant:	SW5Z7D
Respondent:	Queensland Police Service
Decision Date:	15 January 2016
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – information provided to police by a particular individual about an alleged domestic violence matter – 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 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant made an application to the Queensland Police Service (**QPS**)¹ under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to an entry in a QPS notebook recording information provided by his son in relation to an alleged domestic violence matter in 2005.
2. QPS refused access to the requested information on the grounds that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act. The decision was affirmed on internal review.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to the requested information. For the reasons set out below, QPS' decision is affirmed. I find that access to the requested information can be refused as its disclosure would, on balance, be contrary to the public interest.

Background

4. Significant procedural steps relating to the external review are set out in the appendix.

Reviewable decision

5. The decision under review is QPS' internal review decision made on 6 July 2015.

¹ The Public Safety Business Agency dealt with the application on behalf of QPS.

Evidence considered

6. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Information in issue

7. The information in issue comprises an entry in a QPS notebook recording information the applicant's son provided to QPS in relation to an alleged domestic violence matter in 2005 (**Information in Issue**).

Relevant law

8. A person has a right to be given access to documents of an agency under the RTI Act.² However, this right is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.³ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁴
9. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁵ and explains the steps that a decision-maker must take⁶ 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 disclosing the information would, on balance, be contrary to the public interest.

Findings

Irrelevant factors

10. The applicant refers to a previous access application he made to QPS in 2011 for information relating to allegations of domestic violence. In that matter, QPS decided to partially release some information. The applicant submits that the same reasoning has been applied inconsistently in this matter and that the Information in Issue should be released to him in part.⁷
11. The previous decision made by QPS did not deal with the Information in Issue in this review and, on the information available to me, I am satisfied that QPS has not previously released the Information in Issue to the applicant under the RTI Act. OIC is required to apply the provisions of the RTI Act to the particular information and circumstances of each case. The fact that QPS may have decided to release certain information in response to a previous application also relating to domestic violence allegations is not a relevant consideration in this external review.

² Section 23 of the RTI Act.

³ Section 47 of the RTI Act.

⁴ Section 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that, ordinarily, 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.

⁵ 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.

⁶ Section 49(3) of the RTI Act.

⁷ Internal review application to QPS dated 23 June 2015 and external review application to OIC dated 26 July 2015.

12. The applicant submits that QPS should have applied sections 73, 74 and 75 of the RTI Act to grant him partial access to the Information in Issue.⁸ These provisions allow an agency to delete certain information from a document and grant access to the remainder of the document. However, as I consider access to the Information in Issue can be refused in its entirety, these provisions of the RTI Act do not arise for consideration.
13. The applicant also submits that the decision to refuse access to the Information in Issue is intended to cover up and protect corrupt police officers and constitutes bias, corruption, an attempt to pervert the course of justice and an abuse of public office.⁹ There is no evidence before me to support the applicant's assertions and these submissions are irrelevant to the issue for determination.
14. I will now address the relevant factors favouring disclosure and nondisclosure of the Information in Issue.

QPS accountability and transparency

15. QPS must be both transparent and accountable in how it deals with the investigation and prosecution of allegations it receives. I have considered whether disclosing the Information in Issue could reasonably be expected to enhance QPS' accountability or transparency for its handling of the matter to which the Information in Issue relates.¹⁰
16. The applicant submits that he already has the Information in Issue because it was disclosed by QPS in proceedings before the Family Court of Australia pursuant to a subpoena and he was permitted to inspect the document and write down the content in full as part of those proceedings.¹¹
17. I accept that the applicant may have received this information as a result of Family Court proceedings. I also acknowledge that the applicant is aware of the identity of the individual who provided the information to QPS, given his involvement with the matter. As this information is generally known to the applicant, I am unable to identify how disclosing the Information in Issue to him under the RTI Act could enhance QPS accountability or transparency in any way.
18. Furthermore, the Information in Issue is information provided by another individual. The information does not reveal any of the actions taken by QPS in investigating or dealing with the allegations.
19. The information is from 2005 and is now more than ten years old. I consider the significant passage of time since QPS received this information, also reduces the weight of these factors.
20. For these reasons, I consider these public interest factors carry only minimal weight in this case.

⁸ Submissions to OIC dated 8 October 2015.

⁹ Submissions to OIC dated 10 December 2015.

¹⁰ Schedule 4, part 2, items 1 and 11 of the RTI Act.

¹¹ Submissions to OIC dated 8 October 2015.

Personal information of the applicant

21. The Information in Issue is about the applicant and comprises his personal information.¹² This gives rise to a factor favouring disclosure.¹³ I acknowledge the importance of providing individuals with access to their personal information held by public authorities, however, as the Information in Issue is generally known to the applicant, I afford this factor only minimal weight in this case.

Personal information and privacy of another individual

22. Even though the Information in Issue is the applicant's personal information, it also comprises the personal information of another person, that is, the person who provided the information to QPS. I am satisfied that disclosing the Information in Issue could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;¹⁴ and
- cause a public interest harm by disclosing the individual's personal information.¹⁵

23. As noted above, I accept that the applicant is generally aware of the content of the Information in Issue. As a result, I consider that the extent of the intrusion, and the anticipated harm, that could be expected to result from disclosing the Information in Issue to the applicant is reduced to some degree. However, I do not consider the weight of these factors is entirely negated for the following reasons.¹⁶

24. The Information in Issue relates to and identifies a minor¹⁷ in the context of an alleged domestic violence matter. It is therefore highly sensitive and personal in nature. There is a strong public interest in:

- protecting the identity of individuals involved in alleged domestic violence matters, particularly if the individual was a minor at the time; and
- not releasing information that these individuals provide to authorities outside of the investigation and court processes and under the RTI Act where there can be no restriction on its use, dissemination or republication.

25. Given the nature of the Information in Issue and the context in which it appears, I am satisfied that any disclosure of this information under the RTI Act would be an intrusion into the relevant individual's privacy and the anticipated harm associated with disclosure of the personal information is moderate – even though the applicant is generally aware of the content of the Information in Issue.

26. For these reasons, I afford moderate weight to both of these factors favouring nondisclosure in this case.

¹² Section 12 of the *Information Privacy Act 2009* (Qld) defines 'personal information' as '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.'

¹³ Schedule 4, part 2, item 7 of the RTI Act.

¹⁴ Schedule 4, part 3, item 3 of the RTI Act.

¹⁵ Schedule 4, part 4, section 6 of the RTI Act.

¹⁶ In *Setschnjak and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 25 May 2012) at 21-23, the Assistant Information Commissioner noted that the applicant knowing the personal information potentially reduces but does not negate the privacy interests attaching to the information.

¹⁷ In submissions to OIC dated 10 December 2015, the applicant notes that his son is no longer a child. As explained above, the Information in Issue is now more than 10 years old and I am satisfied that the applicant's son was a minor at the time he provided the Information in Issue to QPS.

Prejudice the flow of information to QPS

27. There is a very strong public interest in protecting the free flow of information to law enforcement agencies.¹⁸ This is a factor favouring nondisclosure of the Information in Issue.
28. QPS relies on information from the public to be alerted to and to pursue breaches of the law. Disclosing sensitive information obtained from individuals in the context of domestic violence allegations would, in my view, discourage individuals from coming forward and communicating with police. This in turn would significantly prejudice QPS' ability to respond to these allegations.
29. The applicant submits that the Information in Issue shows that the complaint against him was withdrawn by his son which demonstrates that he did not commit the alleged offences.¹⁹ He also submits that *'real victims'* of domestic violence are not affected if QPS discloses sensitive information obtained from them in the context of domestic violence allegations and that *'Perjurers and False Complainants are the only one[s] to be discouraged from coming forward and communicat[ing] with Police'*.²⁰
30. I am not required to determine whether the allegations about the applicant in this case were genuine or substantiated. This public interest factor is recognised even where protecting the flow of information to law enforcement agencies may result in the investigation of false and/or unsubstantiated allegations.²¹ I am not persuaded by the applicant's submissions and I consider that disclosing the Information in Issue could reasonably be expected to have a detrimental impact on the flow of information to QPS.
31. For these reasons, I afford this factor significant weight.

Balancing the relevant factors

32. I acknowledge the general public interest in promoting access to information under the RTI Act and the pro-disclosure bias in deciding access to documents.²²
33. I have identified three factors which favour disclosure of the Information in Issue. For the reasons addressed above, I afford only minimal weight to each of these factors.
34. I have identified three factors favouring nondisclosure of the Information in Issue. I afford moderate weight to the two factors relating to the protection of the personal information and privacy of the other individual and significant weight to the factor relating to the protection of the flow of information to QPS.
35. As a result, the factors favouring nondisclosure outweigh the factors favouring disclosure of the Information in Issue. Accordingly, I am satisfied that QPS was entitled to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

¹⁸ *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) (**P6Y4SX**) at paragraphs 35-40.

¹⁹ Submissions to OIC on 10 December 2015.

²⁰ Submissions to OIC on 10 December 2015.

²¹ *P6Y4SX* at paragraph 40.

²² Section 44 of the RTI Act.

DECISION

36. I affirm the decision under review and find that access to the Information in Issue can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
37. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

J Mead
Right to Information Commissioner

Date: 15 January 2016

APPENDIX

Significant procedural steps

Date	Event
6 May 2015	QPS received the access application.
5 June 2015	QPS issued its initial decision to the applicant.
24 June 2015	The applicant applied to QPS for internal review of the initial decision.
6 July 2015	QPS affirmed the initial decision on internal review.
29 July 2015	OIC received the external review application. OIC notified QPS that the external review application had been received and requested that QPS provide a number of procedural documents by 6 August 2015.
5 August 2015	OIC received the requested documents from QPS.
13 August 2015	OIC notified QPS and the applicant that the external review application had been accepted. OIC asked QPS to provide the documents located in response to the access application by 28 August 2015.
31 August 2015	OIC received the requested documents from QPS.
28 September 2015	OIC conveyed its preliminary view to the applicant and invited him to provide submissions supporting his case by 13 October 2015 if he did not accept the preliminary view.
8 October 2015	OIC received the applicant's submissions. The applicant requested that OIC refer this matter to the Queensland Civil and Administrative Tribunal under section 118 of the RTI Act.
26 October 2015	OIC notified the applicant that it did not intend to refer the matter to the Queensland Civil and Administrative Tribunal as requested.
29 October 2015	OIC asked QPS to provide a copy of the 15 pages which it had released to the applicant pursuant to a previous access application.
12 November 2015	OIC received the requested documents from QPS.
30 November 2015	OIC conveyed a second preliminary view to the applicant and invited him to provide submissions supporting his case by 14 December 2015 if he did not accept the preliminary view.
10 December 2015	OIC received the applicant's submissions.