



Decision and Reasons for Decision

Citation:	<i>Winchester and Queensland Police Service [2017] QICmr 56 (4 December 2017)</i>
Application Number:	313454
Applicant:	Winchester
Respondent:	Queensland Police Service
Decision Date:	4 December 2017
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for documents about a specified agency officer - whether the existence of responsive information can be neither confirmed nor denied - section 55 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for documents recording a complaint made, between 8 August 2008 and 24 December 2010, by individuals other than himself about a specified officer.¹
2. QPS neither confirmed nor denied the existence of the information sought by the applicant pursuant to section 55 of the RTI Act.²
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of the decision.
4. For the reasons set out below, I affirm QPS's decision that section 55 of the RTI Act applies to the access application.

Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix to these reasons.

Reviewable decision

6. The decision under review is QPS's decision dated 3 August 2017.

¹ The application dated 7 June 2017 was received by QPS on 13 June 2017.

² By decision dated 3 August 2017.

³ The application dated 10 August 2017 was received by OIC on 17 August 2017.

Evidence considered

7. Evidence, submissions, legislation and other material that I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
8. The applicant provided OIC with a number of submissions.⁴ While I have carefully reviewed all of those submissions, including the supporting material the applicant provided with those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act.⁵ Accordingly, in reaching this decision, I have only considered and addressed the applicant's submissions to the extent they are relevant to the issue for determination on external review.

Relevant law

9. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations.
10. Section 55 of the RTI Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it exists, would contain prescribed information. This provision is intended to apply in situations where revealing that the agency does or does not have documents in response to an application, due to the specific wording of the request, would reveal information to which an agency would normally be entitled to refuse access.
11. '*Prescribed information*' is defined⁶ as including '*personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b)*' of the RTI Act.
12. '*Personal information*' is defined⁷ 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. 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.
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:⁸
 - identify factors irrelevant to the public interest and disregard them⁹
 - identify factors in favour of disclosure of information

⁴ As set out in the Appendix.

⁵ Such as his concerns regarding certain evidence considered at his trial and that the complainant in that trial was not cross examined by his legal representative. Additionally, the applicant's submissions received on 15 September 2017 include a series of questions that OIC does not have jurisdiction to address.

⁶ Schedule 5 of the RTI Act.

⁷ Schedule 5 of the RTI Act, and section 12 of the *Information Privacy Act 2009* (Qld).

⁸ Section 49(3) of the RTI Act.

⁹ I have not taken any irrelevant factors into account in this review.

- identify factors in favour of nondisclosure of information; and
- decide whether, on balance, disclosure of the information would be contrary to the public interest.

Findings

15. Although the applicant submits that the requested documents exist 'as the complaint was mentioned in [his] trial',¹⁰ there is nothing in the material provided by the applicant in support of his submissions which independently confirms that any complaint of the nature sought in the access application was made. Further, nothing in these reasons should be taken to confirm or deny that any complaint was made against the specified officer or that the requested documents exist.
16. The applicant seeks access to documents recording a complaint which he believes was made about a specified officer. If the documents did exist, they would identify and contain information about an individual or individuals who made an allegation to QPS and the individual who is the subject of an allegation.
17. I consider there are strong public interest factors favouring the nondisclosure of the type of information sought by the applicant—including those relating to the personal information and privacy of a complainant,¹¹ the fact that disclosing a complainant's identifying details could reasonably be expected to prejudice the flow of information to QPS¹² and disclosing details of a complaint against a police officer may prejudice QPS's management function or its conduct of industrial relations.¹³ If the documents requested by the applicant did exist, I consider their nature requires that substantial weight be afforded to each of these public interest factors favouring nondisclosure.
18. The applicant submits that:
 - he requires this information to prove his innocence;¹⁴ and
 - as the complaint was mentioned in his trial 'it is [his] right to be informed what the complaint was and the outcome was'.¹⁵
19. Public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies¹⁶
 - contribute to the administration of justice generally, including procedural fairness;¹⁷ and
 - contribute to the administration of justice for a person.¹⁸
20. The fundamental requirements of procedural fairness (that is, a fair hearing and a decision-maker free from bias) should be afforded to the person who is the subject of a

¹⁰ Submissions received 26 September 2017.

¹¹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act. See *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27]-[28].

¹² Schedule 4, part 3, item 13 of the RTI Act. See *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) at [35]-[40].

¹³ Schedule 4, part 3, item 19 of the RTI Act.

¹⁴ External review application.

¹⁵ Submissions received 26 September 2017. However, I note that the access application seeks 'a detailed copy of the complaint' the applicant believes was made and does not seek outcome documents or investigation documents.

¹⁶ Schedule 4, part 2, item 10 of the RTI Act.

¹⁷ Schedule 4, part 2, item 16 of the RTI Act.

¹⁸ Schedule 4, part 2, item 17 of the RTI Act.

decision. Here, the applicant seeks details of a complaint he says was made by persons other than himself, about a person other than himself.

21. While the applicant considers he requires the requested information to ‘*prove [his] innocence*’, I note that:
 - the applicant appealed his conviction and sentence to the Court of Appeal
 - the Court of Appeal allowed the appeal against the applicant’s conviction on certain charges¹⁹
 - the applicant was not retried in respect of those charges;²⁰ and
 - the applicant subsequently made further applications to the Court of Appeal,²¹ however, the applicant’s further appeals against conviction and sentence were refused.²²
22. In these circumstances, it is unclear how disclosure of the requested information, if it existed, would advance the applicant’s fair treatment in his dealings with QPS or contribute to administration of justice or procedural fairness for the applicant. Further, it is unclear how disclosure of the requested information, if it existed, would contribute to the administration of justice, including procedural fairness, for any other individual.
23. For these reasons, I consider that the factors favouring disclosure relating to fair treatment and the administration of justice generally²³ do not apply. However, for the sake of completeness, I note that even if I were incorrect in this regard, and these factors could be said to apply, I consider they nonetheless warrant low to no weight in favour of disclosure given the nature of the requested information and the applicant’s completed appeal processes.
24. The applicant has not raised any specific public interest factors favouring disclosure. As noted above, the applicant seeks documents recording a complaint, which he believes was made by an individual or individuals other than himself, against a police officer. Factors favouring disclosure relating to QPS’s accountability²⁴ and allowing or assisting inquiry into, or revealing or substantiating, deficiencies in an official’s conduct²⁵ may arise in respect of information of this nature, if it existed. Generally, there is a public interest in disclosing information that demonstrates actions taken by QPS in investigating and dealing with complaints it receives concerning its officers. However, in this case, the applicant has not sought information that demonstrates the actions taken or inquiries made by QPS. He is seeking only ‘*a detailed copy*’ of a complaint which he did not make. Further, the applicant has not identified the nature or subject matter of the complaint he believes was made and I do not have any objective evidence before me to support a reasonable expectation that disclosing the requested information, if it existed, would allow or assist inquiry into, or reveal or substantiate, deficiencies in an officer’s conduct. For these reasons, to the extent that these factors favouring disclosure may arise, I do not consider that they would carry sufficient weight to override the public interest factors favouring nondisclosure identified above.

¹⁹ *R v Winchester* [2011] QCA 374. The Court of Appeal also allowed the appeal against the applicant’s sentence in respect of one charge.

²⁰ External review application. Refer also to *R v Winchester* [2013] QCA 166. I note that the applicant was resentenced in respect of one charge on 17 October 2012.

²¹ Seeking extensions of time within which to appeal against conviction and sentence, leave to appeal against sentence and leave to adduce evidence.

²² *R v Winchester* [2013] QCA 166.

²³ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

²⁴ Schedule 4, part 2, item 1 of the RTI Act.

²⁵ Schedule 4, part 2, items 5 and 6 of the RTI Act.

25. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no public interest considerations telling in favour of disclosure of the requested information.²⁶
26. In balancing the public interest, I consider that, to the extent that any factors exist which may favour disclosure of the requested information, those factors do not carry sufficient weight to override the public interest factors favouring nondisclosure.
27. For these reasons, I am satisfied that the type of information requested by the applicant, if it exists, would include the personal information of individuals other than the applicant and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that the requested information, if it exists, would contain prescribed information, and QPS is entitled to neither confirm nor deny the existence of that information under section 55 of the RTI Act.

DECISION

28. For the reasons set out above, I affirm QPS's decision that the existence of documents sought by the applicant is neither confirmed nor denied under section 55 of the RTI Act.
29. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 4 December 2017

²⁶ Taking into consideration the nature of the requested information I cannot see how disclosure of the requested information could, for example, reasonably be expected to reveal the reason for a QPS decision (Schedule 4, part 2, item 11 of the RTI Act).

APPENDIX**Significant procedural steps**

Date	Event
17 August 2017	OIC received the external review application.
5 September 2017	OIC notified the applicant and QPS that the external review application had been accepted and conveyed a preliminary view to the applicant that QPS was entitled to neither confirm nor deny the existence of the requested documents. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
7 September 2017	In a conversation with an OIC staff member, OIC received the applicant's submissions.
15 September 2017	OIC received further submissions from the applicant.
20 September 2017	OIC received further submissions from the applicant.
21 September 2017	OIC conveyed a further preliminary view to the applicant.
22 September 2017	In a conversation with an OIC staff member, OIC received the applicant's further submissions.
26 September 2017	OIC received further submissions from the applicant.