



Decision and Reasons for Decision

Citation:	G46 and Queensland Police Service [2020] QICmr 11 (24 February 2020)
Application Number:	314572
Applicant:	G46
Respondent:	Queensland Police Service
Decision Date:	24 February 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - SUBSTANTIAL AND UNREASONABLE DIVERSION OF RESOURCES - documents relating to the applicant and their interactions with the agency - whether dealing with the access application would substantially and unreasonably divert agency resources from their use in performing its functions - sections 60 and 61 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**), for the period 1 January 2011 to 20 February 2019, for access to:
 1. *All ministerial emails and documents about me. All documents, texts and emails about me to or from Gold Coast Bulletin, or any of their staff or other media. All documents and emails about me generated or received or sent by police media officers*
 2. *All emails and documents organised for, searched for and related to my Blue Card application*
 3. *All security related warnings sent by QPS to staff of courts, judicial officers, Premier, hospitals, Gold Coast City Council such as workplace health and safety warnings, risk notices, or to alert that I am a danger to others.*
 4. *My ESC file. All documents and communications about me and my complaints made to Ethical Standards, including all emails and other documents relating to my ESC complaints, and related evidence collected. If complaints were referred to ESC on my behalf such as from CCC or CMC or anyone else, for example, ministers' offices or any public servants or medical staff etc, I would like to have all related documents.*

¹ Access application dated 20 February 2019.

2. QPS decided² to refuse to deal with the access application on the basis that dealing with it would substantially and unreasonably divert the resources of QPS from their use in the performance of its functions.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision refusing to deal with the access application.
4. For the reasons set out below, I set aside QPS's decision and find that QPS cannot refuse to deal with the access application on the basis that to do so would result in a substantial and unreasonable diversion of resources.

Background

5. Significant procedural steps relating to the external review are set out in Appendix 1.

Reviewable decision

6. The decision under review is QPS's decision dated 24 April 2019.

Evidence considered

7. Evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and Appendices).
8. During the review the applicant provided extensive submissions. I have considered all this material and have extracted those parts which have relevance to the issue to be determined in this external review.

Issue for determination

9. The issue for determination is whether QPS can refuse to deal with the access application under section 60 of the IP Act on the basis that dealing with it would substantially and unreasonably divert QPS's resources from the performance of its usual functions under the IP Act.

Relevant law

10. Parliament intends that an agency receiving an access application will deal with that application unless dealing with the application would, on balance, be contrary to the public interest.⁴
11. Relevantly, section 60(1) of the IP Act permits an agency to refuse to deal with an access application if the agency considers the work involved in dealing with the application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.
12. The phrase '*substantially and unreasonably*' is not defined in either the IP Act or its companion legislation, the *Right to Information Act 2009* (Qld) (**RTI Act**). It is therefore appropriate to consider the ordinary meaning of these words. '*Substantial*' is relevantly defined as meaning '*considerable amount, quantity, size, etc.*'.⁵ '*Unreasonable*' is

² Decision dated 24 April 2019.

³ External review application dated 24 April 2019.

⁴ Section 58 of the IP Act.

⁵ Susan Butler (ed), *Macquarie Dictionary* (7th ed, 2017) at page 1492.

relevantly defined as meaning '*exceeding the bounds of reason; immoderate; exorbitant*.'⁶

13. In deciding whether an agency may refuse to deal with an application on the basis that doing so would substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions, I must have regard to the resources that would be used for:⁷
 - identifying, locating, or collating the documents
 - making copies, or edited copies of any documents
 - deciding whether to give, refuse, or defer access to any documents, including resources that would be used to examine any documents or conducting third party consultations; and
 - notifying any final decision on the application.
14. The power to refuse to deal with an application under section 60 of the IP Act can only be exercised if the preconditions set out by section 61 of the IP Act has been met. Section 61 sets out the procedural steps that an agency must take before deciding to refuse to deal with an application on this basis, being to:
 - give the applicant written notice⁸
 - give the applicant a reasonable opportunity to consult with the agency;⁹ and
 - as far as reasonably practicable, give the applicant any information that would help the making of an application in a form that would remove the ground for refusal.¹⁰
15. The written notice must:¹¹
 - state an intention to refuse to deal with the application
 - advise that, for the prescribed consultation period¹² for the notice, the applicant may consult with the agency with a view to making an application in a form that would remove the ground for refusal; and
 - state the effect of sections 61(2) to (6) of the IP Act, which is as follows:
 - following any consultation, the applicant may give the agency written notice either confirming or narrowing the application
 - if the application is narrowed, section 60 applies in relation to the changed application, but the procedural requirements in section 61 do not apply to it
 - if the applicant fails to consult¹³ after being given the notice, the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.

⁶ Susan Butler (ed), Macquarie Dictionary (7th ed, 2017) at page 1645.

⁷ Section 60(2) of the IP Act.

⁸ Section 61(1)(a) of the IP Act.

⁹ Section 61(1)(b) of the IP Act.

¹⁰ Section 61(1)(c) of the IP Act.

¹¹ Section 61(1)(a) of the IP Act.

¹² Under section 61(6) of the IP Act, the '*prescribed consultation period*' for a written notice under section 61(1)(a) is ten business days after the date of the notice, or the longer period agreed by the agency and the applicant (whether before or after the end of the 10 business days).

¹³ Under section 61(5) of the RTI Act, failure to consult includes the applicant not giving written notice either confirming or narrowing the application under section 61(2) of the RTI Act.

Findings

Requirement to consult

16. I have read QPS's notice sent¹⁴ to the applicant (**Notice**). The Notice stated QPS's intention to refuse to deal with the application under section 60 of the IP Act, and advised the applicant that they had until a specified date¹⁵ to consult with a view to making their application in a form that would remove this ground as a basis for refusing to deal with the application. The Notice also stated that the applicant may give written notice confirming or narrowing the scope of the access application and, if they did not respond, they would be taken to have withdrawn their application. Considering the content of the Notice, I am satisfied that the Notice complied with the requirements of the IP Act.
17. QPS's Notice explained to the applicant ways that the applicant could change their access application to make it manageable, including:
 - reducing the scope of the application in relation to the applicant's 'ESC file' to a summary/outcome for each complaint; and
 - requesting specific information.
18. Based on the above, I find that QPS, as far as was reasonably practicable, gave the applicant information that would help them to make an access application in a form that removed the ground for refusal.
19. In response to the Notice, the applicant stated¹⁶ '[just] numbers 3 and 4 listed' in the scope as set out at paragraph 1 above or, if QPS 'still find that too much please do number 3 only...'
20. In response, QPS asked¹⁷ the applicant to 'clearly identify what you wish to change your scope to.' The applicant responded¹⁸ 'I believe I set out my response with certainty' and invited QPS to call if QPS 'do not understand the options I gave you...'
21. QPS responded¹⁹ to the applicant stating:

Unfortunately your email does not assist with narrowing the scope of your application to remove the grounds for the substantial and unreasonable diversion notice being issued to you, pursuant to section 60 of the Information Privacy Act 1999 (Qld).

To meet the requirements of the notice, the Act requires that you provide written notice of your narrowed application scope so that this Unit can consider whether the narrowed application removes the grounds of the substantial and unreasonable diversion notice.
22. Based on the above, while the applicant has indicated that they are open to further narrowing of the scope if it remains unmanageable (i.e., to request 3. only), I am satisfied²⁰ that the applicant has narrowed the scope of the application to requests 3. and 4. as set out at paragraph 1 above—that is:

¹⁴ On 5 April 2019.

¹⁵ Being 23 April 2019.

¹⁶ Email to QPS dated 5 April 2019.

¹⁷ Email dated 10 April 2019.

¹⁸ Email dated 10 April 2019.

¹⁹ Email dated 13 April 2019.

²⁰ This was conveyed to QPS in a preliminary view on 12 July 2019. QPS did not object to this preliminary view.

3. All security related warnings sent by QPS to staff of courts, judicial officers, Premier, hospitals, Gold Coast City Council such as workplace health and safety warnings, risk notices, or to alert that I am a danger to others.
4. My ESC file. All documents and communications about me and my complaints made to Ethical Standards, including all emails and other documents relating to my ESC complaints, and related evidence collected. If complaints were referred to ESC on my behalf such as from CCC or CMC or anyone else, for example, ministers' offices or any public servants or medical staff etc, I would like to have all related documents.

What work would be required to process the access application?

23. In summary, QPS initially submitted²¹ that processing the application would be a substantial and unreasonable diversion of its resources because it would require 'at least' a further 48 hours, plus 'at least' 6.5 hours for consultation, as follows:
 - 25 hours to examine the 378 pages located and determine whether they should be disclosed, based on a rate of 15 pages per hour (being approximately 3.5 work days)²² which was revised from an original estimate of 21 hours, based on a rate of 18 pages per hour²³
 - 23 hours to conduct initial examination, editing and review of 6.5 hours of audio/video recordings (being approximately 3.2 work days)
 - 6.5 hours to conduct consultations with relevant third parties (being approximately 0.9 work days); and
 - an unspecified amount of additional time to conduct research for and prepare a considered decision.
24. QPS also noted that it had already taken around 6 hours²⁴ (that is, about 0.8 work days) to retrieve documents located within the Ethical Standards Command (ESC) unit from an electronic database and compile a schedule of documents.
25. In terms of the estimates of both 25 hours and 21 hours, there was no detail before OIC as to how either estimate was calculated. Based on the descriptions of the 378 pages,²⁵ a preliminary view²⁶ was conveyed to QPS that:
 - some of the pages appeared to comprise correspondence between QPS and the applicant²⁷ it is likely that QPS's determination of whether to grant access to those pages would take very little time²⁸

²¹ Based on the Notice issued to the applicant dated 5 April 2019 and the further details provided in QPS's letter to OIC dated 18 June 2019.

²² Based on a 7.15 hour work day.

²³ In the PDF titled 'Time Estimate FINAL' provided to OIC on 8 May 2019.

²⁴ QPS also stated 'the initial processing and related searches conducted in relation to this application currently exceeds 6 hours.'

²⁵ In the PDF titled 'Time Estimate FINAL' provided to OIC on 8 May 2019.

²⁶ By letter dated on 12 July 2019.

²⁷ For example, documents identified as being letters to the applicant, some of the outcome notices and possibly some of the emails.

²⁸ Noting that providing unredacted copies of correspondence already sent or received by the applicant:

- would not be disclosing personal information of the other individuals to the applicant, as the information is already known to them – see *Australian Broadcasting Corporation and Department of Child Safety, Youth and Women* [2018] QICmr 47 (21 November 2018) at [107] and *Seven Network (Operations) Limited and Department of Justice and Attorney-General; Department of Child Safety, Youth and Women* [2018] QICmr 48 (29 November 2018) at [45]. In these decisions, the Right to Information Commissioner observed that, where releasing personal information would not involve conveying to any person or entity information not already known to them, it cannot be said such release would disclose personal information within the meaning of the personal information harm factor, and that factor will therefore not apply.
- does not, in the present circumstances, appear to intrude into the privacy of the individuals concerned, and therefore the right to privacy of those individuals could not reasonably be expected to be prejudiced as a result of access.

- some pages appeared to comprise information in the public domain²⁹ and, again, it is likely that QPS's determination of whether to grant access to those pages would take very little time
 - some of the pages appeared to comprise medical or QPS administrative/documents about the applicant,³⁰ it is likely that such information would generally be provided to an applicant, and therefore QPS's determination of whether to grant access to those pages should take relatively little time; and
 - other pages appeared to comprise specific types of documents used by QPS when dealing with complaints³¹ and it is likely that the QPS officer processing such documents would have familiarity with the layout and content of such documents, and therefore would be likely to take less time than anticipated by QPS to identify information that QPS considers warrants redaction.³²
26. In these circumstances, and in the absence of any detailed basis for the 25/21 hour estimates, OIC's preliminary view concluded that it appeared reasonable to expect that QPS could deal with the 378 pages, and any further pages located as a result of further searches, at a rate somewhat faster than 15/18 pages per hour and, therefore, QPS's estimate for examining and deciding whether to give, refuse or defer access to hardcopy documents was not reasonable.
27. In response, QPS further submitted:³³
- *'The initial estimate of examining 18 pages per hour was overly optimistic ... 15 pages is a more accurate reflection of the amount of time examining documents and includes sufficient time to review final documents. Previous experience involving large numbers of documents have shown that a considerably longer time is undertaken to examine documents, with multiple reviews undertaken.'*
 - information regarding third parties, including information *'outside what is considered routine work information'*, such as complaint information, would need to be redacted
 - information contained within the documents is likely to be of a varying nature and involve complexity and third parties, therefore careful consideration would need to be given in deciding whether access can be given to the applicant
 - information identified by OIC as appearing to comprise information in the public domain may have since been archived and no longer be readily available therefore making it necessary to assess in the current context; and
 - documents created by Gold Coast University Hospital (**GCUH**) would require consideration of third party information and GCUH would need to be consulted prior to release of any of these documents.
28. I acknowledge the concerns raised in the above submission by QPS about identifying information which would, on balance, be contrary to the public interest to disclose and accept that this may slightly increase the time it would take QPS to deal with the 378 pages. In relation to QPS's submission about documents within the public domain, I do not consider that the fact that those documents may have since been archived and are now not readily available would shift the balance of the public interest such that disclosure would not be in the public interest as, for example, it is unlikely that disclosure

²⁹ For example, Gold Coast Bulletin / Facebook pages and possibly the local management plan.

³⁰ For example, undertaking to bail, GCUH notes, prisoner medical and prisoner custody documents.

³¹ For example, CSS summary reports, mars documents and various outcome notices to parties other than the applicant.

³² For example, the personal information of individuals other than the applicant, and possibly information falling within some of the types of exempt information in schedule 3, section 10(1) or (4) of the RTI Act.

³³ Submission to OIC dated 23 August 2019.

could reasonably be expected to prejudice the protection of an individual's right to privacy³⁴ or the management functions of QPS³⁵ given the information has previously been within the public domain. The issue of consultation with relevant third parties is discussed at paragraphs 35 to 38 below.

29. Based on my observations at paragraph 28 above, I do not consider that QPS's further submissions on these issues alters the conclusion reached in paragraph 26 above and I therefore remain satisfied that QPS's estimate for examining and deciding whether to give, refuse or defer access to hardcopy documents is not reasonable.
30. In terms of the estimate of *'23 hours to conduct an initial examination, edit and review the 6.5 hours of audio/video recordings'*, there was no detail before OIC as to how this estimate was calculated. Based on the material before OIC, OIC's preliminary view to QPS noted that it appeared possible that:
 - some of the audio and video recordings could comprise interviews with the applicant. It appeared that QPS's determination of whether to grant access to such interviews would take very little time beyond that required to listen to (and, for videos, watch), the recordings; however, the process of redacting audio which identifies the subjects of the applicant's complaints³⁶ may take some time
 - some of the audio and video recordings could comprise interviews with individuals other than the applicant. It appeared likely that QPS's determination of whether to grant access to such interviews would take very little time beyond the time required to listen to (and, for videos, watch), the recordings
 - some of the video recordings could comprise CCTV obtained by QPS as evidence or recorded on QPS premises. It appears likely that all individuals, except for the applicant and QPS officers acting in their routine capacity, would require pixellation, and therefore that QPS's determination of parts of the footage to required pixellation would take very little time beyond that involved in watching the recordings. However, the process of pixellating individuals other than the applicant and QPS officers from the footage may take some time; and
 - some of the video recordings could comprise segments broadcast on local news programs regarding incidents involving the applicant. Given such material is in the public domain, it appeared that QPS's determination of whether to grant access to such footage would take very little time.
31. In these circumstances, and in the absence of any detailed basis for the 23 hour estimate, OIC's preliminary view concluded that it appeared reasonable to expect that it would take less time to deal with the audio and video recordings than QPS anticipated and, therefore, QPS's estimate for examining, editing and reviewing the 6.5 hours of audio/video recordings was not reasonable.
32. In response, QPS provided a detailed list of the video and audio documents located, as set out in Appendix 2, and further submitted:³⁷

³⁴ Schedule 4, part 3, item 3 of the RTI Act.

³⁵ Schedule 4, part 3, item 19 of the RTI Act.

³⁶ Which is generally the approach taken regarding recordings of discussions with an applicant (cf. correspondence to or from an applicant, where the approach is that mentioned at footnote 28 above). This is because an applicant's recall of recorded discussions is necessarily less complete and specific than their knowledge of correspondence sent or received by them, and the recordings are therefore relatively likely to *disclose* the personal information of other individuals and prejudice their privacy.

³⁷ Submission dated 23 August 2019.

- QPS's current operating system requires redaction of audio and visual separately, which would necessitate at least tripling the time of the 18.75 hours of Watchhouse CCTV footage located
 - the 2.5 hours of audio *'would require to be fully reviewed prior to being finalised. This would entail at least 7.5 hours (2.5 listening to identify redactions required/minimum of 2.5 hours to undertake redactions/2.5 hours to review final documents).'*
 - initial consideration of the combined audio and visual documents would take 20.25 hours, and additional *'time would need to be considered for any redactions required to be made for release, and review of final documents.'*
33. Based on the above, I understand QPS's submission to be that dealing with the video and audio recordings would take at least 60.75 hours due to the need to assess, redact and review all recordings.
34. I accept QPS's submission that the time required to conduct an initial examination of the audio/video recordings would require approximately 20.25 hours based on the details as set out in the table in Appendix 2. I also accept that the process of applying redactions to the audio/video recordings may take some time. However, given the nature of the recordings, it appears likely that a significant proportion of the recordings would predominantly involve the applicant alone or with officers undertaking routine work duties. Further, if any of the videos and audio recordings were used for the purposes of an investigation regarding the conduct of officers appearing in those recordings, this information may fall within some of the types of exempt information in schedule 3, section 10(1) or (4) of the RTI Act. On this basis, it does not appear to be likely that significant amounts of redaction will be required as the whole recording would likely be exempt. Accordingly, I am not satisfied that QPS's estimate for examining, editing and reviewing the audio/video recordings is reasonable.
35. In terms of the estimate of 6.5 hours to conduct third party consultation, QPS initially submitted³⁸ that the *'nature of the consultation relates to allegations that [the applicant] has made against a number of external people/organisations as well as QPS members...'* and identifies that consultation will need to be undertaken with:
- the Department of Health;
 - several individuals from Bond University (at least 3);
 - At least 4 individuals nominated as offenders by [the applicant]
 - Southport Magistrate
 - CCC
 - Gold [Coast] City Council
 - Gold Coast Bulletin and possibly other media outlets
 - NSW Police.
36. Consultation under section 56 of the IP Act is only required in respect of documents considered for *release* to an applicant where disclosure *could reasonably be expected to be of concern* to a third party. It is anticipated that QPS would not decide to release information which is subject to any of the law enforcement exemptions in schedule 3, section 10(1) of the RTI Act, or the crime body exemption in schedule 3, section 10(4) of the RTI Act. It is also anticipated that QPS would not decide to disclose information about the subjects of the applicant's complaints, including unsubstantiated allegations. On the other hand, it is anticipated that disclosure of routine work information of agency officers dealing with the applicant's complaints could not reasonably be expected to be of concern to those individuals, and would not require consultation with those individuals.

³⁸ Submission dated 18 June 2019.

Also, it is anticipated that disclosure of information published by media outlets or other entities could not reasonably be expected to be of concern to those entities, and would not require consultation with those entities. Based on this, OIC's preliminary view to QPS set out that it was unlikely that QPS would need to undertake consultation with many of the individuals and entities named at paragraph 35 above and, therefore, QPS's estimate of 6.5 hours to conduct consultation was not reasonable.

37. In response, QPS further submitted³⁹ that as a detailed examination had not been undertaken, it was *'impossible to assess the estimated volume of the relevant information subject to third party consultation without further examination of the documents. Whilst your preliminary findings suggest third party consultation would not be required, it is assuming without actual examination of the documents.'* QPS proposed that 3 hours would be required for any consultation.
38. Based on the information before me and without the benefit of being able to review documents which respond to the scope of the access application, I accept that QPS's revised estimate of 3 hours to conduct any necessary consultation is reasonable in the circumstances.
39. Although QPS had not provided an estimate of time to conduct research for and prepare a considered decision, OIC's preliminary view concluded that this task would take some time, but no more than one day. QPS has not provided any further submissions in response to this view.
40. As set out at paragraphs 23 and 24 above, QPS's initial total processing time estimate was *'at least'* 60.5 hours.
41. In summary, I:
 - do not accept QPS's revised estimate in relation to processing the 378 pages, being 25 hours at a rate of 15 pages per hour
 - accept that the processing time in relation to the audio/video recordings is longer than previously estimated, however do not accept QPS's revised estimate of at least 60.75 hours as being reasonable; and
 - accept QPS's revised estimate of 3 hours for conducting third party consultations.
42. For the reasons set out above, I do not consider that QPS's estimate of a total of 88.75 hours is a reasonable estimate of the time required to process the application. Rather, I consider that the processing time would be somewhat closer to that originally estimated by QPS.
43. On 9 September 2019 OIC received another application for external review from the applicant relating to a subsequent decision of QPS. The scope of the access application (**later application**) considered in that decision was materially the same as the scope for the access application the subject of this external review as set out at paragraph 1 above, except in relation to the time period for which access was sought, being for the shorter period of 1 July 2011 to 1 July 2013, which is entirely within the time period for the access application the subject of this external review, being 1 January 2011 to 20 February 2019.
44. Accordingly, QPS was advised⁴⁰ that its decision to process the later application impacts the scope of the access application the subject of this external review given that part of

³⁹ Submission dated 23 August 2019.

⁴⁰ Letter dated 22 October 2019.

the scope has now been dealt with thus removing the need to deal with those documents again (i.e., documents falling within the period 1 July 2011 to 1 July 2013) and that this removed any claim that processing the earlier application would be a substantial and unreasonable diversion of resources.

45. In response, QPS submitted:⁴¹

The QPS acknowledges the requested information for [the later application], is similar in scope to this review, aside the scope on the period of time the information is sought. The scope in relation to the time period is clearly considerably longer, which was the reason for the initial [decision]. The QPS remains unchanged on the submissions provided in the QPS letter dated 23 August 2019.

46. As QPS has processed the later application, and the decision on that later application is the subject of a current external review by OIC, I consider that information responding to the later application can be carved out of the scope of the access application the subject of this external review.

47. In the decision on the later application, QPS relevantly:

- refused access to information which corresponds with the applicant's request at item 3. as set out at paragraph 1 above on the basis that it is exempt from disclosure under section 47(3)(a) and schedule 3, section 10(f) of the RTI Act; and
- located 30 pages and decided to refuse access to 5 pages and parts of 21 pages which corresponds with the applicant's request at item 4. as set out at paragraph 1 above on the basis that it is contrary to the public interest to disclose under section 47(3)(b) of the RTI Act.

48. I am satisfied that by carving out the request to the extent it has been addressed by the decision on the later application, this will somewhat reduce the estimated processing time in relation to the current application.

Would the impact on QPS's functions be substantial and unreasonable?

49. No, for the following reasons.

50. Under section 22 of the IP Act, the usual time allowed for processing an application is 25 business days. Whilst this period can be extended in certain circumstances,⁴² it is relevant to have regard to this timeframe when considering whether the time involved in processing a single access application will have a substantial impact on an agency's resources.

51. QPS initially submitted⁴³ that processing the application would have a substantial and unreasonable impact on QPS's resources because:

- *'There is a community expectation that the QPS provides timely and professional responses to calls for service to maintain community confidence.'*
- *'the resources allocated to the QPS Right to Information and Privacy Unit [RTI&P Unit] are finite.'*

⁴¹ Submission dated 4 November 2019.

⁴² Such as consultation with third parties which extends the processing period by a further 10 business days: section 22 of the IP Act.

⁴³ Submission dated 18 June 2019.

- the QPS RTI&P Unit comprises 10 members and, at the time of the submission, had more than 611 active files (consisting of access applications, internal reviews and external reviews); and
- given the estimate of at least 48 hours to examine documents plus additional time to conduct third party consultations and conduct research for and preparation of, a considered decision, processing the application would *‘significantly affect the business of the RTI&P Unit and would cause disruption to and interference with its normal functions and would significantly impact on the processing of other applicants’ access applications.*

52. In response to OIC’s preliminary view, QPS further submitted:⁴⁴

Whilst the QPS is a large organisation, the RTI&P unit has finite resources to meet this function of the service. The ordinary allocation of resources within the work unit are not best placed to manage a file such as this with the required time undertaking. The QPS’ primary role is stopping crime and making the community safer, it would be problematic to reallocate members from other areas without impacting on the functions of the service. Additionally, the nature of the work undertaken by the RTI&P Unit is a specialised area with a knowledge set that is not readily transferrable to enable a short-term relief option to process a single application.

The impact of taking one member from the RTI&P unit offline for the initially estimated 8.3 work days to solely deal with one application impedes the function of the unit and would affect the processing of all other applications allocated to that decisionmaker. It is not feasible to reallocate applications to other decision makers due to the workload of each member within the unit. Therefore, in excess of 100 other applications would not be actioned during the 8.3 days (initial estimate) and this would unfairly disadvantage other applicants. The review of the video/audio holdings has identified a substantial increase from 6.5 to 20.25 hours, thereby significantly increasing the processing times. Even in isolation this would be considered to be an unreasonable disruption to the performance of this unit’s daily activities and core functions. Given the current volume of access applications and external reviews on foot, this extrapolates the time, both current and deferred, consequent to primarily focus on this file. It is respectfully further submitted that the release of such information would not significantly advance public interest.

When considering previous OIC decisions regarding the significantly longer length of time estimates, it would be pertinent to consider these contextually with respect to the relevant agency’s RTI workload and number of decision-makers.

53. While I appreciate the impact that processing this application will place on the small team within QPS (as noted in the third dot point in paragraph 51 above) this must be tempered with a consideration of the size of the organisation as a whole. As at 30 June 2019 QPS employed 15,285.27 full-time equivalent staff.⁴⁵ Consequently, I accept that the work involved in dealing with the access application would, if carried out, divert the resources of the QPS’s RTI&P Unit from their use in relation to other access applications, internal and external reviews. However, I am not satisfied that this diversion would be substantial or unreasonable when looking at the size of the organisation as a whole.
54. I acknowledge that the phrase *‘substantial and unreasonable’* *‘admits of no ready or precise measure’*⁴⁶ and it *‘is not possible to specify an indicative number of hours of processing time that would constitute’*⁴⁷ a substantial and unreasonable diversion of resources. Having said that, whether it be the 88.75 hours (which I do not accept) or

⁴⁴ Submission dated 23 August 2019.

⁴⁵ As set out at page 87 of QPS’s 2018-19 Annual Report (Accessed at <https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/annual-report-2018-2019> on 17 January 2019).

⁴⁶ *Cianfrano v Director General, Premier’s Department* [2006] NSWADT 137 (*Cianfrano*) at [44].

⁴⁷ *NX and Australian Trade and Investments Commission* [2018] AICmr 18 at [28].

60.5 hours—that is, 8.3 work days—estimated by QPS to process the application, the estimates are less than the amount of time considered in a number of previous OIC decisions to amount to a substantial and unreasonable diversion of resources.⁴⁸

55. In conclusion, while I accept that processing the application will divert the resources of the QPS's RTI&P Unit from their use in relation to other access applications, internal and external reviews, ultimately, I find that the diversion is not substantial or unreasonable when considering the size of the organisation as a whole, the number of hours required to process the application and the pro-disclosure bias in deciding to deal with applications under the RTI and IP Acts.⁴⁹

DECISION

56. For the reasons set out above, I set aside QPS's decision and find that dealing with the application would not be a substantial and unreasonable diversion of QPS's resources from the performance of its usual functions under section 60 of the IP Act.
57. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 24 February 2020

⁴⁸ See *Seal and Queensland Police Service* (Unreported, Queensland Information Commissioner, 29 June 2007); *Thomson and Lockyer Valley Regional Council* (Unreported, Queensland Information Commissioner, 23 September 2010); *Middleton and Building Services Authority* (Unreported, Queensland Information Commissioner, 24 December 2010); *Middleton and Department of Environment and Resource Management* (Unreported, Queensland Information Commissioner, 30 May 2011); *Mathews and University of Queensland* (Unreported, Queensland Information Commissioner, 5 December 2011); *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd (Third Party); Treasury Department (Fourth Party)* (Unreported, Queensland Information Commissioner, 9 May 2012); *Mewburn and Department of Natural Resources and Mines* [2016] QICmr 31 (19 August 2016); *ROM212 and Queensland Fire and Emergency Services* [2016] QICmr 35 (9 September 2016); *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016); *Underwood and Department of Housing and Public Works* [2016] QICmr 48 (9 December 2016) (which was the subject of an appeal by the applicant to QCAT; however the applicant withdrew this application); *Angelopoulos and Mackay Hospital and Health Service* [2016] QICmr 47 (8 November 2016); *60CDYY and Department of Education and Training* [2017] QICmr 52A (7 November 2017); and *Marigliano and Tablelands Regional Council* [2018] QICmr 11 (15 March 2018).

⁴⁹ *Cianfrano* at [58].

APPENDIX 1

Significant procedural steps

Date	Event
24 April 2019	OIC received the applicant's application for external review.
28 April 2019	OIC received emailed submissions from the applicant.
29 April 2019	OIC notified the QPS and the applicant that the application for external review had been received and requested procedural documents from QPS.
2 May 2019	OIC received emailed submissions from the applicant.
8 May 2019	OIC received the requested documents from QPS via two emails.
15 May 2019	OIC notified QPS and the applicant that the application for external review had been accepted.
24 May 2019	OIC requested a submission from QPS.
20 June 2019	OIC received the requested submission from QPS dated 18 June 2019.
12 July 2019	OIC conveyed a written preliminary view to QPS.
8 August 2019	OIC received emailed submissions from the applicant.
19 August 2019	OIC received emailed submissions from the applicant.
23 August 2019	OIC received a submission from QPS.
27 August 2019	OIC received emailed submissions from the applicant.
28 August 2019	OIC received two emailed submissions from the applicant.
11 September 2019	OIC received emailed submissions from the applicant.
12 September 2019	OIC received emailed submissions from the applicant.
17 September 2019	OIC received emailed submissions from the applicant.
19 September 2019	OIC received emailed submissions from the applicant.
20 September 2019	OIC received emailed submissions from the applicant.
25 September 2019	OIC wrote to the applicant about their external reviews.
26 September 2019	OIC received emailed submissions from the applicant.
22 October 2019	OIC conveyed a written preliminary view to QPS.
4 November 2019	OIC received a submission from QPS.
25 January 2020	OIC received emailed submissions from the applicant.

APPENDIX 2

Table as set out in QPS's submission dated 23 August 2019

2017_01024	
Disc 1	Duration
charge reception counter	00:19
cell17	02:08:15
charge reception counter	01:03:05
cell 9	40:01:
wh lift and lobby grnd	00:19
holding cell b	10:45
charge counter	03:06
charge counter 17-05	03:05
lock whouse	03:45
lock whouse 20:45	02:20
charge counter 2047	01:40
charge reception counter 20:48	03:29
EST DISC 1 VIEWING 4HRS	
Disc 2	
cell17	0:48:34
charge recp 10_ 11	00:36
release counter	01:32
charge reception	00:30
cell17 16/2 10.13	02:50
charge reception	00:20
release counter 3:26	
EST DISC 2 viewing 1 hr	
Disc 3	
15/2 wh lobby	00:19
15/2 w/house holding cell B	10:45
charge counter	03:06
vlock gas	03:45
cell 17	09:55:09
ex yard	01:16
cell 17	02:06:35
16/2 recept counter	00:55
charge 16/02/2019 08:52	00:14
charge counter 16/2	00:24
16/2 w/house lift and lobby arrive	00:30
lift and lobby leave	00:30
charge rece return to cell	00:35
EST DISC 3 viewing only 12.25 hrs	
DISC 4	
LIFT LOBBY 16/2	04:00
EST DISC 4 viewing 4 minutes	
DISC 5	
LIFT LOBBY	04:00
EST DISC 5 viewing 4 minutes	
DISC 6	
LEVEL 1 ACCESS	16:59
EX YARD	16:59
EST DISC 6 VIEWING 34 minutes	

DISC 7	
W/HOUSE HOLDING CELL A	08:00
W/HOUSE HOLDING CELL B	07:59
PROPERTY	09:59
CHARGE COUNTER A	04:00
CHARGE COUNTER B	04:00
EST DISC 7 viewing 34 minutes	
DISC 8	
CELL 9	16:01
EST DISC 8 viewing 16 minutes	
DISC 9	
PADDED CELL	02:00
EST DISC 9 viewing 2 minutes	
2013-01290	00:28:55
INITIAL DISCUSSION WITH [the applicant] AUDIO	
2017-02065	
- [The applicant] DISCUSSION AUDIO	02:04:43