



Decision and Reasons for Decision

Citation:	<i>R25 and Queensland Police Service</i> [2020] QICmr 50 (15 September 2020)
Application Number:	314850
Applicant:	<i>R25</i>
Respondent:	Queensland Police Service
Decision Date:	15 September 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE - applicant contends additional documents exist - whether the information sought is nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - whether deleted information is irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - documents relating to the applicant and her interactions with the agency - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - sections 47(3)(a), 48 and schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - documents relating to the applicant and her interactions with the agency - whether information was obtained, used or prepared for an investigation by a prescribed crime body or another agency in performance of the prescribed functions of the prescribed crime body - sections 47(3)(a), 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access, for the period from 1 July 2011 to 1 July 2013, to information as follows:

Part 1:

- All emails and documents about [the applicant] to/from QPS to the Minister of Police
- Any documents including emails to/from MinisterialLiaison.Officer@police.qld.gov.au regarding [the applicant].
- All documents and emails about [the applicant] generated or received or sent by police media officers
- All emails and documents organised for, searched for and related to [the applicant's] Blue Card application

Part 2:

- 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 [the applicant is] a danger to others

Part 3:

- [The applicant's] ESC file - All documents and communications about [the applicant and her] complaints made to Ethical Standards, including all emails and other documents relating to [her] ESC complaints, investigations of those complaints and related

2. QPS located 30 pages and decided² to:

- in relation to Part 1, refuse access to documents on the ground documents do not exist
- in relation to Part 2, refuse access to 1 page on the ground it is exempt from disclosure on the basis disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment
- in relation to Part 3:
 - delete information from 3 pages on the ground it is irrelevant to the application; and
 - refuse access to parts of 26 pages on the ground the information is contrary to the public interest to disclose.

3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision refusing access and raised concerns about the sufficiency of QPS's searches for documents responsive to Part 1 of the application.

4. For the reasons set out below, I find that:

- access may be refused to documents responsive to Part 1 of the application on the ground that they are nonexistent
- parts of 3 pages are not relevant to the access application and may be deleted; and
- access may be refused to 2 pages and parts of 26 pages on the grounds they comprise exempt information.

¹ Access application dated 8 May 2019.

² Decision dated 9 September 2019.

³ External review application dated 9 September 2019.

Preliminary issue – alleged bias

5. The applicant has requested that I be removed from her matters⁴ and alleged that I have an undisclosed bias against her.⁵ I have issued previous decisions involving the same applicant in which she raised this issue. As I did on those occasions,⁶ I have carefully considered these submissions, alongside the High Court's test for assessing apprehended bias for a decision maker. The High Court's test requires consideration of *'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide'*.⁷ The High Court has also noted that *'[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made'*.⁸
6. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.⁹ In order to ensure procedural fairness (as required by both the IP Act¹⁰ and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected party. This appraises that party of the issues under consideration and affords them the opportunity to put forward any further information they consider relevant to those issues.
7. During this external review, I conveyed¹¹ a preliminary view to the applicant that access to further documents can be refused on the basis they are nonexistent or unlocatable, some information could be deleted from the copies of the documents released to her on the ground that it is irrelevant and access to other information can be refused on the grounds that it comprises exempt information. My letter advised the applicant that the purpose of my view was to give her the opportunity to put forward her views, and if she provided additional information supporting her case, this would be considered and could alter the outcome.¹²
8. For this decision, I am the delegate of the Information Commissioner.¹³ I have not to my knowledge dealt with the applicant in any capacity prior to her reviews and cannot identify any conflict of interest in my dealing with her application for review of QPS's decision. I do not consider the fact that the applicant has asked for me to be removed from her matters has altered my conduct of the review or consideration of the issues before me in any way. In these circumstances, paraphrasing the High Court's test, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I¹⁴ might not bring an impartial and unprejudiced mind to the resolution of this matter. Accordingly, I have proceeded to make this decision.

⁴ Emailed submission dated 27 February 2020.

⁵ Emailed submission dated 12 March 2020.

⁶ I have not listed these previous decisions to protect the applicant's privacy.

⁷ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

⁸ *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Kiefel, Bell, Keane and Nettle JJ.

⁹ Section 108 of the IP Act.

¹⁰ Section 110 of the IP Act.

¹¹ Letter to applicant dated 29 June 2020.

¹² Footnote 1 of letter to applicant dated 29 June 2020.

¹³ Section 139 of the IP Act.

¹⁴ As a delegate of the Information Commissioner under section 139 of the IP Act.

Background

9. Significant procedural steps taken during the external review are set out in the Appendix to this decision.
10. The applicant has previously requested that all her matters be finalised by way of written decision that can be appealed to the Queensland Civil and Administrative Tribunal.

Reviewable decision

11. The decision under review is QPS's decision dated 9 September 2019.

Evidence considered

12. The applicant frequently emailed the OIC during the review, often making submissions within the emails or attachments. I have considered all this material and have extracted those parts which I consider have relevance to the issues to be determined in this external review.
13. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and Appendix).
14. Generally, it is necessary that I have regard to the *Human Rights Act 2019* (Qld) (**HR Act**) given that section 11(1) of the HR Act provides that '[a]ll individuals **in Queensland** have human rights' (my emphasis). In this matter however, the applicant currently resides in New South Wales. Accordingly, I am not required to have regard to the HR Act vis a vis the applicant in this review. Nonetheless I have had regard to the HR Act, particularly the right to seek and receive information,¹⁵ as if the applicant was in Queensland. I consider a decision-maker will be '*respecting and acting compatibly with*' the right to seek and receive information, and other rights prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).¹⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁷ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁸ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'¹⁹

Information in issue

15. The information in issue in this review is contained within 2 pages²⁰ and parts of 28 pages.²¹

¹⁵ Section 21(2) of the HR Act.

¹⁶ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁷ Section 58(1) of the HR Act provides that it '*is unlawful for a public entity—*

(a) to act or make a decision in a way that is not compatible with human rights; or

(b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

¹⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁹ *XYZ* at [573].

²⁰ Comprising a single page located in response to Part 2 of the application (this page was not numbered in QPS's decision) and page 29 of the documents located in response to Part 3 of the application.

²¹ Comprising pages 1-24, 26-28 and 30 of the documents located in response to Part 3 of the application.

Issues for determination

16. The issues for determination in this review are:

- **Sufficiency of search:** whether access to documents responsive to Part 1 of the access application may be refused on the ground that they are nonexistent.
- **Irrelevant information:** whether certain information may be deleted on the ground it is irrelevant to the scope of the access application.
- **Refusal of access:** whether access to information may be refused on the basis it is exempt information variously on the basis that:
 - disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment; or
 - it was obtained, used or prepared for an investigation by a prescribed crime body or another agency, in the performance of the prescribed functions of a prescribed crime body.

Sufficiency of search

Relevant law

17. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²² However, this right is subject to other provisions of the IP Act and the RTI Act including the grounds on which an agency or Minister may refuse access to documents.²³
18. Access to a document may be refused if the document is nonexistent or unlocatable.²⁴ A document is nonexistent²⁵ if there are reasonable grounds to be satisfied that the document does not exist. A document is unlocatable²⁶ if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.
19. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors including:²⁷
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including:

²² Section 40 of the IP Act.

²³ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

²⁴ Sections 47(3)(e) and 52(1) of the RTI Act.

²⁵ Section 52(1)(a) of the RTI Act.

²⁶ Section 52(1)(b) of the RTI Act.

²⁷ *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*). *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act.

- the nature and age of the requested document/s; and
 - the nature of the government activity the request relates to.²⁸
20. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents. The key factors identified above are also relevant to a consideration of whether an agency or Minister has taken all reasonable steps before concluding that documents are unlocatable.²⁹

Findings

21. In response to Part 1, QPS's decision³⁰ states:

In this case I am satisfied that there are reasonable grounds to believe that this document does not exist. In reaching this decision I have taken account of the following:

- *Searches of QPS databases show no records or incidents for the dates you mentioned in the application*
- *Searches and enquiries have been conducted with:*
 1. *The Ministerial Liaison Officer (MLO), resulting in the advice that no such documents exist. It is likely that if such documents existed, the office of the MLO would retain such documents.*
 2. *Media and Public Affairs Group, resulting in the advice that no such documents exist. The Media and Public Affairs Group is an area that might keep such documents if they existed.*
 3. *The Ethical Standards Command resulting in the advice that no such documents exist.*
 4. *State Crime Command resulting in the advice that no such documents exist. The QPS does not have any part in the process of applications as it is entirely up to the statutory regulatory authority, Blue Card Services.*
 5. *Police Information Centre resulting in the advice that no such documents exist. It is likely that if such documents existed, the Police Information Centre would retain such documents.*

Further, since no such document exists or is expected to exist in current databases, I consider that no such document would be kept in or be retrievable from a backup system.

22. In seeking an external review, the applicant submitted³¹ that the 'records request was obstructed again by QPS ...' and that the 'requested QPS records are needed to set out the particulars of a law suit...'. I have taken this submission to mean that the applicant seeks review of QPS's decision to refuse access to information, including QPS's decision to refuse access to documents which respond to Part 1 on the basis that they are nonexistent.
23. OIC required QPS to provide records of the searches conducted. I have considered these records and I am satisfied that they confirm the nature and results of the searches as described above by QPS. As it appeared that QPS had searched all locations where any existing documents would logically be found, I sought further submissions from the applicant including any specific evidence she was able to present as to the existence of the documents sought.

²⁸ PDE at [37] - [38].

²⁹ Pryor and Logan City Council (Unreported, Queensland Information Commissioner, 8 July 2010) at [20] - [21].

³⁰ At page 2 of QPS's decision.

³¹ Email to OIC dated 9 September 2019 at 9:58 am.

24. The applicant did not provide further submissions or specific evidence as to the existence of the documents sought.
25. In the absence of specific evidence pointing to the existence of further documents, and in light of the enquiries made, the locations identified and the searches undertaken by QPS, and having regard to the factors set out in paragraph 19 above, I am satisfied that all reasonable searches have been conducted for documents responding to Part 1, and that they do not exist. On this basis, access to documents which respond to Part 1 may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act.

Irrelevant information

Relevant law

26. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.³²

Findings

27. QPS deleted small portions of information on 3 pages³³ on the basis that they were irrelevant to the access application.
28. I have reviewed the small portions of information that were deleted and I am satisfied that they constitute information about other individuals and/or matters being dealt with by QPS which do not relate to the applicant or the terms of her access application.
29. As per the terms of her application, the applicant sought information about herself. Given the small portions of information on the 3 pages in no way relates to the applicant and clearly fall outside the terms of the application, I find that they can be deleted from the copies of the documents released to the applicant.³⁴

Refusal of access

Relevant law

30. Access to a document may be refused to the extent it comprises exempt information.³⁵
31. Relevantly, information will be exempt from disclosure if disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment (**System or Procedure Exemption**).³⁶

³² O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

³³ Identified within the decision as pages 27-29 of the documents located responsive to Part 3 of the access application. However, on external review, QPS confirmed that the irrelevant information was contained within pages 27-28 and 30.

³⁴ Under section 88 of the IP Act.

³⁵ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act specifies categories of exempt information.

³⁶ Schedule 3, section 10(1)(i) of the RTI Act.

32. For the System or Procedure Exemption to apply, the following three elements must be satisfied:³⁷
- a) there exists an identifiable system or procedure
 - b) it is a system or procedure for the protection of persons, property or the environment; and
 - c) disclosure of the information could reasonably be expected to prejudice that system or procedure.
33. An exception to the System or Procedure Exemption applies where the information consists of:³⁸
- matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law
 - matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law
 - a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law
 - a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the *Crime and Corruption Act 2001* (Qld) (**CC Act**); or
 - a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
34. Also of relevance to this decision is Schedule 3, section 10(4) of the RTI Act. That section provides that information will also be exempt from disclosure if the information was obtained, used or prepared for an investigation by a prescribed crime body or another agency,³⁹ in the performance of the prescribed functions of a prescribed crime body (**Prescribed Crime Body Exemption**). However, it will not apply where:⁴⁰
- the information consists of information about the applicant; and
 - the investigation has been finalised.

Findings: System or Procedure Exemption

35. QPS refused access to information contained within 1 page (**Category A information**) on the basis the information was subject to the System or Procedure Exemption.⁴¹
36. While I am limited by the operation of the IP Act in the extent to which I can describe the exact content of the Category A Information,⁴² it is information which responds to Part 2 of the application and can broadly be described as flags recorded by QPS officers against the applicant's QPRIME⁴³ record.

³⁷ As set out in *Ferrier and Queensland Police Service* (1996) 3 QAR 350 [27]-[36] under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld), and summarised in *I3C1ST and Department of Community Safety* (Unreported, Queensland Information Commissioner, 30 August 2011) [12] in the context of the RTI Act.

³⁸ Schedule 3, section 10(2) of the RTI Act.

³⁹ Although the Crime and Corruption Commission (**the CCC**) has primary responsibility for dealing with corrupt conduct complaints, the CCC may refer such a complaint to a public official (which includes the chief executive officer of a unit of public administration) to be dealt with by the public official or in cooperation with the CCC, subject to the CCC's monitoring role: sections 45 and 46(2) of the CC Act. Equivalent provisions with the same numbering were contained in the *Crime and Misconduct Act 2001* (Qld), in operation at the time of relevant investigations.

⁴⁰ Schedule 3, section 10(6) of the RTI Act.

⁴¹ Comprising the single page located in response to Part 2 of the application set out at footnote 20 above.

⁴² Section 121 of the IP Act.

⁴³ QPRIME (Queensland Police Records and Information Management Exchange) is a data management system used by QPS.

37. QPS officers who become aware of relevant information⁴⁴ in the performance of their duties in relation to a person, business, vehicle or address are required to enter that information into the relevant QPRIME record.⁴⁵ I am satisfied that the process of recording flags by QPS officers against an individual's QPRIME record comprises an identifiable system or procedure. I consider this system is designed to ensure the safety and security of the subject individuals, the broader community and in some instances, publicly/privately-owned property. For these reasons, I am satisfied that requirements (a) and (b) at paragraph 32 above are met.
38. I am also satisfied that revealing the specific flags recorded by QPS against an individual's QPRIME record could reasonably be expected to allow individuals to use that information to modify their behavior in such a way so as to avoid detection by QPS. I am satisfied that this would compromise the ongoing effectiveness of the warning system. Additionally, Police may be discouraged from entering appropriate warnings, which in turn may compromise public safety and police safety. As a result, I find that disclosure of such information could reasonably be expected to prejudice QPS's warnings system, and requirement (c) at paragraph 32 above is also met.
39. A preliminary view setting out the above was conveyed to the applicant. In response, the applicant submitted⁴⁶ *'Police powers were not used for lawful investigations.'* I have taken this to mean that the applicant is raising public interest arguments relating to revealing or substantiating that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct, and contributing to the administration of justice generally, including procedural fairness, or for the applicant.⁴⁷
40. In view of the applicant's submission above, I have considered whether any of the relevant exceptions to the exemption may apply.⁴⁸ Having considered the Category A Information, I am satisfied that it does not consist of any of the types of specific information referred to in schedule 3, section 10(2) of the RTI Act.
41. Based on the above, I am satisfied that the Category A information comprises exempt information as its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment, that no exceptions to the exemption apply in the circumstances, and that access to it may therefore be refused.⁴⁹
42. Where information is found to be exempt, there is no scope under the legislation to consider public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information. Accordingly, I cannot take any of the applicant's submissions concerning the public interest into account. In addition, the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.⁵⁰

⁴⁴ Relevant information may include the full name and date of birth, including any aliases of the person; current address; any general tendency toward violent or suicidal behaviour, including self-mutilation, violence towards police or other persons; the use or possession of weapons; and any incident of spitting or biting, either directed at persons or otherwise whilst in police custody including in watchhouse cells, police vehicles or establishments.

⁴⁵ See section 1.6.11 of the QPS Operational Procedures Manual Issue 77 Public Edition | 31 July 2020, accessed at <https://www.police.qld.gov.au/queensland-police-service-corporate-documents/operational-policies/operational-procedures-manual> on 1 September 2020.

⁴⁶ Submission to OIC dated 30 June 2020.

⁴⁷ Schedule 4, Part 2, items 6, 16 and 17 of the RTI Act.

⁴⁸ In line with *Commissioner of the Police v Shelton & Anor* [2020] QCA 96.

⁴⁹ Under section 47(3)(a) of the RTI Act.

⁵⁰ Section 118(2) of the IP Act.

Findings: Prescribed Crime Body Exemption

43. QPS refused access to information contained within 1 page⁵¹ and parts of 26 pages⁵² (**Category B Information**) on the basis that the information was subject to the Prescribed Crime Body Exemption.
44. I have reviewed the documents located by QPS which contain the Category B Information. These documents respond to Part 3 of the access application and reveal that the information contained within them relates to two complaints made by the applicant:
- **The First Complaint:**
 - was lodged with the QPS Ethical Standards Command on 12 January 2012
 - after being notified of the First Complaint, the CCC⁵³ referred it to QPS to deal with; and
 - the allegations were categorised as involving misconduct.
 - **The Second Complaint:**
 - was lodged with the CCC on 16 January 2012
 - was referred to QPS to deal with; and
 - the allegations were categorised as involving official or police misconduct.
45. The CCC is a prescribed crime body⁵⁴ and its prescribed functions are broad in relation to suspected corrupt conduct⁵⁵ or police misconduct.⁵⁶ Where the CCC refers a complaint back to an agency, such as QPS, to investigate, subject to the CCC's monitoring role,⁵⁷ all information obtained used or prepared by the agency as part of that investigation will also be exempt information under the Prescribed Crime Body Exemption.
46. In the circumstances of this matter, I am satisfied that the Category B information was obtained, used or prepared by QPS in the performance of the CCC's prescribed functions. While the investigations regarding the First and Second Complaints have been finalised, I am also satisfied that the Category B information is not 'about' the applicant but rather it is about the individuals the subject of the complaints, and therefore the exception to the Prescribed Crime Body Exemption does not apply.
47. For these reasons, I find that the Category B information is exempt information under the Prescribed Crime Body Exemption and access to that information may be refused.⁵⁸

⁵¹ Comprising page 29.

⁵² Comprising pages 1-24, 26 and 30.

⁵³ Formerly known as the Crime and Misconduct Commission.

⁵⁴ The CCC's prescribed functions are defined in schedule 3, section 10(9) of the RTI Act as its crime, intelligence and corruption functions. These functions are specified in Chapter 2 of the CC Act.

⁵⁵ As defined in section 15 of the CC Act. Section 22 of the CC Act provides that a reference to corruption includes, in the context of a complaint or corruption investigation, suspected corruption.

⁵⁶ As defined in schedule 2 of the CC Act.

⁵⁷ The CCC's corruption function involves dealing with complaints about corruption in an appropriate way, having regard to principles set out in section 34 of the CC Act (see section 33 of the CC Act). These principles include the principle of *devolution*—which specifies that action to deal with corruption in a unit of public administration should generally happen within the unit (see section 34(c) of the CC Act). The principle of devolution is enabled by some of the provisions that specify how the CCC may perform this function—namely, provisions enabling the CCC to refer a complaint to a relevant public official or unit of public administration to be dealt with by them, or dealt with by them in cooperation with the CCC, subject to the CCC's monitoring role (sections 35(1)(b),(d) and (e) and 46(2)(b) of the CC Act). The nature of the CCC's monitoring role is set out at section 48 of the CC Act. Similarly, provisions addressing how a public official is to deal with a complaint about corrupt conduct also enable devolution, by providing that the public official has a responsibility to deal with a complaint that is referred to it by the CCC (section of the CC Act) subject to the CCC's monitoring role (section 44(2) of the CC Act).

⁵⁸ Under section 47(3)(a) of the RTI Act.

48. As with the Category A Information, where information is found to be exempt, there is no scope under the legislation to consider public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information and I reiterate that the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.⁵⁹

DECISION

49. I vary QPS's decision by finding that:

- access may be refused to documents responsive to Part 1 of the application on the ground that they are nonexistent under sections 47(3)(e) and 52(1)(a) of the RTI Act
- parts of 3 pages are not relevant to the access application and may be deleted under section 88 of the IP Act; and
- access may be refused to:
 - the Category A Information on the ground that it is exempt under sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the RTI Act; and
 - the Category B Information on the ground that it is exempt under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the RTI Act.

50. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 15 September 2020

⁵⁹ Section 118(2) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
9 September 2019	OIC received the applicant's application for external review.
12 September 2019	OIC received an emailed submission from the applicant.
17 September 2019	OIC received an emailed submission from the applicant.
23 September 2019	OIC received an emailed submission from the applicant.
25 September 2019	OIC notified QPS and the applicant that the application for external review had been received and requested procedural documents. OIC received two emailed submissions from the applicant. OIC separately wrote to the applicant about this external review and other external reviews sought by her.
26 September 2019	OIC received an emailed submission from the applicant. OIC received the requested procedural documents from QPS.
14 October 2019	OIC notified the applicant and QPS that the external review application had been accepted and requested the following from QPS: <ul style="list-style-type: none"> • any records of the searches conducted • a copy of the documents located clearly showing the information to which access was refused; and • any correspondence between the applicant and QPS about the terms of the application OIC received an emailed submission from the applicant.
17 October 2020	OIC received records of the searches conducted and details of correspondence between the applicant and QPS about the terms of the application from QPS.
25 October 2020	OIC received email confirmation from QPS that all documentation requested in OIC's letter dated 14 October 2019 had been provided.
17 January 2020	OIC wrote to QPS advising that a copy of the documents located had not been received by OIC.
21 January 2020	OIC received a copy of the documents located from QPS.
30 January 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
27 February 2020	OIC received an emailed submission from the applicant.
5 March 2020	OIC received an emailed submission from the applicant.
11 March 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
12 March 2020	OIC received an emailed submission from the applicant.
14 April 2020	OIC sought clarification from QPS about two discrepancies identified by OIC between the reasons set out in QPS's decision notice and the mark-up on the copy of the documents located provided to OIC.

Date	Event
21 April 2020	OIC received a submission from QPS addressing the two discrepancies identified by OIC.
27 May 2020	OIC sought further clarification from QPS about the two discrepancies identified by OIC.
1 June 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
19 June 2020	OIC received a further submission from QPS addressing the two discrepancies identified by OIC.
29 June 2020	OIC conveyed a preliminary view to the applicant.
30 June 2020	OIC received an emailed submission from the applicant.
6 July 2020	OIC received an emailed submission from the applicant. OIC wrote to the applicant about this external review and other external reviews sought by her.
9 July 2020	OIC received an emailed submission from the applicant.
20 July 2020	OIC received two emailed submissions from the applicant.
11 August 2020	OIC received an emailed submission from the applicant.
17 August 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
3 September 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
4 September 2020	OIC received an emailed submission from the applicant.