



Decision and Reasons for Decision

Citation:	<i>B97 and Queensland Police Service [2022] QICmr 19 (1 April 2022)</i>
Application Number:	316109
Applicant:	B97
Respondent:	Queensland Police Service
Decision Date:	1 April 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - access sought to warrant application concerning the applicant - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure - whether information exempt - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> - sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for certain information about a search warrant issued in February 2020.²
2. In response to the access application, QPS located the relevant search warrant application (and related checklist) comprising eight pages in total. It released³ one page of the search warrant application in full, and the remaining seven pages were partially⁴ refused on the basis that disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (**Lawful Method or Procedure Exemption**).⁵

¹ By way of application dated 5 June 2020.

² Specifically, the applicant sought the file names of the material which prompted the warrant, the application to the Magistrate including grounds in favour or against the warrant application, and all documents pertaining to the decision to raise the warrant.

³ Decision notice dated 31 May 2021. As noted under the heading '*Reviewable Decision*' below, this decision was made after the end of the processing period, and accordingly the decision under review is a deemed refusal of access.

⁴ I acknowledge that on pages 2, 4, 7 and 8 the only information released was the footer.

⁵ Section 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009 (Qld)* (**RTI Act**). QPS also relied on section 47(3)(b) and section 49 of the RTI Act (that disclosure would, on balance, be contrary to the public interest.)

3. The applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. In his application for external review, the applicant disputed the application of the Lawful Method or Procedure Exemption. In relation to the information he is seeking, he noted:⁷

I simply want to know WHAT IT WAS that prompted the Warrant. I absolutely reject the suggestion that the QPS is unable to tell me WHAT IT WAS without "prejudicing methods and procedures".

I do not accept that the one simple piece of information I am requesting cannot be left unredacted – whether it is a filename or some other description saying exactly WHAT IT WAS.

4. I have considered the information the applicant is seeking, along with the parties' submissions. For the reasons set out below, I vary QPS' decision, and refuse access to the information sought by the applicant under section 67(1) of the IP Act⁸ and sections 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

Background

5. In his access application,⁹ the applicant explained that he was seeking information in relation to a search warrant issued in February 2020. The warrant application related to a suspicion of possession of child exploitation material. As noted above, the applicant's key concern is what prompted this warrant.
6. During this review, OIC proposed to QPS settlement of the matter¹⁰ by release of certain information of particular concern to the applicant. QPS did not accept this informal resolution proposal and maintained its objection to disclosure.¹¹
7. Significant procedural steps in the review are set out in the Appendix to this decision.

Reviewable decision

8. QPS originally refused to deal with the applicant's access application.¹² The applicant applied to OIC for external review of QPS' refusal to deal decision, and this review was resolved informally,¹³ with QPS agreeing to recommence processing of the application from 31 March 2021.
9. QPS then did not make its decision within the recommenced processing period,¹⁴ and accordingly, on the last day of the processing period – 14 April 2021 – it was taken to have made a deemed decision¹⁵ refusing access to information sought by the applicant.¹⁶ This deemed decision is the decision under review.
10. QPS' purported decision notice dated 31 May 2021 sets out its position on access (as explained at paragraph 2 above).

⁶ Application received 4 June 2021.

⁷ Application received 4 June 2021.

⁸ Under this section, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

⁹ Dated 5 June 2020.

¹⁰ As required under section 103(1) of the IP Act, by letter dated 8 July 2021.

¹¹ By email dated 5 August 2021 and submission dated 17 November 2021.

¹² Under section 59 of the IP Act.

¹³ Under section 103(1)(a) of the IP Act.

¹⁴ Rather, the decision notice was issued on 31 May 2021.

¹⁵ Under section 66 of the IP Act.

¹⁶ I note that QPS requested a longer period to consider the application on 4 May 2021, but this was after the end of the processing period.

Evidence considered

11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
12. On three occasions, we also sought to clarify with QPS the way that we could describe the information in issue for the purposes of our analysis in these reasons.¹⁷ QPS expressed concern about describing the information in issue, even in general terms, due to the potential prejudice to QPS' investigative methods.¹⁸ For this reason, and given my obligations concerning information in issue under the IP Act,¹⁹ I am constrained in the level of detailed analysis I am able to provide in these reasons.
13. I have had regard to the *Human Rights Act 2019 (Qld) (HR Act)*,²⁰ particularly the right to seek and receive information as recognised in section 21 of the HR Act. I consider that a decision maker, when observing and applying the law prescribed in the IP Act and the RTI Act, '*will also be respecting, and acting compatibly with, the applicant's right to freedom of expression*' under the equivalent provisions of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.²¹ I also note the observations made by Bell J on the interaction between the Victorian equivalents of the Queensland IP and RTI Acts and HR Act:²² '*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*'.

Information in issue

14. As noted above, on external review, the applicant has indicated that he '*simply want[s] to know WHAT IT WAS that prompted the Warrant*'.²³ Accordingly, the only information in issue in this review, and considered in this decision, is the refused information that sets out the basis for the warrant application (**information in issue**).²⁴

Issue for determination

15. The issue for determination is whether access to the information in issue may be refused on the ground that it is exempt under the Lawful Method or Procedure Exemption.²⁵
16. QPS' position is also that²⁶ disclosure of some of the information in the warrant application would, on balance, be contrary to the public interest.²⁷ Given my findings concerning the Lawful Method or Procedure Exemption, it is not necessary to consider this alternative ground of refusal.²⁸

¹⁷ Emails to QPS on 8 February 2022, 17 February 2022, and 18 February 2022.

¹⁸ Schedule 3, section 10(1)(f) of the RTI Act.

¹⁹ Section 121 (1)(a) of the IP Act.

²⁰ Relevant provisions of which commenced on 1 January 2020.

²¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (*XYZ*) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

²² *XYZ* at [573].

²³ Application received on 4 June 2021.

²⁴ This information appears on page 3-4 of the information located by QPS, at paragraph 16 to 21 of the warrant application.

²⁵ Sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the RTI Act.

²⁶ As set out in its purported decision notice of 31 May 2021.

²⁷ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

²⁸ See *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 [15]-[17].

Relevant law

17. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁹ This right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to information.³⁰ Relevantly, access to information may be refused to the extent it comprises exempt information.³¹
18. The Lawful Method or Procedure Exemption applies if the following requirements are met:³²
 - a) there exists an identifiable method or procedure
 - b) it is a method or procedure for the preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - c) disclosure of the information could reasonably be expected to prejudice the effectiveness of that method or procedure.
19. However, information will not be exempt if one of the exceptions listed in schedule 3, section 10(2) of the RTI Act apply.

Findings

20. Having considered the information in issue, and the submissions provided by QPS on external review,³³ I am satisfied that there exists a lawful method or procedure used by QPS for detecting or investigating contraventions, or possible contraventions of the law, specifically concerning the possession and sharing of child exploitation material. I am unable to further describe these methods or procedures, without disclosing the content of the information in issue.³⁴
21. Further, having considered the material before me, I am satisfied that disclosure of the information in issue in this matter could reasonably be expected to prejudice the effectiveness of that method or procedure. I acknowledge that the applicant rejects this, as noted at paragraph 3 above. Once again, I am constrained in the level of analysis I am able to provide concerning the expected prejudice, as to do so would reveal the information in issue.³⁵ However, based on the information before me,³⁶ I am satisfied that revealing the information in issue could reasonably be expected to allow an individual to modify their behaviour to avoid detection. This would prejudice the ongoing effectiveness of QPS' method for detecting and investigating contraventions of the law in relation to child exploitation material.
22. I note that in some cases, information concerning police methodology is available via court disclosure processes as the applicant contends.³⁷ However, in this case, this has not occurred. Based on the material before me, and the current factual circumstances, I am satisfied that the relevant prejudice could reasonably be expected to arise from disclosure.

²⁹ Section 40 of the IP Act.

³⁰ Section 67(1) of the IP Act and section 47 of the RTI Act.

³¹ Section 47(3)(a) of the RTI Act.

³² As set out in *Harris and Queensland Police Service* [2014] QICmr 10 (18 March 2014) at [11].

³³ Dated 5 August 2021, 17 November 2021, 17 February 2022 and 10 March 2022.

³⁴ Section 121(3) of the IP Act.

³⁵ Section 121(3) of the IP Act.

³⁶ Including the information in issue, and QPS' submissions dated 5 August 2021, 17 November 2021, 17 February 2022 and 10 March 2022.

³⁷ Submission dated 8 October 2021.

23. I have reviewed schedule 3, section 10(2) of the RTI Act, and I am satisfied, given the nature of the information in issue, that the exceptions listed do not apply in the circumstances of this case.³⁸ Given the applicant's submissions³⁹ concerning the intrusive nature of the search, I have specifically considered schedule 3, section 10(2)(a) which provides that information is not exempt where it reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law. Having considered the information in issue, I am satisfied that it does not reveal this, and the exception in schedule 3, section 10(2)(a) does not apply in this case.
24. The applicant submitted that he requires the information to defend his personal integrity and character and is seeking the information to defend himself against serious accusations.⁴⁰ As there has been no prosecution resulting from this warrant application, the applicant submitted⁴¹ that this heightens the need for transparency by QPS. He has also submitted that "Lawful methods & procedures" *must be balanced against the rights of individuals*.⁴² The applicant has also made submissions concerning the power imbalance, given that he has been forced to disclose hundreds of thousands of documents to QPS, and QPS has refused to give him access to the information he is seeking.⁴³
25. In relation to these submissions, I acknowledge that the IP Act is to be administered with a pro-disclosure bias.⁴⁴ However, the exemptions in schedule 3 of the RTI Act represent the types of information which Parliament has already decided would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption have been established, as I have found in this case, the legislation precludes me from considering public interest factors, no matter how compelling they may be.⁴⁵
26. Finally, I acknowledge the applicant's submission that the Victorian case of *Smith v Thompson & Anor (No 2)*⁴⁶ supports the release of the information in issue. Quite aside from the matter being from a different jurisdiction, and relating to the law of public interest immunity, the relevant finding of fact in that matter was that the affidavit in issue **did not** reveal police methodology. Accordingly, I do not consider this has relevance to this matter.
27. On the basis of the above, I am satisfied that the Lawful Method or Procedure Exemption applies to the information in issue.

DECISION

28. For the reasons set out above, I vary QPS' decision and find that access to the information in issue may be refused under section 67(1) of the IP Act, as it comprises exempt information under section 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the RTI Act.

³⁸ Schedule 3, section 10(2) of the RTI Act provides circumstances in which the exemption does not apply. None apply in this case.

³⁹ Submission received 4 June 2021 and 8 October 2021.

⁴⁰ Submission dated 8 October 2021.

⁴¹ Submission dated 8 October 2021.

⁴² Submission dated 8 October 2021.

⁴³ Submission received on 4 June 2021 and 26 September 2021.

⁴⁴ Section 64 of the IP Act.

⁴⁵ Further, under section 118 of the IP Act, the Information Commissioner does not have the power to direct that access to an exempt document be granted.

⁴⁶ [2021] VSC 632.

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

Christine Jones
A/Assistant Information Commissioner

Date: 1 April 2022

APPENDIX

Significant procedural steps

Date	Event
4 June 2021	OIC received the external review application. OIC notified the applicant and QPS that the application for review had been received and requested processing documents from QPS.
7 June 2021	OIC received the processing documents from QPS.
11 June 2021	OIC notified the applicant and QPS that the external review had been accepted and requested the information in issue from QPS.
13 June 2021	OIC received a submission from the applicant.
14 June 2021	OIC received the information in issue from QPS.
18 June 2021	OIC received correspondence from the applicant.
8 July 2021	OIC provided a preliminary view to QPS.
5 August 2021	QPS provided a response to OIC's preliminary view.
6 August 2021	OIC provided QPS with an extension of time for a further submission in response to the preliminary view.
25 August 2021	OIC received an email from the applicant.
27 August 2021	OIC conveyed a preliminary view to the applicant.
26 September 2021	OIC received an email from the applicant.
7 October 2021	OIC conveyed a preliminary view to the applicant.
8 October 2021	OIC received submissions from the applicant in response to the preliminary view.
28 October 2021	OIC provided QPS with a Notice to Produce.
17 November 2021	OIC received QPS' submission in response to the preliminary view of 5 August 2021.
15 December 2021	OIC conveyed a further preliminary view to the applicant. The applicant requested a formal decision to finalise the review.
8 February 2022	OIC confirmed the scope of the decision with the applicant and wrote to QPS seeking agreement concerning how to describe the information in issue in the decision.
17 February 2022	OIC contacted QPS concerning the description of the information in issue in the decision. QPS provided a response.
18 February 2022	OIC contacted QPS concerning the description of the information in issue in the decision.
10 March 2022	QPS provided a response.