



Decision and Reasons for Decision

Citation:	<i>P86 and Queensland Police Service [2022] QICmr 25 (11 May 2022)</i>
Application Number:	315832
Applicant:	P86
Respondent:	Queensland Police Service
Decision Date:	11 May 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - application for disciplinary investigation information - information provided by or about other individuals - accountability, transparency, fair treatment and administration of justice - personal information, privacy and ability to obtain information - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Services (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access documents relating to two disciplinary investigations in which he was involved.
2. QPS did not make a decision within the required statutory timeframe and was therefore taken to have made a deemed decision refusing access to the requested information.²
3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' deemed decision.³ On external review, QPS located relevant documents and, as part of OIC's informal resolution process,⁴ QPS disclosed some of those documents to the applicant, subject to the redaction of certain information.⁵
4. The applicant continues to seek access to some, but not all, of the undisclosed information.

¹ The access application is dated 24 November 2020 and became compliant on 3 December 2020.

² Section 66(1) of the IP Act. In accordance with section 66(2) of the IP Act, QPS provided a notice of the deemed decision to the applicant on 13 January 2021.

³ External review application dated 13 January 2021.

⁴ Under section 103(1) of the IP Act, the Information Commissioner is required to identify opportunities and processes for early resolution and to promote settlement of external reviews.

⁵ These disclosures occurred on 29 June 2021, 4 January 2022 and 24 February 2022.

5. For the reasons set out below, I vary QPS' decision and find that access to the information remaining in issue may be refused on the ground that disclosure would, on balance, be contrary to the public interest.

Background

6. The investigations which are the subject of the access application relate to an event in 2003 involving the applicant and an incident involving the applicant and another officer which occurred in 2004. The applicant participated in these investigation processes and was notified of the investigation outcomes, namely that disciplinary charges against him had been recommended. Due to the applicant's retirement from QPS before a disciplinary hearing had commenced, the recommended disciplinary charges remained unresolved. As a result, no findings were made against the applicant in respect of the matters which were the subject of the recommended disciplinary charges.
7. During the course of separate legal proceedings, the applicant received a significant number of the documents which QPS located as relevant to the access application.⁶ On external review, these previously disclosed documents were identified and excluded from consideration.⁷
8. The significant procedural steps taken during this review are set out in the Appendix.

Reviewable decision and evidence considered

9. The decision under review is the deemed decision QPS is taken to have made under section 66 of the IP Act.
10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
11. The applicant provided a number of submissions to OIC in support of his case.⁸ I have carefully reviewed those submissions and taken into account the parts of those submissions which are relevant to the issues for determination. The applicant also seeks to raise concerns beyond the jurisdiction of the Information Commissioner, and which fall outside the scope of this review.⁹ In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issue for determination.
12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹²

⁶ To avoid identifying the applicant, I am unable to provide further details about these proceedings. I have, however, carefully considered the information provided by the applicant in respect of those proceedings.

⁷ OIC confirmed this to the applicant in emails dated 24 August 2021 and 26 November 2021.

⁸ As set out in the Appendix.

⁹ For example, the applicant's submissions dated 27 April 2021 and 12 January 2022 raised concerns that QPS employs a '*delay strategy*' when requested to provide information and that there were unreasonable QPS delays in respect of a previous access application he had made.

¹⁰ Section 21(2) of the HR Act.

¹¹ *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].

¹² I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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 and issue for determination

13. The information which remains in issue¹³ comprises 127 fully refused pages and one partly refused page (**information in issue**).
14. I am constrained as to the level of detail I can provide about the information in issue,¹⁴ however, I can confirm that it broadly comprises:
 - records of interviews conducted with individuals other than the applicant during the investigations that are the subject of the access application (**Interview Records**);¹⁵ and
 - portions of information about individuals other than the applicant, including their names, qualifications and other identifying information, appearing in a one page police roster for a fortnight in October 2003 (**Third Party Information**).
15. The applicant contends that he is entitled to access the information in issue. In support of this position, the applicant has referenced¹⁶ his entitlement to access '*information related to disciplinary matters*' under an internal QPS Policy.¹⁷ While it may be open to the applicant to seek access to certain information under separate processes (such as those in the referenced QPS Policy¹⁸), the access right under the IP Act is not meant to replicate other avenues of information access.
16. The issue for determination is whether access to the information in issue may be refused under the IP Act on the basis that disclosure of this information would, on balance, be contrary to the public interest.

Relevant law

17. Under section 40 of the IP Act, an individual has a right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.¹⁹ This right is subject to some limitations, including grounds on which access to information can be refused.²⁰
18. One ground of refusal arises where disclosing information would, on balance, be contrary to the public interest.²¹ The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is

¹³ Following QPS' disclosure of information to the applicant and the exclusion of documents the applicant received in separate legal proceedings (as noted in paragraphs 3 and 7 above), the applicant advised OIC (by email dated 6 January 2022) that he only continued to seek access to the undisclosed information on pages numbered 191-322 in the documents QPS had disclosed to him. QPS subsequently released four of those pages to the applicant.

¹⁴ Section 121 of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

¹⁵ Comprising 127 full pages.

¹⁶ Submissions dated 2 February 2022. The applicant also referenced his entitlement to receive information '*as per QPS HR Manual*' in his submissions dated 3 August 2021.

¹⁷ Specifically, section 5.4 of a QPS Policy titled '*2013/35 Access and Disclosure of Human Resource Information – Personnel Administration*'. A copy of that policy may be accessed at:

<https://www.ppsba.qld.gov.au/rti/pubscheme/Documents/Access%20and%20Disclosure%20of%20HR%20Information.pdf> (accessed 24 March 2022).

¹⁸ In this regard, I also note that the applicant has received information via separate court processes.

¹⁹ '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

²⁰ Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the Right to Information Act 2009 (Qld) (**RTI Act**). The grounds on which access can be refused are set out in section 47 of the RTI Act.

²¹ Sections 47(3)(b) and 49 of the RTI Act.

common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.²²

19. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²³
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Interview Records

Irrelevant factors

20. I have not taken any irrelevant factors into account in making my decision with respect to the Interview Records.

Factors favouring disclosure

21. The applicant submits that the Interview Records should be released because he is the *'only subject officer relating to these documents'*²⁴ and *'[a]ll information has been provided by Police officers only and matters solely relate to me'*.²⁵
22. While I am limited in the level of detail I can provide about the Interview Records,²⁶ I can confirm that some, but not all, of this information relates to the applicant and comprises his personal information. To the extent the Interview Records contain the applicant's personal information, this gives rise to a public interest factor favouring disclosure,²⁷ to which I afford significant weight. However, this personal information of the applicant is inextricably intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (which raises the nondisclosure factors discussed below).
23. The RTI Act recognises that the following factors favouring disclosure will arise where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the government's accountability²⁸
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;²⁹ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁰

²² However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, *'The Public Interest: We Know It's Important, But Do We Know What It Means'* (2006) 48 AIAL Forum 12, 14.

²³ Section 49(3) of the RTI Act.

²⁴ Submissions dated 6 January 2022.

²⁵ Submissions dated 12 January 2022.

²⁶ Section 121(3) of the IP Act.

²⁷ Schedule 4, part 2, item 7 of the RTI Act.

²⁸ Schedule 4, part 2, item 1 of the RTI Act.

²⁹ Schedule 4, part 2, item 3 of the RTI Act.

³⁰ Schedule 4, part 2, item 11 of the RTI Act.

24. The applicant argues that '*it is in the public interest to provide disclosure to provide accountability to these matters*'³¹ and he submits that '*accountability and scrutiny favours disclosure*'.³²
25. QPS must be transparent and accountable in how it deals with complaints it receives about the conduct of its officers. QPS has disclosed a significant amount of information to the applicant about the investigations which are the subject of the access application. In particular, the disclosed information records details of the investigated conduct and the investigation process, some of the information obtained during the investigations (including information provided by the applicant) and the investigation recommendations. I consider disclosure of this information has substantially advanced QPS' accountability and transparency, enabling scrutiny of how QPS investigates complaints about officer conduct and the reasoning for the recommended disciplinary charges. While I accept that disclosure of the Interview Records may provide the applicant with a more complete picture of the information that was available to QPS in the investigations, I consider disclosure of that information, given its particular nature, would not further advance these accountability and transparency factors to any significant degree. Accordingly, I afford these disclosure factors moderate weight.
26. A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person.³³ For this factor to apply, it must be established that the applicant has suffered some kind of wrong in respect of which a remedy is, or may be, available under the law, that there is a reasonable basis for seeking to pursue any such remedy and that disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.³⁴
27. The applicant has not identified that he is wishing to pursue any particular remedy and there is no evidence before me to indicate that disclosure of the Interview Records is required to enable the applicant to pursue or evaluate any legal remedy.³⁵ For these reasons, I do not consider this factor favouring disclosure³⁶ applies.
28. The RTI Act also gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁷ and contribute to the administration of justice generally, including procedural fairness.³⁸ As the applicant submits that '*these matters have been intentionally left unresolved by the QPS for almost 20 years*' and this is affecting his employment opportunities,³⁹ I have considered whether these public interest factors apply to favour disclosure of the Interview Records.
29. As noted above, a hearing of the recommended disciplinary charges did not proceed due to the applicant's retirement from QPS. While this appears to be the reason for matters associated with the investigations being '*unresolved*', I also note that no formal findings

³¹ Submissions dated 12 January 2022.

³² Submissions dated 2 February 2022.

³³ Schedule 4, part 2, item 17 of the RTI Act.

³⁴ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17]; confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16]].

³⁵ I acknowledge that the applicant has provided information to OIC about the separate legal proceedings referenced in paragraph 7 above. However, on the information before me, those referenced legal proceedings are finalised and the applicant has not identified any further remedies he wishes to pursue, or evaluate, or how the Interview Records would be required to enable that to occur.

³⁶ Schedule 4, part 2, item 17 of the RTI Act.

³⁷ Schedule 4, part 2, item 10 of the RTI Act.

³⁸ Schedule 4, part 2, item 16 of the RTI Act.

³⁹ Submissions dated 12 January 2022.

were made against the applicant as a result. In these circumstances, having considered the information which has been disclosed by QPS and the applicant's submissions (including information related to the separate legal proceedings), I am not satisfied that disclosure of the Interview Records would advance, in any meaningful way, the applicant's fair treatment in his dealings with QPS and/or other government agencies and bodies.

30. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.⁴⁰ In this case, the applicant participated in the relevant investigations. The applicant was also notified of the investigation recommendations, however, due to his retirement from QPS, no disciplinary findings were made against him. Taking this into consideration, as well as the nature of the Interview Records and information already disclosed to the applicant,⁴¹ I am not satisfied that disclosure of the Interview Records would substantially contribute to procedural fairness for the applicant, or any other person.
31. For these reasons, while these factors relating to fair treatment and procedural fairness may apply,⁴² I afford them only low weight.
32. Further factors favouring disclosure arise in circumstances where disclosing information could reasonably be expected to allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of QPS or its officers.⁴³ While the applicant's submissions do not address these factors, I have considered them given the applicant's submission that these disciplinary matters have been intentionally left unresolved. Noting that a hearing of the recommended disciplinary charges did not proceed due to the applicant's retirement, and having carefully reviewed the Interview Records, I am satisfied that there is nothing within those records which gives rise to an expectation that their disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. On this basis, I do not consider these factors apply to favour disclosure of the Interview Records.
33. I have carefully considered all other factors listed in schedule 4, part 2 of the RTI Act and can identify no other public interest considerations which favour disclosure of the Interview Records.⁴⁴

Factors favouring nondisclosure

34. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm.⁴⁵ A further factor

⁴⁰ The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J). Accordingly, the person who is the subject of a decision must be provided with adequate information that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.

⁴¹ In this external review and during the separate legal proceedings.

⁴² Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴³ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁴⁴ I cannot see how disclosing the Interview Records could, for example, contribute to a positive and informed debate on important issues or matters of serious interest or ensure effective oversight of expenditure of public funds (schedule 4, part 2, items 2 and 4 of the RTI Act); reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); reveal health risks or measures relating to public health and safety (schedule 4, part 2, item 14 of the RTI Act); or contribute to the enforcement of the criminal law (schedule 4, part 2, item 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Interview Records.

⁴⁵ Schedule 4, part 4, section 6(1) of the RTI Act.

favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁶

35. The Interview Records comprise the information provided to disciplinary investigations by individuals other than the applicant. I am satisfied this information comprises the personal information of those other individuals. As noted above, some of this information appears intertwined with the applicant's personal information.
36. The applicant submits that '*... all witnesses were Police officers and their names would not normally be withheld*'.⁴⁷ While I am limited in the level of detail I can provide about the Interview Records,⁴⁸ I can confirm this information comprises more than the names of these other individuals—it includes the observations, opinions and recollections of these other individuals provided in the sensitive context of internal disciplinary investigations. Although information relating to the day-to-day work duties and responsibilities of public sector officers is generally disclosed under the RTI Act,⁴⁹ I do not consider that information provided by an officer at an interview conducted for a workplace complaint process is wholly related to that officer's routine work duties.⁵⁰
37. The applicant also contends that, as these Interview Records relate to an investigation conducted many years ago and this information was obtained under disciplinary processes that have now been superseded, these records should be disclosed to him.⁵¹ While I accept that the Interview Records relate to historical matters and that QPS' policies and procedures relating to disciplinary matters have changed over time, I do not consider this displaces the expectation these individuals would have had that the information they provided to QPS in these interviews would only be used in the investigation processes (and in any subsequent disciplinary processes).⁵²
38. Having carefully considered the Interview Records and the context in which that information was obtained by QPS, I am satisfied that disclosure of the Interview Records would be a significant intrusion into the privacy of these other individuals. I also consider that the extent of the harm that could be anticipated from disclosing this information (which includes the identities, observations, recollections and opinions of these individuals) under the IP Act would be significant. I acknowledge that the applicant may be aware of some of the information in the Interview Records, by reason of his involvement in the investigation processes. However, I do not consider this reduces the weight of these nondisclosure factors to any significant degree, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
39. For these reasons, I afford these nondisclosure factors relating to personal information and privacy significant weight.⁵³

⁴⁶ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others (Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

⁴⁷ Submissions dated 2 February 2022. The applicant also raised a similar argument in his submissions dated 25 November 2021.

⁴⁸ Section 121(3) of the IP Act.

⁴⁹ *Mewburn and Department of Natural Resources and Mines* [2016] QICmr 31 (19 August 2016) at [43]-[47]; and *E104YO and Queensland Fire and Emergency Services* [2018] QICmr 42 (16 October 2018) at [19].

⁵⁰ See, for example, *Castley-Wright and Mareeba Shire Council* [2018] QICmr 25 (22 May 2018) at [22]; *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 12 April 2013) at [71]; and *E104YO and Queensland Fire and Emergency Services* [2018] QICmr 42 (16 October 2018) at [19].

⁵¹ Submissions dated 2 February 2022. I note that, at the time of these investigations, the disciplinary processes were regulated by the *Police Service Administration Act 1990* (Qld) and QPS' Human Resource Management Manual.

⁵² Under section 121(3) of the IP Act, I am unable, in these reasons, to provide any further information about the circumstances in which these interviews were conducted.

⁵³ Schedule 4, part 3, item 3 and part 3, item 6(1) of the RTI Act.

40. The RTI Act also recognises that a public interest harm can result from the disclosure of information that could have a substantial adverse effect on the management or assessment by an agency of its staff.⁵⁴ A public interest factor favouring nondisclosure will also arise where disclosing information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.⁵⁵
41. The applicant submits that, as *'the entire disciplinary process under which these complaints were made, has been superceded'*, disclosing the Interview Records *'will have no effect on any functions of the QPS'*.⁵⁶ QPS must be able to consider and discuss officer conduct complaints discreetly and ensure that disclosure of information does not unduly impact its ongoing employment relationship with its staff. Although certain coercive powers may be available to investigators when conducting investigations of this nature, information is often obtained cooperatively. As noted above, it is reasonable to expect that these individuals provided information to the QPS investigations on the understanding it would be used only for the investigations (and in any subsequent disciplinary processes), but that it would not otherwise be disclosed. I do not consider that changes over time to QPS' internal disciplinary processes would have displaced that expectation. In this context, I consider that disclosing the Interview Records under the IP Act, where there can be no restriction on use, dissemination or re-publication, would have a significant and negative impact on QPS' ability to manage its staff in relation to future disciplinary investigations. On this basis, I afford significant weight to these nondisclosure factors.

Balancing the public interest

42. I have taken into account that the IP Act is to be administered with a pro-disclosure bias.⁵⁷ For the reasons set out above, I am satisfied that privacy considerations and the protection of the personal information of other individuals warrant significant weight in favour of nondisclosure of the Interview Records, particularly given the disciplinary investigation context of this information. I also consider the nondisclosure factors relating to QPS' management function are deserving of significant weight.
43. On the other hand, I have afforded significant weight of the factor favouring disclosure of the applicant's personal information within the Interview Records, however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional factors which favour disclosure of the Interview Records (being those relating to QPS' accountability and transparency, fair treatment and the general administration of justice). However, in the circumstances of this matter and taking into account the nature of the Interview Records, I have afforded these factors only moderate or low weight.
44. On balance, I am satisfied that the factors favouring nondisclosure outweigh the factors which favour disclosure. Accordingly, I find that disclosure of the Interview Records would, on balance, be contrary to the public interest and access may be refused on that basis.⁵⁸

⁵⁴ Schedule 4, part 4, section 3(c) of the RTI Act.

⁵⁵ Schedule 4, part 3, item 19 of the RTI Act.

⁵⁶ Submissions dated 2 February 2022.

⁵⁷ Section 64 of the IP Act.

⁵⁸ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

Third Party Information

Irrelevant factors

45. I have taken no irrelevant factors into account in making my decision with respect to the Third Party Information.

Factors favouring disclosure

46. The police roster in which the Third Party Information appears relates to a period of time over 18 years ago. QPS has disclosed to the applicant those parts of the roster which contain the applicant's personal information. The undisclosed information in this document (being the Third Party Information) comprises names, qualifications and other personal information of individuals other than the applicant.⁵⁹ Given the limited nature of the Third Party Information, I do not consider its disclosure would advance QPS' accountability and transparency in any meaningful way and, accordingly, I afford no weight to the public interest factors relating to QPS' accountability and transparency of QPS.⁶⁰
47. I have carefully considered all other factors listed in schedule 4, part 2 of the RTI Act and can identify no other public interest considerations which favour disclosure of the Third Party Information.⁶¹

Factors favouring nondisclosure

48. As mentioned above, the Third Party Information comprises information about other individuals. This gives rise to factors favouring nondisclosure relating to protecting other individuals' personal information⁶² and safeguarding the right to privacy of those individuals.⁶³
49. The QPS work roster is a document that was provided for the investigations which are the subject of the access application. The Third Party Information identifies QPS officers who were rostered on duty with the applicant at a particular point in time and includes personal details about those other individuals. I am satisfied that, in these circumstances, disclosure of the Third Party Information would disclose personal information of those other individuals and prejudice their privacy. Taking into account the age of this information and the context in which it was provided to QPS, I afford moderate weight to these factors which favour nondisclosure.⁶⁴

⁵⁹ Accordingly, the public interest factor in schedule 4, part 2, item 7 of the RTI Act, related to providing individuals with access to their personal information, does not apply.

⁶⁰ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁶¹ I cannot see how disclosing the Third Party Information could, for example, contribute to a positive and informed debate on important issues or matters of serious interest or ensure effective oversight of expenditure of public funds (schedule 4, part 2, items 2 and 4 of the RTI Act); allow or assist an inquiry into possible deficiencies in the conduct or administration, or reveal or substantiate misconduct or negligent, improper or unlawful conduct, of an agency or official (schedule 4, part 2, items 5 and 6 of the RTI Act); reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); reveal health risks or measures relating to public health and safety (schedule 4, part 2, item 14 of the RTI Act); advance the fair treatment of individuals in accordance with the law in their dealings with agencies or contribute to the administration of justice generally or for a person (schedule 4, part 2, items 10, 16 and 17 of the RTI Act); or contribute to the enforcement of the criminal law (schedule 4, part 2, item 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Third Party Information.

⁶² Schedule 4, part 4, section 6(1) of the RTI Act.

⁶³ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁴ Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

Balancing the public interest

50. I have again taken into account the pro-disclosure bias in deciding whether to give access to documents under the IP Act. I have afforded moderate weight of the factors favouring nondisclosure which relate to protecting the personal information and privacy of other individuals. On the other hand, I have not identified any factors favouring disclosure of the Third Party Information which are deserving of weight. On balance, I consider the factors favouring disclosure are determinative. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁶⁵

DECISION

51. For the reasons set out above, I vary⁶⁶ QPS' deemed decision and find that access to the information in issue may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

T Lake
Acting Assistant Information Commissioner

Date: 11 May 2022

⁶⁵ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁶⁶ As a delegate of the Information Commissioner, under section 139 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
13 January 2021	OIC received the external review application.
28 January 2021	OIC notified the applicant and QPS that the application for external review had been accepted and requested information from QPS.
10 May 2021	OIC received requested information from QPS.
18 June 2021	OIC notified the applicant that QPS had agreed to disclose some of the requested information and asked the applicant to confirm with OIC, after considering that information, if he wished to continue with the external review.
29 June 2021	OIC received confirmation from QPS that information had been released to the applicant.
1 July 2021	OIC received the applicant's submissions and his request to continue the external review.
21 July 2021	OIC asked the applicant to identify the particular undisclosed information he continued to seek access to.
3 August 2021	OIC received the applicant's further submissions.
11 August 2021	OIC requested further information from QPS about documents previously disclosed to the applicant in separate legal proceedings (i.e. disclosures made outside of the external review process).
18 August 2021	OIC received the requested information from QPS.
24 August 2021	OIC asked the applicant to notify OIC if he required OIC to consider listed documents, which had previously been fully disclosed to the applicant in the separate legal proceedings.
23 November 2021	OIC notified QPS that the listed documents had been excluded from consideration and conveyed a preliminary view to QPS about the remaining information.
25 November 2021	OIC received the applicant's further submissions.
26 November 2021	OIC provided an update to the applicant and confirmed that the previously disclosed documents had been excluded from further consideration.
16 December 2021	OIC received QPS' submissions.
22 December 2021	OIC asked QPS release the further information it had agreed to disclose to the applicant. OIC conveyed a preliminary view to the applicant and asked the applicant to identify any particular information to which he continued to seek access.
6 January 2022	OIC received the applicant's further submissions, which confirmed he continued to seek access only to the undisclosed information on pages 191-322 of the documents released by QPS.

Date	Event
11 January 2022	OIC conveyed a further preliminary view to the applicant and invited him to provide further submissions if he did not accept the preliminary view.
12 January 2022	OIC received the applicant's further submissions. OIC asked QPS to confirm whether any of this remaining information had been previously disclosed to the applicant outside of the external review process.
18 January 2022	OIC asked QPS whether it was prepared to disclose limited further information to the applicant.
31 January 2022	OIC received QPS' agreement to disclose the limited further information to the applicant.
2 February 2022	OIC conveyed a further preliminary view to the applicant and invited him to provide further submissions if he maintained his disagreement with the preliminary view. OIC received the applicant's further submissions.
4 February 2022	OIC confirmed the preliminary view to the applicant and confirmed a formal decision would be issued to finalise the review.
24 February 2022	OIC received confirmation that QPS had disclosed the limited further information to the applicant.