



## Decision and Reasons for Decision

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**Application Number:** 310967

**Applicant:** Troiani

**Respondent:** Queensland Police Service

**Decision Date:** 21 August 2012

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for access to a report regarding a complaint made to police - investigation finalised by police due to unsubstantiated allegations - access refused to personal information of other individuals - whether the public interest in enhancing an agency's accountability outweighs protecting the personal information and privacy of other individuals - whether access to information may be refused under section 47(3)(b) of the *Right to Information Act 2009 (Qld)* on the basis that disclosure would, on balance, be contrary to the public interest

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to a copy of a QPS report concerning a fraud complaint made in 2002 by her late husband, in relation to a business he previously operated.
2. QPS granted the applicant access to parts of the report but decided to refuse access to information relating to other individuals on the basis that disclosure would, on balance, be contrary to the public interest. The parts of the report released to the applicant showed that the investigation was finalised because no evidence of fraud or other criminal activity was discovered.
3. The applicant alleges that the financial institution, which was the subject of the complaint, misappropriated money from her late husband's business. The applicant submits that QPS' investigation was not conducted properly and that she would like to examine all of the facts of the investigation to assess their accuracy. The applicant has also sought to have the investigation reopened.
4. The information to which QPS refused access is the personal information of other individuals and, as it appears in a police investigation report, is of a nature that attracts

a high privacy interest weighing against disclosure. The information also connects individuals with unsubstantiated allegations which, if disclosed, could adversely affect their reputations. As the majority of the information in the QPS report has been released to the applicant, including the substance of actions taken in the investigation and the reasons why it was finalised, the accountability and transparency of QPS would not be advanced by disclosing the personal information of the other individuals.

5. QPS' decision to refuse access to information in the report under section 47(3)(b) of the RTI Act is affirmed on the basis that disclosure would, on balance, be contrary to the public interest.

### **Background**

6. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons.

### **Reviewable decision**

7. The decision under review is QPS' internal review decision dated 1 February 2012 refusing access to information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

### **Material considered**

8. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

### **Information in Issue**

9. The information to which QPS refused access appears in an 18 page report generated through the QPS complaints database, QPRIME, to record the complaint made by the applicant's late husband and actions taken by QPS to investigate it.
10. Parts of 10 pages<sup>1</sup> of the report remain in issue in this review<sup>2</sup> (**Information in Issue**). The Information in Issue relates to individuals other than the applicant or her late husband, and includes their names, dates of birth, job titles, bank account details, contact details, personal details and descriptions of their association/relationship with the applicant's late husband.

### **Relevant law**

11. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>3</sup> However, this right is subject to limitations, including grounds on which access may be refused.<sup>4</sup> One ground for refusing access is where disclosure would, on balance, be contrary to the public interest.<sup>5</sup>
12. 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

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<sup>1</sup> Pages 6-15.

<sup>2</sup> During the external review, QPS agreed to release a further four whole pages (pp. 1, 3, 5 and 16) and parts of four pages (pp. 6, 8, 9 and 10) of the report to the applicant. The additional information released included the personal information of the applicant's late husband. QPS had initially refused to grant access to this information but on external review, agreed with OIC's view that this information should be disclosed. Accordingly, this information is not considered in these reasons for decision.

<sup>3</sup> Section 23 of the RTI Act.

<sup>4</sup> As set out in section 47 of the RTI Act.

<sup>5</sup> Sections 47(3)(b) and 49 of the RTI Act.

means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.<sup>6</sup>

13. The RTI Act list factors which may be relevant to deciding the balance of the public interest<sup>7</sup> and sets out the following steps<sup>8</sup> to decide where the public interest lies in relation to disclosure of information:
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure would, on balance, be contrary to the public interest.

## Findings

14. Disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons set out below. No irrelevant factors, including those in schedule 4, part 1 of the RTI Act, arise in this case.

### **Factors favouring disclosure**

#### **Accountability**

15. The applicant submits that the investigation was not conducted correctly and that parts of the QPS report released to her contain numerous mistakes to the point where it would misguide an investigation. The applicant would also like to ascertain if the facts that guided QPS' investigation were accurate—for example, she would like to access the names of other people in the report to be able to verify that QPS talked to the correct people.
16. Under the RTI Act, the public interest will favour disclosure of information where it could reasonably be expected to:
- (i) enhance the government's accountability<sup>9</sup>
  - (ii) allow or assist inquiry into possible deficiencies in the conduct of an agency<sup>10</sup>
  - (iii) reveal the reason for a government decision and any background or contextual information that informed the decision,<sup>11</sup> or
  - (iv) reveal that the information was incorrect.<sup>12</sup>
17. By obtaining access to the entire version of the report, the applicant would be able to view all of the information which was available to the investigator, including other people's names and their personal details. However, the parts of the report already released to the applicant largely disclose the steps taken by QPS in investigating the complaint and reveal the reasons why the investigation was finalised.<sup>13</sup> The Information in Issue only contains the personal details of individuals who were the

<sup>6</sup> For example, where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (schedule 4, part 2, item 17 of the RTI Act).

<sup>7</sup> In schedule 4 of the RTI Act. However, this list is not exhaustive and therefore, factors not listed may be relevant in a particular case.

<sup>8</sup> In section 49(3) of the RTI Act.

<sup>9</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>10</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>11</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>12</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>13</sup> Relevantly, the QPS report states that "[n]o evidence of fraud or other criminal activity was discovered during this investigation" (p. 15) and concludes that "[t]his matter is to be not substantiated and finalised" (p. 16).

subject of the allegations, and therefore, disclosure would be of limited assistance in ascertaining whether the investigation was conducted correctly.

18. The Information in Issue records the names of other individuals, their job titles and association/relationship with the applicant's late husband. In view of this and the surrounding information in the report, there is no evidence to indicate that QPS did not identify the appropriate persons to investigate. Further, there is no evidence to suggest that the Information in Issue is incorrect and I note that the applicant's submission in this regard appears to relate to the information already released to her, not the Information in Issue.
19. For these reasons, I consider public interest factors (i) to (iii) referred to in paragraph 16 above carry only limited weight in favour of disclosure. I am satisfied that factor (iv) does not apply in relation to disclosure of the Information in Issue.

### **Enforcement of the criminal law**

20. The applicant submits that she is a victim of fraud and alleges that the financial institution, which was the subject of her late husband's complaint, is engaging in unlawful conduct.
21. The RTI Act provides that the public interest will favour disclosure if it could reasonably be expected to contribute to the enforcement of the criminal law.<sup>14</sup> I am satisfied that this factor is not raised by the circumstances of this case particularly as QPS has:
  - investigated the claims made by the applicant's late husband and finalised the matter on the basis that the claims were unsubstantiated;<sup>15</sup> and
  - considered the information provided by the applicant last year and decided not to reopen the investigation.

### **Factors favouring nondisclosure**

#### **Personal information and privacy**

22. I am satisfied that the Information in Issue, as described in paragraph 10 of these reasons, is about other individuals who are either identifiable or whose identities could reasonably be ascertained, and that it therefore comprises their personal information.<sup>16</sup> The RTI Act recognises a public interest in safeguarding the personal information of other individuals which appears in documents held by government agencies.<sup>17</sup>
23. In considering the disclosure of such information, it is relevant to consider the extent of the public interest harm that would result from disclosure. As the information about the other individuals appears in a report regarding a police investigation into allegations made against them, which were found to be unsubstantiated, I am satisfied that if disclosed, the public interest harm would be significant.
24. The RTI Act also recognises that there is a public interest in protecting the privacy of other individuals.<sup>18</sup> I am satisfied that the reference to an individual's involvement in a

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<sup>14</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>15</sup> See footnote 13 above.

<sup>16</sup> Having regard to the definition of 'personal information' in section 12 of the *Information Privacy Act 2009* (Qld): "information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".

<sup>17</sup> Schedule 4, part 4, item 6 of the RTI Act. The RTI Act recognises this factor as favouring nondisclosure due to the public interest harm in disclosure.

<sup>18</sup> Schedule 4, part 3, item 3 of the RTI Act.

police investigation is a particularly private and sensitive matter and that therefore, this factor applies in this case.

25. Where information is already known to an applicant, the privacy interests of other individuals will be reduced to an extent, but not entirely. I accept that the applicant may already be aware of some of the information relating to other individuals given her involvement in her late husband's business and more recently, the pursuit of the complaint on his behalf. While disclosure under the RTI Act is not taken to be disclosure to the world at large,<sup>19</sup> once information is disclosed, its dissemination cannot be controlled. I am satisfied that disclosing the Information in Issue, appearing as it does in a QPS report regarding unsubstantiated allegations, under a general information access scheme, could reasonably be expected to significantly intrude on the privacy of the other individuals.
26. A small amount of the Information in Issue is also the personal information of the applicant's late husband, as it sets out the nature of his association/relationship with the other individuals. While this gives rise to a public interest factor favouring disclosure<sup>20</sup> of those particular parts of the Information in Issue, I am satisfied that the nature of this information is such that it is not possible to separate the applicant's late husband's personal information from the personal information of others. As the applicant has been given access to the personal information that solely relates to her late husband,<sup>21</sup> I consider that disclosure of that information which cannot be separated from the personal information of other individuals carries only low weight favouring disclosure.

### **Unsubstantiated allegations**

27. The Information in Issue includes references to individuals who were the subject of the allegations made by the applicant's late husband in relation to unlawful activity. As set out in paragraph 17 of these reasons, QPS found that the allegations could not be substantiated as no evidence of fraud or other criminal activity was discovered in the investigation.
28. The RTI Act provides if disclosure could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of unlawful conduct, this will give rise to a public interest factor favouring nondisclosure.<sup>22</sup>
29. Given the nature of the Information in Issue and QPS' findings in relation to the allegations, I consider this factor applies in this case. I am satisfied that the public interest weighs strongly against disclosure as the Information in Issue relates to unsubstantiated allegations and has the potential to adversely affect the reputations of the relevant individuals.

### **Balancing the public interest**

30. In view of the information already disclosed to the applicant regarding the steps taken by QPS in the investigation, and the particularly personal nature of the Information in Issue, the public interest in enhancing QPS' accountability and increasing transparency in decision-making carries only limited weight in favour of disclosure of the Information in Issue. The public interest also favours disclosure of the personal information of the

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<sup>19</sup> *Patrick and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 24 November 2011) at paragraph 19.

<sup>20</sup> Schedule 4, part 2, item 9 of the RTI Act. The applicant is an 'eligible family member' as per the definition in schedule 6 of the RTI Act.

<sup>21</sup> See footnote 2 above.

<sup>22</sup> Schedule 4, part 3, item 6 of the RTI Act.

applicant's late husband. However, as the information of this nature remaining in issue cannot be separated from the personal information of others, this factor can only be afforded low weight.

31. Balanced against the relevant disclosure factors in this case is the strong public interest in safeguarding the personal information of other individuals and protecting their privacy. Given the sensitive context in which the other individuals' information appears, I am satisfied that the public interest in nondisclosure is very high. The public interest also weighs strongly against disclosing the Information in Issue to the extent that it relates to unsubstantiated allegations which, if disclosed, could adversely affect the reputations of other people.
32. For these reasons, I am satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

### **DECISION**

33. I affirm QPS' decision to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 21 August 2012**

## APPENDIX

### Significant procedural steps

Date	Event
15 November 2011	QPS received the applicant's request for access to " <i>names of signatories of persons who opened 2 bank accounts at [a financial institution] – and view signatures</i> ". The application included relevant details of the bank accounts.
23 November 2011	QPS obtained the applicant's agreement to redefine the terms of her application to a " <i>copy of a relevant Police report concerning a complaint of fraud in relation to [the business previously operated by applicant's late husband]</i> ".
12 December 2011	QPS located an 18 page report ( <b>Report</b> ) and decided to: <ul style="list-style-type: none"> <li>• release four whole pages and part of 14 pages to the applicant; and</li> <li>• refuse access to the remaining parts of 14 pages under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.</li> </ul>
11 January 2012	QPS received the applicant's internal review application.
1 February 2012	QPS issued its internal review decision, affirming the original decision.
29 February 2012	OIC received the applicant's external review application.
21 March 2012	OIC notified the applicant and QPS that the external review application had been accepted, and asked QPS to provide a complete copy of the Report.
2 April 2012	OIC received a copy of the Report from QPS.
1 June 2012	OIC conveyed a preliminary view to QPS that disclosure of: <ul style="list-style-type: none"> <li>• information in six pages would, on balance, be contrary to the public interest; and</li> <li>• four whole pages and additional information in four of the partially released pages would not, on balance, be contrary to the public interest.</li> </ul> <p>OIC invited QPS to provide submissions responding to the preliminary view by 15 June 2012.</p>
14 June 2012	QPS advised OIC that it agreed with OIC's preliminary view.
22 June 2012	OIC asked QPS to release information to the applicant in accordance with the preliminary view.
22 June 2012	OIC wrote to the applicant to convey the preliminary view that disclosing the parts of 10 pages remaining in issue would, on balance, be contrary to the public interest. OIC invited the applicant to provide submissions in response to the preliminary view by 9 July 2012.
26 June 2012	The applicant asked for an extension of three weeks to provide submissions in response to the preliminary view.
27 June 2012	OIC granted the applicant an extension until 30 July 2012 to provide submissions in response to the preliminary view.
23 July 2012	The applicant asked for a further extension to provide submissions in response to the preliminary view. OIC granted the applicant a further extension until 6 August 2012 to provide submissions in response to the preliminary view.
24 and 30 July 2012	An OIC staff member spoke to the applicant by telephone regarding the preliminary view, submission requirements and the external review process.
3 August 2012	OIC received the applicant's written submissions contesting the preliminary view.