



Decision and Reasons for Decision

Application Number: 311152

Applicant: Volep

Respondent: Queensland Police Service

Decision Date: 19 April 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – applicant seeks access to names and addresses of witnesses to an accident in which he was injured – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant sought¹ access from the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the names and addresses of witnesses to a motor vehicle accident in which he was injured.
2. After locating documents containing information responsive to the access application, QPS consulted² with seven witnesses to the accident. Two witnesses did not object to their details being released to the applicant. Of the remaining witnesses, one objected³ to release of their details and the others did not respond to the consultation (**Remaining Witnesses**).
3. QPS decided⁴ to refuse the applicant access to the names and addresses of the Remaining Witnesses.⁵ The decision was affirmed on internal review.⁶
4. On external review, the applicant submitted that disclosure of the names and addresses of the Remaining Witnesses would not, on balance, be contrary to the public interest.
5. For the reasons set out below, access to the names and addresses of the Remaining Witnesses is granted on the basis that disclosure would not, on balance be contrary to the public interest.

¹ By access application dated 30 May 2012 and received on 31 May 2012.

² In accordance with section 37 of the RTI Act.

³ The witnesses' parent objected on behalf of the child witness.

⁴ By decision dated 16 July 2012.

⁵ Internal review decision dated 20 August 2012.

⁶ By internal review decision dated 20 August 2012 in response to an internal review application dated 20 July 2012.

Reviewable decision

6. The decision under review is the internal review decision of QPS dated 20 August 2012.

Information in issue

7. The information in issue in this external review is the names and addresses of the Remaining Witnesses (**Information in Issue**).

Issue in this review

8. The issue for determination in this external review is whether the Information in Issue comprises information the disclosure of which would, on balance, be contrary to the public interest.

Significant procedural steps

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

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Relevant law

Right to access information

11. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

Findings

Does the Information in Issue comprise information the disclosure of which would, on balance, be contrary to the public interest?

12. No, for the reasons that follow.
13. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁷
14. 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 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.

⁷ Sections 47(3)(b) and 49 of the RTI Act.

15. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁸ and explains the steps that a decision-maker must take⁹ in deciding the public interest as follows:

- 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 of the information in issue would, on balance, be contrary to the public interest.¹⁰

Irrelevant factors

16. No irrelevant factors arise on the information before me.

Factors favouring disclosure and nondisclosure

Enhance government accountability

17. The RTI Act recognises that if disclosing information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability, a factor favouring disclosure will arise.¹¹

18. The applicant submits¹² that:

- QPS unilaterally decided that charges would not be brought against the driver of the bus
- the report prepared by QPS of the incident is brief and the substance of the witness statements that were released are not comprehensive
- some of the evidence is contradictory and confusing and warrants further investigation
- QPS has not conducted further investigations and the evidence can only be tested after further discussion with all witnesses
- disclosing the Information in Issue will enable the affected parties to conduct their own investigations and ensure that the necessary evidence can be brought before the court
- while the report may be adequate for QPS purposes, it is completely inadequate for a consideration of liability in a civil proceeding; and
- the fact that QPS has determined that they cannot prove criminal charges beyond reasonable doubt does not mean that there are many issues to be determined on assessing apportionment of liability in a civil proceeding.

⁸ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

⁹ Section 49(3) of the RTI Act.

¹⁰ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

¹¹ Schedule 4, part 2, item 1 of the RTI Act.

¹² Submissions dated 6 November 2012 and 11 March 2013.

19. QPS submits¹³ that:

- the report is quite detailed and provides witness accounts, the investigator's assessment and a thorough reasoning of why criminal charges were not laid against the bus driver; and
- witness statements of such incidents are often contradictory and confusing and QPS weighs these versions in determining whether to commence proceedings.

20. QPS is responsible for attending and reporting on incidents such as that involving the applicant and, in doing so, must be accountable for discharging those functions. QPS has provided the applicant with information about its investigation, even though this was outside the scope of the access application, which shows details of the witness statements and the steps it took in reaching its conclusion to not commence criminal proceedings. Disclosing the Information in Issue, that is, the names and addresses of the Remaining Witnesses, would not reveal how QPS discharged its functions and I do not consider that QPS' accountability would be furthered by releasing the Information in Issue.

21. For these reasons, I afford no weight to this factor.

Administration of justice

22. If disclosing information could reasonably be expected to contribute to the administration of justice generally or for a person, this gives rise to a factor favouring disclosure.¹⁴ I am satisfied that these factors are relevant. Accordingly, it is necessary to consider the weight to be afforded to these factors in the circumstances of this review.

23. The applicant submits¹⁵ that:

- if the Information in Issue is not provided, the parties to the dispute will be denied the basic right to be able to contact these witnesses, test their evidence and call them as witnesses at trial
- as a result, the parties and the court would be denied important witness information which should be submitted for a proper determination of liability in the matter
- the respondent insurer has not given a full admission of liability
- the apportionment of liability cannot be appropriately considered solely on the basis of the police report
- witnesses cannot be subpoenaed because they cannot be identified and there is no way this information can be obtained through any legal process
- the whole thrust of personal injuries compensation is to resolve claims prior to the commencement of litigation
- at least seven days before a compulsory conference is held, each party is required to give to the other party a signed certificate to the effect that the party is ready for trial

¹³ Submission dated 21 December 2012.

¹⁴ Schedule 4, part 2, items 16 and 17 of the RTI Act.

¹⁵ Submissions dated 6 November 2012 and 11 March 2013.

- it is a statutory necessity for a personal injuries claimant to be able to obtain the information on witnesses prior to the commencement of any Court proceedings, therefore section 134A of the *Evidence Act 1977 (Qld)*¹⁶ (**Evidence Act**) is not relevant; and
- this substantial injustice is weighed against only a very minor breach of privacy.

24. QPS submits¹⁷ that:

- disclosing the information may assist the applicant pursue or evaluate whether to pursue a legal remedy and will assist him to make his own inquiries about the accident; but
- once proceedings have commenced, the applicant could subpoena the witnesses at trial or obtain the Information in Issue from QPS under section 134A of the Evidence Act.

25. The applicant contended that he and the other party in the matter would be denied the ability to call the witnesses at trial and test their evidence if the identity of the witnesses is not disclosed under the RTI Act, and that there is no way that information could be obtained through any legal process.

26. In this case the applicant suffered personal injury in a single vehicle incident involving a bus. He has sought compensation for his injuries in reliance upon the *Motor Accident Insurance Act 1994 (MAIA)*. One of the objects of the MAIA is to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents.¹⁸

27. Before a claimant under the MAIA can bring a civil action in a court for damages for personal injuries they must participate in a 'compulsory conference'.¹⁹ Prior to the compulsory conference the parties' legal representatives must sign a 'certificate of readiness'.²⁰ The certificate of readiness must state, among other things, that all witness statements from persons the party intends to call as witnesses at the trial have been obtained.²¹

28. In this case, the Applicant contends that he is precluded from signing the certificate of readiness because he cannot obtain the identities of the witnesses, nor obtain statements upon which he may rely at trial (or in a conference).

29. While QPS have submitted that the applicant could subpoena the witnesses at trial or obtain the Information in Issue from QPS under section 134A of the Evidence Act, the issue for the applicant is that the Information in Issue is required to complete a pre-trial step under the MAIA.

30. It is apparent that the applicant has no means of obtaining the Information in Issue prior to proceeding to a compulsory conference. This precludes the applicant from being able to sign a certificate of readiness which in turn frustrates the object of the MAIA to encourage speedy resolution of personal injury claims.

¹⁶ Section 134A provides that a person who is a party to a civil proceeding may make written applications to an agency to produce documents for inspection that are in the agency's possession and relevant to an issue in proceedings.

¹⁷ Submission dated 21 December 2012.

¹⁸ Section 3(e) of the MAIA.

¹⁹ Section 51A(1) of the MAIA

²⁰ Section 51B of the MAIA

²¹ Section 51B(6)(b) of the MAIA

31. I note that prior to the commencement of the *Information Privacy Act 2009 (IPA)* the QPS provided witness details such as those in issue in this review to CITEC (the Queensland Government's primary information and communication technology (ICT) service provider) pursuant to section 94 of the *Transport Operations (Road Use Management) Act 1995* and section 31(2) of the *Motor Accident Insurance Regulation 2004*. Those details were accessible by insurance companies and parties to motor vehicle accidents.
32. The introduction of the IPA brought about the removal of the identifying details of witnesses from CITEC. However, this resulted in the difficulties being encountered by the applicant in this case, being encountered by other parties to motor vehicle accidents.
33. The Motor Accident Insurance Commission (the regulatory authority established under the MAIA which is responsible for the management of the Compulsory Third Party (CTP) scheme in Queensland) is aware of the issue arising from the introduction of the IPA and its implications for the operation of the MAIA; and is investigating a solution.²²
34. I consider that it has been an unintended consequence of the introduction of the IPA to fetter the operation of the MAIA to the detriment of the parties in those matters.
35. I consider that it is in the public interest generally to ensure that the object of the MAIA to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents is supported. Additionally I consider that it is in the public interest to ensure that the applicant in this particular case, be given an opportunity to properly pursue a remedy for personal injuries under the MAIA.
36. For the reasons set out above, I give these factors significant weight.

Personal information and privacy

37. It is also relevant to consider whether disclosing the Information in Issue could reasonably be expected to:
 - prejudice the protection of an individuals' right to privacy;²³ and
 - cause a public interest harm as the information is personal information of another individual.²⁴
38. The Information in Issue is the personal information²⁵ of other individuals, namely the Remaining Witnesses. The Remaining Witnesses are minors who witnessed the accident. Given the nature of the Information in Issue and the context in which it appears, it is also reasonable to expect that its disclosure will prejudice the privacy of the Remaining Witnesses. It is relevant to consider the extent of harm that would flow from disclosing the personal information of the Remaining Witnesses.
39. The applicant submits²⁶ that:

²² Telephone conversation with staff of the Motor Accident Insurance Commission 19 April 2013.

²³ Schedule 4, part 3, item 3 of the RTI Act.

²⁴ Schedule 4, part 4, item 6 of the RTI Act.

²⁵ *Personal information* is defined in section 12 of the *Information Privacy Act 2009 (Qld)* 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.

²⁶ Submissions dated 6 November 2012 and 11 March 2013.

- the extent of the harm anticipated from releasing the Information in Issue would be miniscule because (i) the information will not be disclosed to the world at large and (ii) release would simply allow the affected parties to contact the parents of the Remaining Witnesses to discuss evidentiary issues
- the name and address of an individual is not a significant intrusion in the context of this application
- there are weekly occurrences where people are releasing their own name and address in the process of living their everyday lives
- witnesses to an accident should expect that they may be called to give evidence as to what they saw; and
- the privacy issues are minor compared to the potential injustice to the applicant and insurance companies who have to make decisions based on liability.

40. QPS submits²⁷ that:

- disclosure of the Information in Issue is a significant intrusion into the individuals' privacy
- the RTI Act does not provide for release of information subject to an undertaking that the information won't be disclosed to the world at large; and
- the witnesses provided information to QPS for the purpose of assisting in a criminal investigation and would not have contemplated contact from other parties in relation to civil proceedings.

41. In *Marshall and Queensland Police Service*,²⁸ the RTI Commissioner recognised that in appropriate cases, information supplied to QPS will need to be further disseminated or published (so as, for example, to enable further investigation, or for prosecutorial purposes, often in open court) which may reduce the privacy interest attaching to relevant information.²⁹ I accept that this may be the case in relation to the Information in Issue in this review and that this reduces the weight of the privacy interest to some degree in this case.

42. However, in that decision the RTI Commissioner also explained that members of the community assisting police with inquiries have a legitimate expectation that in doing so, their privacy will be maintained and respected as far as is possible.³⁰ I consider that in the circumstances of this case, disclosing the Information in Issue under the RTI Act would constitute an intrusion into the witnesses' privacy.

43. While I acknowledge that individuals often release their own names and addresses to various entities in the process of living their everyday lives, this disclosure is at the discretion of the individual and is often subject to a privacy statement of the entity limiting the use to which the information is put and providing the individual with a legal remedy should the information be used in another manner. I do not consider that this reduces the privacy interest.

44. For the reasons set out above, I afford moderate weight to these factors favouring nondisclosure of the Information in Issue.

²⁷ Submission dated 21 December 2012.

²⁸ (Unreported, Queensland Information Commissioner, 25 February 2011).

²⁹ At paragraph 28.

³⁰ At paragraph 28.

Balancing the relevant public interest factors

45. In summary, for the reasons set out above:
- I afford:
 - no weight to the public interest factor relating to promoting open discussion of public affairs and enhancing the Government's accountability
 - significant weight to the public interest factors relating to the administration of justice for a person and to the administration of justice generally; and
 - moderate weight to the public interest factors relating to the personal information and privacy of witnesses.
46. Having weighed these factors I consider disclosing the Information in Issue would not, on balance, be contrary to the public interest; and access to the Information in Issue is granted under section 47(3)(b) of the RTI Act.

DECISION

47. I set aside the internal review decision of QPS dated 20 August 2012 and substitute a decision to grant access to the Information in Issue on the basis that disclosure is not, on balance, contrary to the public interest.
48. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Victoria Corby
Assistant Information Commissioner

Date: 19 April 2013

APPENDIX**Significant procedural steps**

Date	Event
31 May 2012	QPS receives the access application dated 30 May 2012.
16 July 2012	QPS decides to refuse the applicant access to the names and addresses of witnesses
20 July 2012	The applicant seeks internal review of QPS's decision dated 16 July 2012.
20 August 2012	QPS affirms its original decision to refuse access.
28 August 2012	OIC receives the applicant's request for external review of the internal review decision of QPS dated 20 August 2012.
30 August 2012	OIC informs the applicant and QPS that the application for external review has been accepted.
4 September 2012	QPS provides to OIC copies of the documents containing the Information in Issue.
2 November 2012	OIC conveys a view to the applicant that disclosure of the Information in Issue is, on balance, contrary to the public interest. If the view is contested, the applicant is invited to provide a submission by 19 November 2012.
6 November 2012	The applicant provides a submission.
13 December 2012	OIC conveys a view to QPS that disclosure of the Information in Issue is not, on balance, contrary to the public interest. If the view is contested, QPS is invited to provide a submission by 10 January 2013.
21 December 2012	QPS provides a submission.
25 February 2013	OIC conveys a further view to the applicant that disclosure of the Information in Issue is, on balance, contrary to the public interest. If the view is contested, the applicant is invited to provide a submission by 11 March 2013.
11 March 2013	The applicant provides a submission.