



Decision and Reasons for Decision

Citation:	<i>Gregory and Queensland Police Service</i> [2014] QICmr 48 (21 November 2014)
Application Number:	312029
Applicant:	Gregory
Respondent:	Queensland Police Service
Decision Date:	21 November 2014
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – name, gender and address of a witness in a police matter – personal information – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b), 49 and schedule 4 of the <i>Right to Information Act 2009</i> (Qld)

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 range of information including a complaint made about her to QPS.
2. QPS located and released most of the requested information to the applicant but refused access to a small amount of information on the basis that its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision.
4. QPS released additional information to the applicant in the course of the review. The information in issue comprises the name, gender and address of a witness which appears on one page of a QPS report relating to the complaint made about the applicant.
5. For the reasons set out below, access to this information can be refused under section 47(3)(b) of the RTI Act as it comprises the personal information of a witness, the disclosure of which would, on balance, be contrary to the public interest.

Background

6. The applicant applied for access to various documents under the RTI Act.
7. QPS did not make a decision within the prescribed timeframe and was taken to have made a decision refusing access to the information under section 46(1)(a) of the RTI Act. Despite this, QPS purported to issue a decision to the applicant which:
 - granted part access to three documents subject to the deletion of information which QPS considered would be contrary to the public interest to disclose; and
 - refused access to one document on the basis that it was nonexistent.
8. OIC treated the purported decision as QPS' submission on external review.
9. A number of issues were informally resolved on external review. QPS agreed to release additional information to the applicant and the applicant did not contest OIC's preliminary view in relation to certain information.
10. Significant procedural steps relating to the application and the external review process are set out in the appendix.

Reviewable decision

11. The decision under review is the decision QPS' was deemed to have made under section 46(1)(a) of the RTI Act refusing access to the requested information.

Evidence considered

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

Information in issue

13. The information in issue in this review (**Information in Issue**) comprises the name, gender and address of a witness which appears on one page of a QPS report relating to the complaint made about the applicant.

Relevant law

14. Under the RTI Act, a person has a right to be given access to documents of an agency.¹ However, this right is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.² Access to a document may be refused if disclosing it would, on balance, be contrary to the public interest.³
15. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁴ and explains the steps that a decision-maker must take⁵ in deciding the public interest as follows:

¹ Section 23 of the RTI Act.

² As set out in section 47 of the RTI Act.

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

⁴ 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.

⁵ Section 49(3) of the RTI Act.

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

16. No irrelevant factors arise in the circumstances of this case and I have not taken any into account. I will now consider the relevant factors favouring disclosure and nondisclosure of the Information in Issue.

Applicant's submissions

17. The applicant provided submissions to OIC supporting her case. In summary, the applicant: ⁶
- raises concerns about the actions of QPS officers
 - seeks to have the content of the report amended or the file deleted; and
 - believes a person made a complaint to the police about her which turned out to be unfounded and the complaint will stay on the police files indefinitely to her detriment.
18. These submissions are irrelevant to the issue for determination on external review as they do not give rise to relevant public interest factors. As these submissions are not relevant to the issue for determination, I have not addressed them in these reasons.

Personal information and privacy

19. The Information in Issue comprises the personal information of the witness.⁷ As a result, I have considered whether disclosing the information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;⁸ and
 - cause a public interest harm as it would disclose personal information of a person.⁹
20. In *Marshall and Department of Police*,¹⁰ the Right to Information Commissioner refused access to a person's name, personal details and statement to police under the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest. The Right to Information Commissioner afforded significant weight to these factors favouring nondisclosure and relevantly noted that:
- The concept of 'privacy' is not defined in either the RTI Act or the *Information Privacy Act 2009* (Qld). It can, however, essentially be viewed as the right of an individual to preserve their personal sphere from interference from others. Providing information to law enforcement authorities such as QPS is a private action falling within an individual's personal sphere.¹¹

⁶ External review application dated 22 May 2014 and submissions dated 22 September 2014.

⁷ Section 12 of the *Information Privacy Act 2009* (Qld) defines 'personal information' 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'.

⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁹ Schedule 4, part 4, section 6(1) of the RTI Act.

¹⁰ (Unreported, Queensland Information Commissioner, 25 February 2011) (*Marshall*).

¹¹ *Marshall* at paragraph 27.

- Members of the community have a legitimate expectation that, in providing information to QPS, their privacy will be maintained and respected as far as possible. In appropriate cases, information supplied to QPS will be disseminated so as, for example, to enable further investigation, or for prosecutorial purposes, often in open court and this may reduce the privacy interest attaching to relevant information.¹²
21. I agree with the Right to Information Commissioner's comments in *Marshall* as identified above. In this case, disclosing the identity of a person who has been a witness in a police matter would be a significant intrusion into the individual's privacy. I note that the complaint did not proceed to a point where the identity of the witness would be revealed and I am not satisfied that the privacy interest in this case has been reduced for any reason. Given the nature of the Information in Issue and the context in which it appears, I afford significant weight to both of these public interest factors.
22. Although the Information in Issue appears in the context of a complaint about the applicant, it does not comprise the applicant's personal information and the factor in schedule 4, part 2, item 7 of the RTI Act does not arise for consideration.

Prejudice flow of information to QPS

23. The RTI Act recognises a factor favouring nondisclosure where disclosing information could reasonably be expected to prejudice the flow of information to the police.¹³
24. The applicant submits that *'[i]f people need protection to give the QPS information, then perhaps they should consider their "informant status" prior to making a complaint that causes someone else damage and then hide behind "privacy".'*¹⁴
25. Efficient and effective use of policing resources is facilitated by police being able to seek and obtain information from various members of the community, including complainants, bystanders, informers and even the subjects of a complaint, with as much cooperation as possible.¹⁵ QPS relies heavily on information from the public to be alerted to and to pursue breaches of the law and there is a very strong public interest in protecting the free flow of information to law enforcement agencies, even where this may result in an agency investigating false and/or unsubstantiated allegations.¹⁶
26. The Information in Issue identifies the individual as a witness. I am satisfied that disclosing this type of identifying information under the RTI Act would tend to discourage individuals from approaching QPS with relevant information and cooperating with police investigations in the future as they may consider that their personal information could be released to other individuals, including to the person the subject of the complaint. This, in turn, would significantly prejudice QPS' ability to effectively discharge its functions in enforcing the law.
27. In this case, I am satisfied that disclosing the Information in Issue could reasonably be expected to have a significant detrimental impact on the flow of information from the community to QPS and I afford significant weight to this factor favouring nondisclosure.

¹² *Marshall* at paragraph 28.

¹³ Schedule 4, part 3, item 13 of the RTI Act.

¹⁴ Submissions dated 22 September 2014.

¹⁵ *Marshall* at paragraph 29.

¹⁶ *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) at paragraphs 35-40.

QPS accountability and transparency

28. I have considered whether disclosing the Information in Issue could reasonably be expected to enhance QPS' accountability for its handling of the complaint¹⁷ or reveal the reason for QPS' decision (or any background or contextual information informing the decision).¹⁸
29. The applicant has received the entire three page report subject only to the deletion of the Information in Issue. The report reveals the substance of the complaint, how QPS dealt with the complaint and the outcome of the investigation. Disclosing the Information in Issue would not further these factors to any extent and I am not satisfied that these factors are relevant in the circumstances of this case.

Administration of justice and fair treatment

30. I have considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant.¹⁹
31. The applicant contends that she will *'take action against all of the parties involved, including who made the report, who took the report and who investigated the report'* and requires the Information in Issue to seek *'damages'* and *'get redress'*.²⁰
32. The Information Commissioner has previously recognised that, in an appropriate case, there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances. However, an assertion by an applicant that information is required to enable pursuit of a legal remedy is not sufficient in itself to enliven this consideration. An applicant must, at the least, demonstrate:
- loss or damage or some kind of wrong has been suffered, in respect of which a remedy is, or may be, available under the law
 - a reasonable basis for seeking to pursue the remedy; and
 - disclosure of the relevant information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.²¹
33. Despite the applicant's submissions, I am not satisfied the applicant has established a reasonable basis for seeking to pursue a legal remedy and this factor is not relevant.

Balancing the public interest

34. Beyond the general public interest in furthering access to government held information, I can identify no factors which favour disclosure of the Information in Issue and the applicant has raised none. I am not satisfied that this general public interest is, of its own, sufficient to displace the three public interest factors favouring nondisclosure, each of which carry significant weight.
35. I am satisfied that access to the Information in Issue can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

¹⁷ Schedule 4, part 2, item 1 of the RTI Act.

¹⁸ Schedule 4, part 2, item 11 of the RTI Act.

¹⁹ Schedule 4, part 2, item 17 of the RTI Act.

²⁰ External review application dated 22 May 2014 and applicant's submission dated 22 September 2014.

²¹ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at paragraphs 16 and 17 and *Marshall* at paragraph 22.

DECISION

36. As QPS was deemed to have made a decision refusing access to the information under section 46(1)(a) of the RTI Act, I vary QPS' decision and find that access to the Information in Issue can be refused under section 47(3)(b) of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Tara Mainwaring
A/Assistant Information Commissioner

Date: 21 November 2014

APPENDIX

Significant procedural steps

Date	Event
6 March 2014	QPS received the access application.
30 April 2014	QPS did not make a decision within the processing period and was therefore deemed to have made a decision refusing access to the requested documents. Despite this, QPS purported to issue a decision to the applicant.
27 May 2014	OIC received the application for external review of QPS' decision.
28 May 2014	OIC notified QPS the external review application had been received and requested relevant procedural documents.
13 June 2014	OIC received the requested procedural documents from QPS.
17 June 2014	OIC notified the applicant and QPS that it had accepted the external review application. OIC requested that QPS provide a copy of the located documents and search records relating to a document which was not located.
8 July 2014	OIC received the requested information from QPS.
22 July 2014	OIC conveyed a preliminary view to QPS by phone. QPS agreed to release additional information to the applicant and requested the preliminary view in writing.
31 July 2014	OIC confirmed the preliminary view to QPS in writing and invited QPS to provide submissions supporting its case by 15 August 2014 if it did not accept the preliminary view.
18 August 2014	QPS notified OIC that it accepted the preliminary view and agreed to release additional information to the applicant.
22 August 2014	OIC conveyed a preliminary view to the applicant on the remaining information and invited her to provide submissions supporting her case by 5 September 2014 if she did not accept the preliminary view. OIC asked QPS to release the additional information to the applicant by 29 August 2014.
4 September 2014	QPS notified OIC that the additional information had been released to the applicant.
5 September 2014	OIC extended the timeframe for the applicant to respond to the preliminary view until 15 September 2014.
12 September 2014	The applicant notified OIC she did not accept the preliminary view and requested an extension until 22 September 2014 to provide submissions.
15 September 2014	OIC agreed to the extension requested by the applicant.
22 September 2014	OIC received the applicant's submissions in response to the preliminary view.
24 September 2014	OIC received another copy of the applicant's submissions.
30 September 2014	OIC wrote to the applicant confirming the preliminary view and noting that the only remaining issue for consideration was whether access to the Information in Issue could be granted under the RTI Act.