



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>P6Y4SX and Queensland Police Service [2015] QICmr 25 (11 September 2015)</i></b>
<b>Application Number:</b>	<b>312230</b>
<b>Applicant:</b>	<b>P6Y4SX</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>11 September 2015</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – applicant sought access to information concerning a fence fire at his property from the Queensland Police Service – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></b>

### 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 all relevant documents relating to a fence fire at his property including phone calls and statements made by a complainant to QPS and a police incident report.
2. The QPS investigation into the fire has been finalised and no charges were laid against the applicant. The applicant was cleared of any wrongdoing by QPS.
3. QPS located two audio recordings and a six page police report in response to the application and granted part access to the police report. QPS decided to refuse access to the two audio recordings and remaining information contained in the police report on the grounds that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision. On external review, QPS agreed to release a small amount of additional information contained in the police report to the applicant.
5. For the reasons set out below, I affirm QPS's decision to refuse access to the two audio recordings and remaining information contained in the police report under section 47(3)(b) of the RTI Act on the basis that disclosure of this information would, on balance, be contrary to the public interest.

## Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

## Reviewable decision

7. The decision under review is QPS's internal review decision dated 21 October 2014.

## Evidence considered

8. The evidence, submissions, legislation and other materials I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Information in Issue

9. The information remaining in issue comprises parts of a six page police report and two audio recordings of phone calls made by a complainant to police (**Information in Issue**). This information can generally be described as:

- the name, address and date of birth of a complainant and witnesses; and
- information provided to the police by a complainant and witnesses about the incident.

## Issues for determination

10. Some issues were resolved informally on external review.<sup>1</sup> The remaining issue for determination is whether 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.

## Relevant law

11. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>2</sup> However, this right is subject to limitations, including grounds for refusal of access.<sup>3</sup> Access to information may be refused where disclosure would, on balance, be contrary to the public interest.<sup>4</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 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.

13. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and also explains the steps that a decision-maker must take in deciding the public interest as follows:<sup>5</sup>

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<sup>1</sup> The applicant raised concerns about the existence of a statement made by a complainant to QPS. OIC confirmed that no formal statements were taken by QPS in relation to the fence fire and the document the applicant was seeking was the six page police report located as part of the Information in Issue.

<sup>2</sup> Section 23(1)(a) of the RTI Act.

<sup>3</sup> Section 47 of the RTI Act sets out the grounds on which access may be refused to documents.

<sup>4</sup> Section 47(3)(b) of the RTI Act.

<sup>5</sup> 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 disclosure and nondisclosure; and
- decide whether disclosing the information would, on balance, be contrary to the public interest.

## Findings

14. No irrelevant factors arise in the circumstances of this review and I have taken none into account. I will now consider the relevant factors favouring disclosure and nondisclosure of the Information in Issue.

### Accountability and transparency

15. The RTI Act recognises a factor favouring disclosure in circumstances where disclosing information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.<sup>6</sup>
16. QPS must be accountable for the conduct of its investigations. The applicant was the subject of a serious complaint to QPS and I accept that disclosing the Information in Issue would provide the applicant with a more detailed understanding of the information which informed the action taken by QPS. However, in this case, the information QPS has already provided to the applicant reveals:
- how QPS responded to the complaint made against the applicant
  - that the investigation has been concluded; and
  - that the applicant is not a suspect and has not been charged with any offence in relation to the fence fire.
17. I consider that releasing the remaining Information in Issue would only marginally enhance QPS's accountability in these circumstances. Accordingly, I afford this public interest factor low weight.

### Administration of justice

18. I have considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice generally or for the applicant.<sup>7</sup>
19. I acknowledge the applicant's submission that he would like to clear his name of any wrongdoing with regards to the fence fire.<sup>8</sup> The applicant states '*I have the right to be given the chance to; respond to the false accusations laid against me, especially as those false accusations were made with the intent of having me charged for a crime I have not committed, this is procedural fairness.*'<sup>9</sup>
20. However, the information which QPS released to the applicant reveals that the applicant was not charged with an offence in relation to the fence fire and that QPS considered it was '*highly doubtful the offence occurred.*'<sup>10</sup> The applicant was interviewed by police and was afforded the opportunity to respond to the complaint and refute the allegations. The investigation is now finalised, the matter did not proceed to

<sup>6</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>7</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>8</sup> Submissions dated 24 February 2015.

<sup>9</sup> Submissions dated 6 July 2015.

<sup>10</sup> Page 5 of the police report.

court and no charges were laid against the applicant. The applicant has been cleared of any wrongdoing through QPS's investigation process.

21. For these reasons, I am satisfied that disclosing the Information in Issue would not advance these public interest factors and I do not consider they are relevant in the circumstances.

### **Personal information and privacy**

22. Some of the Information in Issue is about the applicant and comprises his personal information.<sup>11</sup> This gives rise to a factor favouring disclosure.<sup>12</sup> I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I attribute significant weight to this factor to the extent the information comprises the applicant's personal information.

23. The Information in Issue also comprises the personal information of a complainant and witnesses to the fence fire. It comprises their identifying information, contact details, opinions and observations which were reported to QPS about the incident. It is not possible to separate the applicant's personal information from the information of other individuals due to the way in which the information is presented. As a result, I have considered whether disclosing the Information in Issue could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;<sup>13</sup> and
- cause a public interest harm as it would disclose personal information of a person, whether living or dead.<sup>14</sup>

24. The applicant submits that he already knows the identity of the complainant and may also be aware of the identity of the witnesses. The applicant requests an edited version of the audio recordings or a transcript with the complainant's personal information deleted to protect the complainant's identity.<sup>15</sup> However, I am not satisfied that deletion of this information would sufficiently protect the complainant's identity. I consider that the identity of the complainant could reasonably be ascertained by other readers from the information released by QPS and the remaining Information in Issue. Similarly, it is not possible to merely delete the name of the witnesses. Given the nature of the information provided by the witnesses, it would be possible for the applicant, and other readers, to identify them.<sup>16</sup>

25. I consider that the Information in Issue is personal and sensitive in nature. Disclosure of this information under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. The fact that a person is a witness or complainant in a police matter is, in my view, relatively sensitive information and this information is not generally known. I also note that it is not possible to place restrictions on the use, dissemination or republication of information released under the RTI Act and, in my view, this is a relevant consideration in these circumstances.

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<sup>11</sup> 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.*

<sup>12</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>13</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>14</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>15</sup> Submissions dated 27 May 2015.

<sup>16</sup> *F60XCX and Queensland Ombudsman* [2014] QICmr 28 (13 June 2014).

26. For these reasons, I afford both of these factors favouring nondisclosure of the Information in Issue moderate weight.

### **Prejudice the flow of information**

27. If disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency, a public interest factor favouring nondisclosure arises.<sup>17</sup>
28. In his submissions to OIC, the applicant requests the information provided to police by the complainant through the RTI process so that he can remedy the false allegations made against him. He has advised that he seeks a permanent remedy to stop the complainant from making malicious and wrongful allegations to the QPS about him.<sup>18</sup> I acknowledge the applicant's submission that these events have been distressing for him and his family, and that he has a strong personal interest in seeing all of the information which is relevant to the incident.<sup>19</sup> Any person wrongly accused of a serious crime may, understandably, experience a sense of unfairness and injustice in being unable to know the identity and statements of their accuser.<sup>20</sup>
29. However, 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.<sup>21</sup> Agencies such as QPS rely significantly on information from the public to be alerted to and to pursue breaches of the law. It is generally recognised that 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.<sup>22</sup>
30. The Information in Issue identifies a complainant and witnesses and comprises the information given by these individuals to police in the course of the investigation into the fence fire. I am satisfied that disclosing this type of identifying information would tend to discourage individuals from coming forward with relevant information or 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 who is the subject of the complaint. This in turn would significantly prejudice QPS's ability to effectively discharge its functions in enforcing the law.<sup>23</sup>
31. I am satisfied that, notwithstanding that the allegations were not substantiated, 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.

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<sup>17</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>18</sup> Submissions dated 23 September 2014 and 29 October 2014.

<sup>19</sup> Submissions dated 22 January 2015, 24 February 2015, 27 May 2015 and 6 July 2015.

<sup>20</sup> *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) (**P6Y4SX**) at paragraph 37.

<sup>21</sup> *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at paragraph 29.

<sup>22</sup> *Gregory and Queensland Police Service* [2014] QICmr 48 (12 November 2014) at paragraph 25 citing *P6Y4SX* at paragraphs 35-40.

<sup>23</sup> *P6Y4SX* at paragraph 40. See also paragraphs 38 - 39 of that decision referring to the decision in *McEniery and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 28 February 1994) (**McEniery**). In *McEniery*, it was acknowledged that to be falsely accused can cause very real trauma for the accused person and his or her family, financial loss plus general stress, anxiety and inconvenience. In *P6Y4SX*, Assistant Commissioner Jefferies noted that there may be 'severe and unwarranted consequences for the person improperly informed against' but nevertheless, held that there is a very strong public interest in ensuring the free flow of information to law enforcement agencies. While this may have the unfortunate consequence of providing a shield of anonymity for those who knowingly make false allegations, other legislation, including section 10.21 of the *Police Service Administration Act 1990 (Qld)* acts as a deterrent and provides some form of redress for a person who has been subjected to a false complaint.

### **Balancing the relevant factors**

32. The RTI Act is to be administered with a pro-disclosure bias, meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.<sup>24</sup> I have taken into account the pro-disclosure bias in balancing the relevant factors.
33. The information which QPS has already provided to the applicant furthers the applicant's understanding of how the investigation was conducted and the outcome and accordingly, the weight of the factor relating to transparency and accountability is reduced. I afford this public interest factor low weight.
34. To the extent the information comprises the applicant's personal information, I afford the factor favouring disclosure significant weight. However, the information also comprises the personal information of other individuals which is sensitive and the relevant nondisclosure factors relating to personal information and privacy carry moderate weight.
35. Disclosing the Information in Issue could reasonably be expected to prejudice the flow of information to QPS. As a result, I afford significant weight to this public interest factor favouring nondisclosure.
36. For these reasons, the factors favouring nondisclosure of this information outweigh the factors favouring disclosure. Accordingly, 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.

### **DECISION**

37. For the reasons set out above, I affirm the decision under review and find that disclosure of the Information in Issue would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act, and that the QPS is entitled to refuse access to the Information in Issue.
38. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 11 September 2015**

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<sup>24</sup> Section 44 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
14 August 2014	QPS received the access application.
17 September 2014	QPS issued its decision to the applicant.
25 September 2014	QPS received the internal review application.
21 October 2014	QPS notified the applicant the initial decision was affirmed.
29 October 2014	OIC received the external review application by email.
30 October 2014	OIC notified QPS and the applicant that the external review application had been received. OIC asked QPS to provide the relevant procedural documents by 6 November 2014.
4 November 2014	OIC received the requested documents from QPS.
26 November 2014	OIC notified QPS and the applicant that the external review application had been accepted. OIC asked QPS to provide a copy of all of the documents located in response to the access application, clearly showing the information to which access was refused and the basis for refusing access, by 10 December 2014.
5 December 2014	OIC received the requested documents from QPS.
22 January 2015	OIC received submissions from the applicant.
27 February 2015	OIC received submissions from the applicant.
4 March 2015	OIC confirmed the issues on external review with the applicant.
28 April 2015	OIC conveyed its preliminary view to QPS on the release of additional information to the applicant and invited it to provide submissions by 12 May 2015 if it did not accept the preliminary view.
11 May 2015	QPS agreed to the release of additional information to the applicant.
12 May 2015	OIC asked QPS to release additional information to the applicant by 20 May 2015.
13 May 2015	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 28 May 2015 if he did not accept the preliminary view.
15 May 2015	QPS sent the additional information to the applicant.
27 May 2015	OIC received submissions from the applicant. The applicant notified OIC that he did not accept OIC's preliminary view and continued to seek access to the information.
23 June 2015	OIC confirmed the preliminary view on a number of issues and invited the applicant to provide any further and final submissions supporting his case by 7 July 2015.
7 July 2015	OIC received final submissions from the applicant.