



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Clegg and Crime and Corruption Commission [2017] QICmr 9 (16 March 2017)</i></b>
<b>Application Number:</b>	<b>312863</b>
<b>Applicant:</b>	<b>Clegg</b>
<b>Respondent:</b>	<b>Crime and Corruption Commission</b>
<b>Decision Date:</b>	<b>16 March 2017</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CONTEMPT OF PARLIAMENT - documents provided to the Parliamentary Crime and Corruption Committee - whether disclosure would infringe privileges of Parliament - whether exempt - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) - section 47(3)(a) and 48 and schedule 3 section 6(1)(c)(i) of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied under the *Information Privacy Act 2009* (Qld) (**IP Act**) to the Crime and Corruption Commission (**CCC**) for access to a report sent by the former Crime and Misconduct Commission (**CMC**) to the Parliamentary Crime and Corruption Committee (**PCCC**) containing certain allegations and information the applicant had provided to the CMC. The access application noted that the information was contained within two CDs and a report.
2. The CCC decided that one CD comprised exempt information owing to the CCC exemption<sup>1</sup> but exercised its discretion under section 48(3) of the RTI Act and gave the applicant full access to the CD on the basis that because it had been provided by the applicant, it contained information known to him.<sup>2</sup> In its decision, the CCC also refused access to a report of the applicant's allegations (**Report**) created by the former CMC and sent to the PCCC on the basis that it was exempt from release as its public disclosure would infringe the privileges of Parliament.<sup>3</sup>
3. The applicant applied to the Information Commissioner for external review of the CCC's decision. For the reasons set out below, I have decided to affirm that access to the

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<sup>1</sup> Under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access under section 47 of the RTI Act.

<sup>2</sup>The decision noted that a second CD could not be found, but during the external review the CCC located a second CD containing information supplied to it by the applicant. The CCC agreed to release this CD dating from 2009 to the applicant.

<sup>3</sup>Under section 67(1) of the IP Act together with sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the RTI Act.

remaining information in issue - the Report - may be refused under the IP Act on the ground that it is exempt information.

### Background

4. The applicant has made complaints to the former Criminal Justice Commission, the former CMC, the CCC and also the PCCC since 2001 alleging misconduct and corruption by particular Queensland Police Service officers, public sector employees as well as certain members of State Parliament, the judiciary and the legal profession.
5. The applicant has made extensive submissions to the Office of the Information Commissioner (**OIC**) explaining that he seeks the Report because the allegations he has made over time have never been investigated by the entities and individuals to whom he has complained. I acknowledge the importance of these matters to the applicant and the effort he has taken to present the background of his concerns to OIC.
6. Significant procedural steps relating to the application and the external review are set out in the appendix to this decision.

### Reviewable decision

7. The decision under review is the CCC's decision dated 3 June 2016.

### Evidence considered

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

### Issue for determination

9. The issue for determination is this review is whether access to the Report can be refused on the basis that its public disclosure would infringe the privileges of Parliament.

### Relevant law

10. Information will be exempt information to which access may be refused<sup>4</sup> where its public disclosure would infringe the privileges of Parliament.<sup>5</sup>
11. The privileges of Parliament derive from section 9 of the *Constitution of Queensland 2001* (**Constitution of Queensland**) and section 8 of the *Parliament of Queensland Act 2001* (Qld) (**PQ Act**), the latter providing that 'proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly'.
12. One of the privileges of Parliament is the power to control its own proceedings, such as by way of Standing Orders. Standing Order 211A<sup>6</sup> provides:

**211A. Confidentiality of proceedings for Parliamentary Crime and Corruption Committee and Ethics Committee**

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<sup>4</sup> Under sections 47(3)(a) and 48 of the RTI Act.

<sup>5</sup> Schedule 3, section 6(c)(i) of the RTI Act.

<sup>6</sup> Made pursuant to section 11 of the PQ Act. Standing Order 211A was preceded by Standing Order 206 and, from 1999, Standing Order 197.

(1) *The proceedings of the Parliamentary Crime and Corruption Committee and the Ethics Committee or a subcommittee of those committees that is not open to the public or authorised to be published remains strictly confidential to the committee until the committee has reported those proceedings to the House or otherwise published the proceedings.*

13. 'Proceedings' is defined in section 9 of the PQ Act as, relevantly, a document presented to a Parliamentary committee or prepared or made under the authority of such a committee.<sup>7</sup>

## Findings

14. The PCCC is a committee of Parliament<sup>8</sup> for the purposes of section 9(1) of the Constitution of Queensland, and is therefore entitled to all of the privileges enjoyed by Parliament.
15. The Chairperson of the CCC has sworn to the fact that the Report was either presented or submitted to a committee or prepared or made under the authority of a committee and that accordingly, it is a proceeding in the Assembly and subject to parliamentary privilege.
16. I accept the Chairperson of the CCC's sworn statutory declaration and on that basis find that the Report comprises a document presented or submitted to a committee and is therefore 'proceedings' caught by Standing Order 211A. There is nothing before me to suggest that the PCCC has reported the contents of the Report to the House, nor otherwise published or authorised its publication.<sup>9</sup> Its public disclosure would therefore breach a Standing Order, and hence infringe a privilege of the Parliament.<sup>10</sup> I therefore consider that the Report comprises exempt information to which access may be refused.
17. As set out in paragraphs 4 and 5 above the applicant made extensive submissions to OIC during this review but I have been unable to take them into account when reaching this decision.<sup>11</sup> I wish to explain why this is the case. This external review deals with exempt information, that is, a certain limited category of information that Parliament has identified, as noted in section 48(2) of the RTI Act, as being contrary to the public interest to disclose in *all* circumstances. Importantly, if information satisfies a legal test for exemption, I can only consider submissions on the application of the exemption provision. The applicant's submissions were not directed to the application of the Parliamentary exemption provision; he raised general public interest arguments.

## DECISION

18. I affirm the CCC's decision to refuse access to the Report under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act, on the basis the information is exempt information under section 48 of the RTI Act as information the public disclosure of which would

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<sup>7</sup> Section 9(2)(d) and (g) of the PQ Act.

<sup>8</sup> The PCCC is a committee of Parliament pursuant to section 291 of the *Crime and Corruption Act 2001* (Qld) and the definition of 'committee' is contained in the Schedule to the PQ Act. The former Parliamentary Criminal Justice Committee (**PCJC**) was also a committee of the Legislative Assembly pursuant to section 115 of the *Criminal Justice Act 1989* (Qld).

<sup>9</sup> Nor that the PCJC had done so, and nor that the Parliament itself has authorised their publication.

<sup>10</sup> For the sake of completeness, I am also satisfied that quite apart from breaching Standing Order 211A, public disclosure of these documents would also hinder, impede or impair the making of similar communications in the future for the purpose of transacting the business of the PCCC, affecting the quality of information available to the PCCC, and therefore breaching the 'freedom from impeachment' privilege contained in section 8(1) of the PQ Act, in accordance with the principles and analysis in *Waratah Coal Pty Ltd and Department of State Development, Infrastructure and Planning* (Unreported, Queensland Information Commissioner, 10 December 2012), at [26]-[39].

<sup>11</sup> This was explained to the applicant in telephone conversations with OIC on 12 August 2016 and 19 December 2016.

infringe the privileges of Parliament, within the meaning of schedule 3, section 6(c)(i) of the RTI Act.

19. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009 (QLD)*.

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**L Lynch**  
**Assistant Information Commissioner**

**Date: 16 March 2017**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
17 June 2016	OIC received the applicant's application for external review. OIC asked the CCC to provide information relevant to the application.
27 June 2016	OIC received the requested information from the CCC.
4 July 2016	OIC notified the applicant and the CCC that the external review had been accepted. OIC asked the CCC to provide a copy of the information in issue and search information.
18 July 2016	OIC received some of the requested information in issue from the CCC.
12 August 2016	OIC asked CCC to provide the remaining CD in issue to the applicant.
22 November 2016	OIC asked the CCC to supply OIC with a statement sworn by an appropriate officer attesting to the material facts on which the CCC relied in claiming parliamentary privilege.
5 December 2016	OIC received a statutory declaration sworn by the Chairman of the CCC.
12 December 2016	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions by 9 January 2017 if he did not accept the preliminary view.
19 December 2016	OIC received a request for an extension of time to provide submissions from the applicant. OIC granted an extension until 16 January 2017.
12 January 2017	OIC received submissions from the applicant contesting the preliminary view.
31 January 2017	OIC advised the applicant that a decision will be prepared.