



Decision and Reasons for Decision

Citation: *Williams and Queensland Police Service* [2017] QICmr 28
(4 August 2017)

Application Number: 312926

Applicant: Williams

Respondent: Queensland Police Service

Decision Date: 4 August 2017

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for information about police investigation of allegations and complaints against the applicant - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - whether exempt information - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for information about police investigation of allegations and complaints against the applicant - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - whether exempt information - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for information about police investigation of allegations and complaints about the applicant - accountability, transparency, administration of justice and procedural fairness considerations - personal information of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - IRRELEVANT INFORMATION

- application for information about a police investigation of allegations and complaints against the applicant - whether deleted information was irrelevant to the terms of the access application - section 88 of the *Information Privacy Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents pertaining to him from 'the earliest record to 26 May 2016'.¹ The applicant subsequently agreed to confine the scope of the application to a 'focussed review of only the documents in relation to allegations or complaints' made against him.²
2. QPS located 266 pages of information and decided to:³
 - release 22 pages and parts of 106 pages
 - refuse access to 37 pages on the ground that they comprised exempt information
 - refuse access to 101 pages and parts of 93 pages on the ground that disclosure of them would, on balance, be contrary to the public interest; and
 - delete parts of 29 pages⁴ on the basis that they were not relevant to the access application.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision, seeking access to all information not disclosed by QPS.
4. On external review, QPS released some information that it had, in its decision, refused to disclose. Further, QPS located an additional 46 pages of information⁵ and released some of that information.
5. For the reasons set out below, I vary QPS's decision and find that access to the information remaining in issue may be refused or deleted on the grounds that:
 - it is exempt information
 - its disclosure would, on balance, be contrary to the public interest; or
 - it is not relevant to the access application.

Background

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

Reviewable decision

7. The decision under review is the QPS decision dated 28 July 2016.

¹ Access application dated 1 June 2016 and received by QPS on 3 June 2016.

² Applicant's email to QPS dated 4 July 2016.

³ Decision dated 28 July 2016.

⁴ Comprising 13 of the 35 pages that QPS's decision referred to as being released in full and information on 16 of the 93 pages refused, in part, on the ground that their disclosure would, on balance, be contrary to the public interest.

⁵ Some of which duplicate information in the 266 pages initially located by QPS.

Information in issue

8. QPS refused or deleted 138 pages and parts of 106 pages in its decision (**Initial Documents**), and located an additional 46 pages during the external review (**Additional Documents**). QPS accepted OIC's view that there was no basis under the RTI Act to refuse access to three pages of the Additional Documents⁶ or some portions of information on seven pages of the Initial Documents.⁷ As QPS released that information to the applicant, it is not in issue in this review and is not dealt with in these reasons for decision.
9. The information that remains in issue (**Information in Issue**) comprises:
 - information which was refused or deleted on 138 pages⁸ and parts of 106 pages⁹ in the Initial Documents; and
 - 43 pages of the Additional Documents.

Issues for determination

10. The issues for determination in this review¹⁰ are whether the Information in Issue may be refused or deleted on the grounds that:
 - it is exempt information
 - its disclosure would, on balance, be contrary to the public interest; or
 - it is not relevant to the access application.

Evidence considered

11. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
12. The applicant provided OIC with a number of submissions.¹¹ To the extent those submissions are relevant to the issues for determination, I have addressed them below.

⁶ Pages 3-5 in a file titled 'Located Documents', which forms part of the Additional Documents.

⁷ Parts of pages 25-28, 30, 39 and 234 in the Initial Documents. Note—other portions of information on these pages remain in issue.

⁸ Pages 42-46, 54-80, 114-121, 128-183, 186-220, 237, 258-260 and 264-266 in the Initial Documents.

⁹ Parts of pages 1, 2, 4-10, 12-23, 25-28, 30, 32-35, 38-41, 47-52, 81-113, 123-125, 127, 184-185, 221, 223-227, 230, 234, 236, 238-240, 242-253 and 256-257 in the Initial Documents.

¹⁰ In the applicant's application for external review and a telephone conversation with an OIC staff member on 21 April 2017, the applicant stated his understanding that 30 statutory declarations or statements containing allegations against him had been received by QPS. I note that a Courier Mail article dated 4 June 2015, which contained the following statement, may have formed the basis for this understanding:

The Courier-Mail last night forwarded to Police Commissioner Ian Stewart's office the statements from key witnesses, sworn under oath, about Mr Williams' allegedly improper conduct before he was an MP. The declarations were gathered during a four-month special investigation involving contact with more than 30 people with information about Mr Williams and the examination of hundreds of documents. The allegations are untested but appear to demonstrate reasonable grounds to justify investigation and key witnesses said they would co-operate with police.

See: Courier Mail article dated 4 June 2015 at <<http://www.couriermail.com.au/news/queensland/allegations-rick-williams-forged-financial-documents-tried-to-have-rival-done-over-and-sexually-harrassed-teen-employee-handed-to-police/news-story/09d24f18185c44285fa1b5a8aea8a021>>. Based on QPS's response to OIC's enquiries about its searches for responsive documents, however, OIC was satisfied that only three—not 30—statutory declarations had been received by QPS, and that these three documents formed part of the Information in Issue. This was conveyed to the applicant in OIC's preliminary view and confirmed in the telephone conversation on 21 April 2017. Given the applicant's final submissions to OIC (responding to the preliminary view and following the telephone conversation) did not address this matter, the sufficiency of QPS's searches for 27 other statutory declarations or statements is not an issue requiring determination in this review. However, for sake of completeness, I am satisfied that any further documents of this nature may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**), on the ground that they are nonexistent.

¹¹ As set out in the Appendix.

Exempt Information

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent the documents contain the individual's personal information.¹² The IP Act is to be administered with a pro-disclosure bias;¹³ however, the right of access is subject to a number of exclusions and limitations, including grounds of refusal of access.
14. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the RTI Act. Relevantly, section 47(3) of the RTI Act permits an agency to refuse access to documents to the extent they comprise exempt information.¹⁴

Legal professional privilege

15. Information will qualify as exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.¹⁵
16. This exemption reflects the requirements for establishing legal professional privilege at common law.¹⁶ Accordingly, for information to be subject to legal professional privilege, it must comprise or record a communication that was:
 - made in the course of a lawyer-client relationship
 - confidential at the time and remains confidential; and
 - made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.¹⁷
17. When each of these requirements is met, legal professional privilege is established. However, qualifications and exceptions to privilege¹⁸ may, in particular circumstances, affect the question of whether information attracts or remains subject to it.

Findings

18. Following media reporting in 2015, a police investigation (the **QPS Investigation**) was conducted into a number of allegations, including historical allegations, made against the applicant. At the completion of the QPS Investigation, relevant aspects of the matter were referred for external legal opinion.¹⁹ Ten pages of the Additional Documents comprise a legal opinion obtained by QPS (**Legal Opinion**).
19. I have carefully considered the Legal Opinion. While I am restricted as to the level of detail I can relate about the contents of this information,²⁰ I can confirm that I am satisfied that the Legal Opinion comprises a communication that meets each of the requirements for establishing legal professional privilege at common law identified in paragraph 16

¹² Section 40(1)(a) of the IP Act.

¹³ Section 64(1) of the IP Act.

¹⁴ Section 47(3)(a) of the RTI Act. Schedule 3 of the RTI Act sets out the types of information that comprise exempt information: section 48 of the RTI Act.

¹⁵ Schedule 3, section 7 of the RTI Act.

¹⁶ This was confirmed in *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].

¹⁷ *Eso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49 at 73; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552.

¹⁸ Such as waiver or improper purpose.

¹⁹ As stated at <<http://mypolice.qld.gov.au/blog/2016/05/30/investigation-member-parliament-finalised/>>.

²⁰ By section 121(3) of the IP Act, which provides that the Information Commissioner must not, in a decision, include information that is claimed to be exempt information or contrary to the public interest information.

above. Further, I am satisfied that no qualifications or exceptions to legal professional privilege are relevant in the circumstances of this case.

20. In these circumstances, I find that the Legal Opinion is subject to legal professional privilege and is, therefore, exempt information under schedule 3, section 7 of the RTI Act.
21. The applicant's submissions do not refer to the Legal Opinion in particular, address the requirements of legal professional privilege or raise any exception or circumstances of waiver. Some of the applicant's submissions set out under the heading 'Contrary to the public interest information' below contend that the public interest favours disclosure of the information sought by him. However, when information qualifies as exempt information—as is the case here with respect to the Legal Opinion—public interest considerations cannot be taken into account. This is because Parliament has determined that disclosure of exempt information would, on balance, be contrary to the public interest in all instances.²¹ Further, while agencies may decide to exercise discretion to release exempt information, OIC cannot.²²

Law enforcement method or procedure

22. Information will also qualify as exempt information if its disclosure could reasonably be expected to²³ prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.²⁴
23. To enliven this exemption, the following requirements must be met:²⁵
 - there exists an identifiable method or procedure
 - it is a method or procedure for the preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - disclosure of the information could reasonably be expected to prejudice the effectiveness of that method or procedure.

Findings

24. QPS refused access to 37 pages of the Initial Documents²⁶ on the ground that their disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law. Nine pages of the Additional Documents contain similar information.²⁷
25. QPS submits that disclosure of the information on these pages would identify all investigative processes and methods and each piece of evidence considered in the QPS Investigation.

²¹ Section 48(2) of the RTI Act.

²² Section 118(2) of the IP Act.

²³ The words '*could reasonably be expected to*' call for a decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible or merely speculative, and expectations that are reasonably based: that is, expectations for the occurrence of which real and substantial grounds exist. See *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at [62]-[63].

²⁴ Schedule 3, section 10(1)(f) of the RTI Act.

²⁵ *Harris and Queensland Police Service* [2014] QICmr 10 (18 March 2014) at [11].

²⁶ Being pages 42-46, 128-158 and 258 in the Initial Documents.

²⁷ Being information of the same type as that appearing on pages 136-158 in the Initial Documents.

26. QPS determined not to take any further action in relation to the allegations investigated in the QPS Investigation. The applicant was informed of the outcome of the QPS Investigation on 26 May 2016.²⁸
27. While I am constrained as to the level of detail I can provide regarding the 37 pages of the Initial Documents and nine pages of Additional Documents,²⁹ I can confirm that, generally, 31 pages of the Initial Documents³⁰ and all nine pages of the Additional Documents record the investigative processes or methods used by QPS regarding the material considered by it throughout the course of the QPS Investigation. Having carefully considered these pages, I am satisfied that they reveal identifiable lawful methods or procedures used by QPS. Further, given the nature and content of the pages, I am satisfied that disclosing them could reasonably be expected to prejudice those lawful methods or procedures. In this regard, while the QPS Investigation has been finalised, I am satisfied that the methods or procedures in question could reasonably be expected to be less effective in future investigations, if people were to be become aware of them. In these circumstances, I find that 31 pages of the Initial Documents and nine pages of the Additional Documents are exempt information under schedule 3, section 10(1)(f) of the RTI Act.
28. The applicant's submissions do not refer to these pages specifically, nor do they address this particular ground for exemption. As noted at paragraph 21 above, some of the applicant's submissions contend that it is in the public interest that he access the information. However, as noted in that paragraph, when information qualifies as exempt information—as is the case here—submissions about the public interest cannot be taken into consideration.
29. The remaining six of the 37 pages of the Initial Documents,³¹ while recording details about the QPS Investigation undertaken regarding the allegations made against the applicant, do not, in my opinion, reveal identifiable lawful methods or procedures used by QPS.³² Given this position, I am satisfied that disclosure of the six pages could not prejudice any method or procedure. Accordingly, I find that these six pages are not exempt information under schedule 3, section 10(1)(f) of the RTI Act.

Conclusion

30. In conclusion, I find that access to 31 pages of the Initial Documents and 19 pages of the Additional Documents may be refused as they are exempt information.³³
31. The Information Commissioner³⁴ can decide any matter in relation to the access application that could, under the IP Act, have been decided by the agency dealing with the application.³⁵ Accordingly, I will now consider whether disclosure of the six pages that do not constitute exempt information—along with the other remaining Information in Issue—would, on balance, be contrary to the public interest.³⁶

²⁸ By letter dated 26 May 2016, a copy of which was attached to the external review application.

²⁹ By section 121(3) of the IP Act.

³⁰ Pages 42-46 and 133-158 in the Initial Documents.

³¹ Pages 128-132 and 258 in the Initial Documents.

³² Section 121(3) of the IP Act prevents me from being more specific in this regard.

³³ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, sections 7 and 10(1)(f) of the RTI Act.

³⁴ Or delegate.

³⁵ Section 118(1)(b) of the IP Act.

³⁶ This approach was supported in *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [15].

Contrary to the public interest information

Relevant law

32. Section 47 of the RTI Act provides that an agency may refuse access to documents to the extent they comprise information, the disclosure of which would, on balance, be contrary to the public interest.³⁷
33. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:³⁸
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
34. 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.

Findings

35. I have considered whether disclosure of the following information (**Third Party Information**) would, on balance, be contrary to the public interest:
- six pages of the Initial Documents³⁹ which, as set out above,⁴⁰ are not exempt information
 - 101 pages⁴¹ and parts of 93 pages⁴² of the Initial Documents which QPS refused on the ground that disclosure of them would, on balance, be contrary to the public interest; and
 - the remaining 24 pages of the Additional Documents, which contain information that duplicates or is of a similar nature to that in the 101 pages and parts of 93 pages of the Initial Documents referred to above.
36. While I am constrained in terms of the detail I can provide about the Third Party Information,⁴³ I am able to confirm that, generally, it comprises the following types of information provided to or generated by QPS in the course of the QPS Investigation (some of which relates to historical matters):
- three statutory declarations⁴⁴ which the Courier Mail provided to QPS
 - statements obtained from persons interviewed by QPS

³⁷ Sections 47(3)(b) and 49 of the RTI Act.

³⁸ Section 49(3) of the RTI Act.

³⁹ Pages 128-132 and 258 in the Initial Documents.

⁴⁰ See paragraphs 29 and 31.

⁴¹ Pages 54-80, 114-121, 159-183, 186-220, 237, 259-260 and 264-266 in the Initial Documents.

⁴² Pages 1, 2, 4-10, 12-23, 25-28, 30, 32-35, 38-41, 47-52, 81, 84-87, 89, 90, 92-95, 99-105, 110, 112, 122-125, 127, 184-185, 221, 223-227, 230, 234, 236, 238-240, 243-253, 256 and 257 in the Initial Documents.

⁴³ By section 121(3) of the IP Act.

⁴⁴ As noted at footnote 10.

- other investigation documentation (comprising information obtained and prepared in the course of the QPS Investigation); and
- correspondence regarding the outcome of the QPS Investigation to persons other than the applicant.

Irrelevant factors

37. The applicant submits⁴⁵ that:

- [a]s a Member of Parliament and a public figure, the information should not be withheld from [him]⁴⁶
- [a]s a public figure, it is in the best interests of the public that all allegations be made available to him, that [he] may defend himself⁴⁷
- 'with an election pending, [the statutory declarations] should be released to [him] post haste'.⁴⁸

38. The IP Act applies equally to all individuals seeking access to information. The applicant does not have any additional access entitlement under the IP Act by reason of being a Member of Parliament or a public figure. Accordingly, I have not taken these submissions, or any other irrelevant factor, into account in making my decision.

Factors favouring disclosure

Accountability, transparency and inform the community

39. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability⁴⁹
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁵⁰ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.⁵¹

40. Generally, there is a public interest in QPS investigations of allegations and complaints being conducted with a level of transparency and accountability that affords the parties to such an investigation (and the public generally) with an understanding of the outcome and conclusions of the investigation.

41. QPS notified the applicant of the QPS Investigation outcome—namely, that it had determined not to take any action against the applicant regarding the investigated allegations and complaints.⁵² Further, following significant media interest in allegations and complaints and the QPS Investigation, QPS released a media statement about completion of the investigation, which stated that:

⁴⁵ External review application.

⁴⁶ External review application.

⁴⁷ Submissions dated 5 May 2017.

⁴⁸ Submissions dated 5 May 2017.

⁴⁹ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 3 of the RTI Act.

⁵¹ Schedule 4, part 2, item 11 of the RTI Act.

⁵² By letter dated 26 May 2016, a copy of which was attached to the external review application.

*After relevant investigation, and careful evaluation and assessment of the available evidence it has been concluded there is insufficient evidence to support any reasonable prospect of successful prosecutions.*⁵³

42. I acknowledge that disclosing the Third Party Information would further inform the applicant of the investigations and inquiries undertaken in relation to specific matters in the QPS Investigation. However, I also note that a significant amount of information has been released to the applicant. Based on the material before me, I consider that the information which has been released to the applicant significantly advances the accountability and transparency factors favouring disclosure, as it has informed the applicant about QPS's investigation processes, the general nature of the allegations and complaints which were the subject of the QPS Investigation, and the reasons for QPS's decision not to take further action in respect of those investigated allegations and complaints. I also consider that the media statement released by QPS about the outcome of the QPS Investigation further advances these factors favouring disclosure, by generally informing the community about the investigation process and the reasons for QPS's decision not to take action against the applicant in respect of the investigated allegations and complaints. Given that the Third Party Information reveals only, or primarily, information provided by third parties to QPS, rather than steps taken by QPS regarding such information, I am satisfied that disclosure of the Third Party Information is not likely to further advance, to any significant degree, the accountability and transparency factors.
43. For these reasons, in the circumstances of this review, I find that these factors warrant moderate weight.

Applicant's personal information

44. As the QPS Investigation relates to allegations and complaints about the applicant, a factor favouring disclosure⁵⁴ arises regarding those parts of the Third Party Information that contain the applicant's personal information.⁵⁵ To the extent that the Third Party Information contains the applicant's personal information, I afford significant weight to this factor favouring disclosure.

Administration of justice for the applicant

45. The applicant submits that nondisclosure of information is denying him *'any form of legal recourse, as ... the persons making statements have done it publicly and for publication by the Courier Mail Newspaper and in fact these stories have been reported Australia wide and discrepancies may exist in the [s]tatutory declarations opposed to print matter by the media'*.⁵⁶
46. A public interest factor favouring disclosure will arise if disclosing information could reasonably be expected to contribute to the administration of justice for a person⁵⁷—for example, by allowing a person to access information that may assist them in legal proceedings. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:

⁵³ As stated at <<http://mypolice.qld.gov.au/blog/2016/05/30/investigation-member-parliament-finalised/>>.

⁵⁴ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁵ *Personal information* is defined in section 12 of the IP Act 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'*.

⁵⁶ Submissions dated 5 May 2017.

⁵⁷ Schedule 4, part 2, item 17 of the RTI Act.

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁵⁸

47. I acknowledge the applicant's view that he has been adversely affected by the media reporting arising from certain individuals making statements to the media about complaints concerning him. I note that, at the time the reporting occurred, the applicant publicly stated that *'he may take legal action over the matter'* and *'was seeking legal advice'*.⁵⁹ I also note the applicant's submissions, which indicate that he considers that access to information will enable him to pursue *'legal recourse'*.

48. I have carefully considered the Third Party Information, the information which has been released to the applicant, the publicly available information about various allegations that have been made against the applicant and who made them, and the outcome of the QPS Investigation. The information released to the applicant has generally informed him about the allegations and complaints which were the subject of the QPS Investigation and a significant level of background to that investigation. Further, as a result of this released information, as well as extensive media reporting, it is reasonable to expect that the applicant would, most likely, be aware of the identity of certain individuals who made various allegations against him and the nature of those allegations. Finally, I note that, if the applicant considers that the media reporting of allegations made against him is incorrect or misleading, disclosure of the Third Party Information is not required to enable the applicant to take any action that he considers necessary or appropriate in respect of that media reporting.

49. In these circumstances, I am not satisfied that the release of Third Party Information is required to enable the applicant to:

- evaluate whether a legal remedy against any particular individual or entity is available or worth pursuing; or
- pursue legal action against any particular individual or entity.

50. For these reasons, I afford this disclosure factor low to no weight.

Advance fair treatment and procedural fairness

51. The applicant submits that:

- he has *'been given no detail of information supplied to QPS by witnesses pertaining to allegations made against [him]'*⁶⁰
- nondisclosure of information is denying him natural justice by leaving him in a predicament where he doesn't know what allegations are made in the declarations⁶¹
- *'... it is in the best interests of the public that all allegations be made available to him, that [he] may defend himself'*,⁶² and

⁵⁸ *Willisford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

⁵⁹ See Courier Mail article dated 31 May 2016 at <<http://www.couriermail.com.au/news/queensland/queensland-government/labor-mp-rick-williams-beats-allegations-of-intimidation-due-to-insufficient-evidence/news-story/c4acef1de455a1a54c0e2bc4db4e30ed>> and ABC News article dated 31 May 2016 at <<http://www.abc.net.au/news/2016-05-31/labor-mp-rick-williams-legal-advice-1np-after-police-no-charges/7462562>>.

⁶⁰ External review application.

⁶¹ Telephone conversation on 21 April 2017.

⁶² Submissions dated 5 May 2017.

- 'QPS chose not to interview [him] over these allegations and [nondisclosure of information] seems to assert guilt'.⁶³
52. I have considered whether disclosing the Third Party Information could reasonably be expected to:
- contribute to the administration of justice generally, including procedural fairness;⁶⁴ and
 - advance the fair treatment of the applicant in accordance with the law in his dealings with agencies.⁶⁵
53. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it.⁶⁶ Accordingly, the person must be provided with adequate information about material that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.⁶⁷
54. In making the submissions set out at paragraph 51 above about not being given details of the allegations made against him and not being interviewed in relation to them, it is my understanding that the applicant considers that procedural fairness requires that the Third Party Information be provided to him. However here, as noted above, the outcome of the QPS Investigation was that QPS determined not to take any action against the applicant. That is, there was no adverse finding against the applicant that could be construed as requiring that QPS inform the applicant of its intended finding and the material credible, relevant and significant to that finding.
55. Moreover, given the criminal, rather than administrative, nature of the allegations and complaints considered in the QPS Investigation, had QPS made a decision adverse to the applicant, it would have most likely been in the form of criminal charges or a referral of possible corrupt conduct. During the ensuing processes and proceedings, the applicant would have been provided with the pertinent material as part of being given the opportunity to be heard and present his case to the relevant court or commission.⁶⁸
56. Insofar as the applicant contends that failing to disclose the Third Party Information to him seems to assert his guilt, I disagree. This submission appears to be predicated on an assumption that procedural fairness allows for the release of information regarding complaints and allegations to parties determined to be innocent, but not those who are found to be guilty. Even if it were within OIC's jurisdiction to assess the applicant's guilt

⁶³ Submissions dated 5 May 2017.

⁶⁴ Schedule 4, part 2, item 16 of the RTI Act.

⁶⁵ Schedule 4, part 2, item 10 of the RTI Act.

⁶⁶ *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

⁶⁷ *Kioa* at 629 per Brennan J.

⁶⁸ Early common law referred to the fair hearing rule in terms of criminal law—see *R v Gaskin* (1799) 101 ER 1349 at 1350, where Lord Kenyon CJ observed '[i]t is to be found at the head of our criminal law, that every man ought to have an opportunity of being heard before he is condemned'. While consideration of procedural fairness now focusses on administrative decisions, the observation by Mason CJ, Dawson, Toohey and Gaudron JJ—that where a decision-making process involves different steps or stages before a final decision is made, the requirements of natural justice are satisfied if the decision-making process, viewed in its entirety, entails procedural fairness—at [29] of *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 appears apposite for the present matter.

or innocence—which is clearly not the case—the fair hearing aspect of procedural fairness does not operate in this manner.

57. In conclusion, I acknowledge that the applicant wishes to access the Third Party Information to alleviate what he has termed his predicament of not knowing the detail of the allegations made against him, and also to assist him to defend himself—presumably in political and public discourse. Procedural fairness does recognise that reputation is an interest that can be prejudiced by an adverse decision.⁶⁹ However, the QPS Investigation considered matters of criminal rather than administrative law, made no adverse finding against the applicant, and resulted in a decision to take no further action. In these circumstances, I am not satisfied that procedural fairness requires that the applicant be provided with the Third Party Information. Further, I am not satisfied that disclosure of the Third Party Information would advance the applicant's fair treatment in his dealings with QPS.
58. For these reasons, I afford low to no weight to the procedural fairness and fair treatment factors favouring disclosure.

Positive and informed debate

59. The applicant submits that '*the minimum [he] should be entitled to is the statutory declarations in full that were freely given to the Courier Mail, as the Courier Mail continually run[s] excerpts and make[s] reference to the information in these statutory declarations*'.⁷⁰ Although the applicant has not explicitly argued that disclosure of the Third Party Information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest, I have considered this factor.⁷¹
60. Given the nature of the Third Party Information and the publicly announced, and reported, outcome of the QPS Investigation, I do not consider that disclosing the Third Party Information could reasonably be expected to contribute to positive and informed debate.
61. Accordingly, I afford low to no weight to this factor favouring disclosure.

Disclosure would reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant

62. The applicant submits that '*discrepancies may exist in the [s]tatutory declarations [provided to QPS] opposed to print matter by the media*'.⁷² In making this submission, it is unclear which source of information he believes to be incorrect, if any.
63. Insofar as the applicant's submission may relate to the Third Party Information—rather than articles in the media—containing inaccuracies, I have carefully reviewed the Third Party Information. I note that it includes historical complaint information, statements obtained from persons interviewed by QPS and statutory declarations provided for the QPS Investigation. Such information is, by its very nature, the opinions and versions of events expressed by relevant individuals, which are shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent

⁶⁹ *Annetts v McCann* (1990) 170 CLR 596 at [4] per Mason CJ, Deane and McHugh JJ, at [11] per Brennan J, and [27] per Toohey J; and *Vega Vega v Hoyle & Ors* [2015] QSC 111 at [124] per Lyons J.

⁷⁰ Submissions dated 5 May 2017.

⁷¹ Schedule 4, part 2, item 2 of the RTI Act.

⁷² Submissions dated 5 May 2017.

subjectivity does not mean that the Third Party Information is necessarily incorrect or unfairly subjective.⁷³

64. I also note that:

- the statutory declarations, to which the applicant refers in his submissions, have not been publicly disclosed, in the media or otherwise; and
- QPS determined that the information considered in the QPS Investigation (including the statutory declarations to which the applicant refers) was insufficient to substantiate the allegations and complaints that QPS investigated.

65. In these circumstances, I do not consider that disclosure of the Third Party Information could reasonably be expected to reveal that the Third Party Information, rather than media reporting of various allegations, is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Further, as noted at paragraph 48 above, if the applicant considers that the media reporting of allegations made against him is incorrect or misleading, disclosure of the Third Party Information is not required to enable the applicant to take any action that he considers necessary or appropriate in respect of that media reporting.

66. For these reasons, I afford this factor favouring disclosure low to no weight.

Deficiencies in the conduct or administration of an agency or official

67. The RTI Act recognises that a public interest factor in favour of disclosure arises where disclosure of information could reasonably be expected to allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official. Although the applicant has not explicitly argued that disclosure of the Third Party Information could reasonably be expected to allow or assist with inquiry into possible conduct or administration deficiencies, he has submitted that:

- *QPS chose not to interview me over these allegations*⁷⁴ and
- he *find[s] it offensive that in the investigation [he] was referred to as a Labor Member of Parliament instead of a Member of QLD Parliament without reference to political persuasion*.⁷⁵

68. In terms of the applicant's submission that he was not interviewed, I note that the outcome of the QPS Investigation was that QPS decided not to take any action against the applicant. On the material before me, I am unable to ascertain how disclosure of the Third Party Information could allow or assist inquiry into any possible deficiency in conduct or administration related to the applicant not being interviewed.

69. Similarly, in terms of the applicant's concern that he was referred to by party affiliation, rather than simply as a Member of Parliament, I am unable to ascertain how disclosure of the Third Party Information could, given its nature, allow or assist an inquiry into any possible deficiency in conduct or administration related to such reference.

70. In these circumstances, there is nothing in the information before me to suggest that disclosure of information could reasonably be expected to allow or assist with inquiry into any inappropriate conduct on the part of QPS, its investigators or its decision-maker. I also note, in any event, that the applicant may raise any concerns he may have about

⁷³ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) (*Marshall*) at [15]-[20].

⁷⁴ Submissions dated 5 May 2017.

⁷⁵ External review application.

deficiencies in the conduct or administration of QPS regarding the investigation with relevant integrity bodies without accessing the Third Party Information.

71. For these reasons, I afford this factor favouring disclosure low to no weight.

Factors favouring nondisclosure

Personal information of other individuals

72. The RTI Act recognises nondisclosure factors will arise where disclosing information could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;⁷⁶ and
- cause a public interest harm if it would disclose personal information of a person, whether living or dead.⁷⁷

73. The applicant submits that:

- *'these persons have freely spoken and identified themselves to media outlets without reservation of them being identified to the public at large in making allegations against [him]; [OIC has] identified that their identity needs to be protected, this I find perplexing as they had no reservations in openly talking to the media'*⁷⁸
- the Courier Mail has the statutory declarations and they are already in the public domain⁷⁹
- *'the minimum [he] should be entitled to is the statutory declarations in full that were freely given to the Courier Mail, as the Courier Mail continually run[s] excerpts and make[s] reference to the information in these statutory declarations'*⁸⁰ and
- he does *'not believe any rights of those making allegations via statutory declarations should be upheld'*.⁸¹

74. The Third Party Information comprises information considered in the QPS Investigation about individuals other than the applicant. (As noted above,⁸² some of the Third Party Information is the personal information of the applicant). On carefully reviewing the Third Party Information, I note that it comprises information received, obtained and prepared for the QPS Investigation (including statutory declarations provided to the QPS Investigation and information provided in response to QPS officers' inquiries), and includes identifying details of persons involved in or witnessing matters which were the subject of the QPS Investigation (including historical matters). I consider that the Third Party Information is highly sensitive in nature, being information provided by and/or about private individuals (including their personal details, their observations and recollections of events) in relation to matters considered in the QPS Investigation.

75. The applicant considers that these individuals had no reservations about speaking to the media and appears to suggest that the information they provided—particularly the statutory declarations—is already in the public domain, by virtue of being provided to a media organisation. I accept that there has been extensive media reporting of various allegations made against the applicant and that certain individuals making allegations

⁷⁶ Schedule 4, part 3, item 3 of the RTI Act.

⁷⁷ Schedule 4, part 4, item 6(1) of the RTI Act.

⁷⁸ Submissions dated 5 May 2017, similar submissions in telephone conversation on 21 April 2017.

⁷⁹ Telephone conversation on 21 April 2017.

⁸⁰ Submissions dated 5 May 2017.

⁸¹ Submissions dated 5 May 2017.

⁸² As noted at paragraph 44 above.

have been identified in such media reporting.⁸³ Accordingly, I accept that, as a result of this reporting, some details of the allegations in the Third Party Information have entered the public domain.

76. I consider that this position reduces, but does not negate, the extent of the prejudice and public interest harm that could be anticipated from disclosing the details of the allegations in the Third Party Information which have been publicly reported and the names of individuals identified in media reporting as making such allegations. Further, I am unable to accept that *all* information provided to the media organisation (including information which has not been publicly disclosed) is now in the public domain. I note that, in making his access application and submitting that he has *'been given no detail of information supplied to QPS by witnesses pertaining to allegations made against [him]'*;⁸⁴ the applicant appears to acknowledge this.
77. In terms of the extent that to which the Third Party Information concerns allegations that have been reported in the media, while I am restricted as to the level of detail I can provide about the Third Party Information,⁸⁵ I can confirm that the statutory declarations raised by the applicant in his submissions have not been publicly disclosed. I can also confirm that, where the Third Party Information relates to allegations that have been reported in the media, it contains significantly more detailed information than what has been reported.
78. Further, I am able to confirm that, where the Third Party Information is the personal information of the applicant, as well as other individuals, the personal information of the applicant is intertwined with the personal information of other individuals.
79. On careful consideration of the Third Party Information, I am satisfied that it is not possible to:
- accurately separate information that has been reported in the media from that which has not; nor
 - separate the applicant's personal information from the personal information of those other individuals.
80. In these circumstances, I consider that releasing the information already in the public domain and the applicant's personal information in the Third Party Information would necessarily disclose the personal information of other individuals, and could reasonably be expected to prejudice the protection of those individuals' right to privacy and cause a public interest harm.
81. Given the highly sensitive and personal nature of the Third Party Information, I consider that the extent of the harm in disclosing the personal information that is not in the public domain is very significant, due to the nature of the information and the impact this would

⁸³ See, for example, the following articles about the allegations and complaints: Courier Mail article dated 4 June 2015 at <<http://www.couriermail.com.au/news/queensland/allegations-rick-williams-forged-financial-documents-tried-to-have-rival-done-over-and-sexually-harrassed-teen-employee-handed-to-police/news-story/09d24f18185c44285fa1b5a8aea8a021>> and Courier Mail article dated 6 June 2015 at <<http://www.couriermail.com.au/news/queensland/explosive-w-histleblower-video-that-detailed-allegations-against-labor-mp-rick-williams/news-story/494e130410672659725beb00b7efa71f>>. Also, for example, articles about the outcome of the QPS investigation: Brisbane Times article dated 30 May 2016 at <<http://www.brisbanetimes.com.au/queensland/police-drop-probe-against-queensland-mp-rick-williams-20160530-gp7eww.html>>; Courier Mail article dated 31 May 2016 at <<http://www.couriermail.com.au/news/queensland/queensland-government/labor-mp-rick-williams-beats-allegations-of-intimidation-due-to-insufficient-evidence/news-story/c4acef1de455a1a54c0e2bc4db4e30ed>> and ABC News article dated 31 May 2016 at <<http://www.abc.net.au/news/2016-05-31/labor-mp-rick-williams-legal-advice-1np-after-police-no-charges/7462562>>.

⁸⁴ External review application.

⁸⁵ By section 121 of the IP Act.

have on those individuals' privacy.⁸⁶ Accordingly, in relation to this information, I afford the privacy factor and the harm factor substantial weight. In terms of those parts of the Third Party Information that have been mentioned in media reports, while I consider that these factors warrant somewhat less weight, I nonetheless consider that such weight is also substantial.

Prejudice flow of information to QPS

82. If disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies, a public interest factor favouring nondisclosure arises.⁸⁷
83. It is generally recognised that there is very strong public interest in protecting the free flow of information to law enforcement and regulatory agencies.⁸⁸ This is because agencies, such as QPS, often rely on information from the public to be alerted to and to pursue potential breaches of the law. Further, efficient and effective use of public resources is facilitated by police being able to seek and obtain information from members of the community, whether they are complainants, witnesses, informers or the subjects of complaint. Routinely disclosing these types of information would tend to discourage persons from coming forward with relevant information, or providing information at QPS's request. In the circumstances of this review, I am satisfied that this is the case in terms of both the media organisation which provided information to QPS, and individuals who provided further information in the ensuing QPS investigation. If this occurred, I consider it reasonable to expect that this would, in turn, detrimentally effect QPS's ability to effectively discharge its functions.⁸⁹
84. I therefore afford this factor favouring nondisclosure very significant weight.

Balancing the public interest

85. For the reasons set out above, I consider that the accountability and transparency factors favouring disclosure of the Third Party Information warrant moderate weight. I also consider that significant weight favouring disclosure should be afforded to those parts of the Third Party Information that comprise the applicant's personal information. In terms of the remaining applicable factors favouring disclosure, I consider that these should be given no to low weight.
86. On the other hand, I consider that the personal information and privacy factors should be afforded substantial weight in terms of both Third Party Information that has not been canvassed in media reports, and that which has. I consider that the factor regarding prejudice to the flow of information to law enforcement agencies warrants very significant weight as well.
87. On balance, I am satisfied that, in the circumstances of this review, the factors favouring nondisclosure warrant relatively greater weight, and outweigh the factors favouring disclosure.

⁸⁶ I consider that these factors warrant less weight in relation to the statutory declarations.

⁸⁷ Schedule 4, part 3, item 13 of the RTI Act.

⁸⁸ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016) and *Marshall*.

⁸⁹ See *Marshall* at [29]. Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [16].

Conclusion

88. For the reasons set out above, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest⁹⁰ and access to that information can be refused on that basis.⁹¹

Irrelevant information

Relevant law

89. Section 88 of the IP Act permits an agency to delete information from a document which it considers is not relevant to an application.
90. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.⁹²

Findings

91. The applicant made no submissions about any of the information that QPS deleted under section 88 of the IP Act either contending that such information is relevant to his access application or otherwise. Generally, he submits that the information located by QPS should not be withheld from him.⁹³
92. I have carefully considered the information that QPS deleted from 29 pages⁹⁴ on the basis it was not relevant to the access application (**Deleted Information**). I am satisfied that the Deleted Information comprises information about police activities and investigations that are unrelated to complaints or allegations against the applicant.
93. The access application sought information relating to allegations or complaints made against the applicant. Based on the terms of the access application, and given that the part pages in question clearly fall outside the scope of it, I am satisfied that it was appropriate for QPS to delete the Deleted Information.⁹⁵

DECISION

94. I vary QPS's decision and find that access to the:

- 31 pages of the Initial Documents and 19 pages of the Additional Documents may be refused on the ground that these pages are exempt information; and

⁹⁰ Under section 49 of the RTI Act

⁹¹ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁹² *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made in the context of the equivalent of section 88 of the IP Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld). Refer also to *Kiepe and The University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [11] and *2CDLO3 and Department of Education and Training* [2016] QICmr 20 (10 June 2016) at [54].

⁹³ External review application.

⁹⁴ Parts of pages 81-88, 91, 95-103, 105-113, 242 and 243 in the Initial Documents.

⁹⁵ In accordance with the requirements of section 88(2) of the IP Act.

- 107 pages⁹⁶ and parts of 93 pages⁹⁷ of the Initial Documents and 24 pages of the Additional Documents may be refused on the ground that their disclosure would, on balance, be contrary to the public interest.

95. I also find that parts of 29 pages are not relevant to the access application and can be deleted.

96. I have made this decision as a delegate of the Information Commissioner under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 4 August 2017

⁹⁶ Pages 54-80, 114-121, 159-183, 186-220, 237, 259-260 and 264-266 in the Initial Documents.

⁹⁷ Pages 1, 2, 4-10, 12-23, 25-28, 30, 32-35, 38-41, 47-52, 81, 84-87, 89, 90, 92-95, 99-105, 110, 112, 122-125, 127, 184-185, 221, 223-227, 230, 234, 236, 238-240, 243-253, 256 and 257 in the Initial Documents.

APPENDIX

Significant procedural steps

Date	Event
12 August 2016	OIC received the external review application, which included some submissions by the applicant.
26 August 2016	OIC notified the applicant and QPS that it had accepted the external review application and asked QPS to provide additional information.
30 August 2016	The applicant spoke with an OIC staff member about the review process.
12 September 2016	OIC received the requested information from QPS.
20 October 2016	The applicant spoke with an OIC staff member about the review process and requested a written update.
21 October 2016	OIC provided the requested written update to the applicant.
8 November 2016	OIC requested further information from QPS.
18 November 2016	OIC wrote to the applicant providing a further update.
25 November 2016	OIC received the requested information from QPS.
3 February 2017	OIC wrote to the applicant providing a further update.
1 March 2017	OIC conveyed an oral preliminary view to QPS.
12 April 2017	OIC conveyed a preliminary view to the applicant.
21 April 2017	The applicant spoke with an OIC staff member and confirmed he did not accept the preliminary view.
5 May 2017	OIC received the applicant's submissions.
30 May 2017	OIC conveyed a preliminary view to QPS.
19 June 2017	OIC received submissions from QPS, accepting the preliminary view and confirming the release of small portions of information to the applicant in accordance with the preliminary view.