



Decision and Reasons for Decision

Citation: *EC710C and Queensland Police Service* [2019] QICmr 24 (27 June 2019)

Application Number: 313972

Applicant: EC710C

Respondent: Queensland Police Service

Decision Date: 27 June 2019

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - information irrelevant to terms of information access application – deletion of irrelevant information - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information disclosure of which could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - information obtained, used or prepared by Crime Stoppers Queensland Ltd - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, sections 10(1)(i) and 10(5) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information and privacy - accountability and transparency - 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 - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - document not in agency's possession or under its control - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents relating to the execution of a search warrant by QPS officers at his property, following a complaint made to Crime Stoppers Queensland Ltd (**Crime Stoppers**).
2. QPS located various documents, and decided to disclose parts of these documents. Access was refused to other parts, on the grounds relevant information was exempt information, or 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. During that review, QPS agreed to release a deal of information to which it initially refused access. At my request, it also conducted further searches for and located additional documents, the bulk of which were also released to the applicant (in whole or part).
4. The information remaining in issue comprises parts of nine pages. I vary QPS' decision, and find that, for the reasons explained below, it may either delete this information on the basis it is irrelevant, or refuse access. QPS may also refuse access to one document, on the basis that it is nonexistent or unlocatable.

Background

5. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

Reviewable decision

6. The decision under review is QPS' internal review decision dated 4 June 2018.

Evidence considered

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

Information in issue

8. The information in issue comprises 18 segments of information appearing across nine pages, as follows:
 - nine segments¹ redacted from the first, second and third pages of an 'Intelligence Log Summary' (**ILS**)
 - five segments² of information redacted from three pages of a QPS police diary (**Diary**)
 - three segments³ redacted from the first and second pages of an unsigned QPS 'Application for Search Warrant' (**Warrant Application**); and
 - a signature redacted from the final page of a QPS 'Supervisor's Checklist for Application for Search Warrant'.⁴
9. Copies of the above pages, clearly marked so as to indicate information in issue the subject of this decision and segment numbering adopted throughout these reasons, will accompany the copy of these reasons forwarded to QPS.

¹ Segments 1-9.

² Segments 10-14.

³ Segments 15-17.

⁴ Segment 18.

Issues for determination

10. The issues for determination are whether:
- parts of the Diary may be deleted, as information irrelevant to the access application,
 - access to certain segments of information in issue may be refused, on the grounds those segments comprise exempt information; and
 - access to the balance of the segments in issue may be refused, on the grounds disclosure of these segments would, on balance, be contrary to the public interest.
11. The applicant also questions the whereabouts of the final, signed version of the Warrant Application. Therefore, a further issue is whether access to the final version of the Warrant Application may be refused, on the basis this document is not in QPS' possession or under its control and therefore nonexistent or unlocatable.
12. I have addressed each issue in turn.

Irrelevant information

13. Section 88 of the IP Act relevantly provides:

88 Deletion of irrelevant information

(1) *This section applies if giving access to a document will disclose to the applicant information the agency or Minister reasonably considers is not relevant to the access application for the document.*

(2) *The agency or Minister may delete the irrelevant information from a copy of the document and give access to the document by giving access to a copy of the document with the irrelevant information deleted.*

...

14. From my examination of the information in issue, I am satisfied that the following segments in the Diary concern policing matters other than the execution of the search warrant on the applicant's premises:
- first page – top segment,⁵
 - second page – bottom segment,⁶ and
 - segment redacted from third page.⁷

15. The above information is not relevant to the terms of the applicant's access application, in that it is not information '*pertaining to*'⁸ the execution of the warrant the subject of that application. It may therefore be deleted under section 88(2) of the IP Act.

Exempt information

Relevant law

16. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.⁹ While the IP Act is to be administered with a pro-disclosure bias,¹⁰ the right of access is subject to a number of exclusions and limitations, including grounds for refusal of access.

⁵ Segment 10.

⁶ Segment 13.

⁷ Segment 14.

⁸ Access application dated 28 February 2018.

⁹ Under section 40(1)(a) of the IP Act.

¹⁰ Section 64(1) of the IP Act.

17. 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 *Right to Information Act 2009* (Qld) (**RTI Act**). Section 47(3)(a) of the RTI Act permits an agency to refuse access to documents to the extent they comprise 'exempt information'.¹¹
18. Exempt information includes:
- a) information obtained, used or prepared by Crime Stoppers (**Crime Stoppers Exemption**);¹² and
 - b) information the disclosure of which could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment (**Prejudice System Exemption**).¹³
19. The following table summarises information which, for reasons I have explained below, I consider comprises exempt information:

Segment No.	Description	Exemption Provision
ILS		
1	Sole segment of information redacted from page 1	Crime Stoppers Exemption
2	First segment of information redacted from page 2	Prejudice System Exemption
3	Second segment of information redacted from page 2	Crime Stoppers Exemption
4	Third segment of information redacted from page 2	Prejudice System Exemption
5	Block of information redacted from top of page 3	Prejudice System Exemption
6	Second segment of text redacted from page 3	Prejudice System Exemption
Warrant Application		
15	Sole segment of text redacted from page 1	Prejudice System Exemption
16	Block redacted from top of second page	Prejudice System Exemption

Crime Stoppers Exemption

20. Schedule 3, section 10(5) of the RTI Act provides:

...information is exempt information if it consists of information obtained, used or prepared—

- (a) for an investigation by a part of the Queensland Police Service known as the State Intelligence Group; or*
- (b) for an investigation by a part of the Queensland Police Service known as the State Security Operations Group; or*
- (c) by Crime Stoppers Queensland Limited ACN 010 995 650.*

21. An exception to the above is, however, stated in schedule 3, section 10(6) of the RTI Act:

¹¹ As further defined in section 48 and schedule 3 of the RTI Act.

¹² Schedule 3, section 10(5)(c) of the RTI Act, set out in full below (paragraph 20).

¹³ Schedule 3, section 10(1)(i) of the RTI Act.

However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—

(a) it consists of information about the applicant; and

(b) the investigation has been finalised.

22. I am satisfied that all eight segments listed in the table at paragraph 19 comprise information¹⁴ originally obtained, used or prepared by Crime Stoppers – this is clear from most of the segments themselves, and/or surrounding contextual information.¹⁵
23. Without more, therefore, all eight segments would comprise exempt information under the Crime Stoppers Exemption.
24. As noted above, however, schedule 3, section 10(5) of the RTI Act is qualified by the exception stated in schedule 3, section 10(6). The applicant relies upon this exception, arguing that it operates in his favour to preclude exemption under the Crime Stoppers Exemption.
25. As regards segments 1 and 3, this is not the case. Neither segment is ‘*about*’¹⁶ – does not concern – the applicant, and does not, therefore, meet the first requirement for exception stated in schedule 3, section 10(6)(a) of the RTI Act.
26. Accordingly, as I am satisfied that segments 1 and 3 were obtained, used or prepared by Crime Stoppers, and that they are not ‘*about*’ the applicant, each comprises exempt information, to which access may be refused under section 47(3)(a) of the RTI Act, and section 67(1) of the IP Act.
27. Turning then to the balance of the segments listed in the table above, arguably the exception in schedule 3, section 10(6) may not apply to the specific limb of schedule 3, section 10(5) – ie, 10(5)(c) – comprising the Crime Stoppers Exemption. This is because that latter clause is, unlike schedule 3, sections 10(5)(a) and (b), not worded to apply by reference to ‘*an investigation*’. Therefore, it might be said there can be no ‘*investigation*’ that can be ‘*finalised*’ for the purposes of schedule 3, section 10(6)(b) of the exception.
28. On the other hand, recognising both that the IP Act is beneficial legislation, and that decision-makers are expressly obliged to interpret grounds for refusing access narrowly,¹⁷ it may be somewhat artificial to ‘read down’ the exception in schedule 3, section 10(6) of the RTI Act in the manner mooted above.
29. This is, however, not a matter which I need¹⁸ to resolve. This is because I am satisfied that these remaining segments – segments 2, 4-6 and 15-16 – comprise exempt information under the Prejudice System Exemption.

Prejudice System Exemption - schedule 3, section 10(1)(i) of the RTI Act

30. The Prejudice System Exemption provides

...Information is exempt information if its disclosure could reasonably be expected to—

...

- (i) *prejudice a system or procedure for the protection of persons, property or the environment...*

¹⁴ And contextual information surrounding relevant segments.

¹⁵ QPS explained that segment 1 comprises information created by Crime Stoppers, such that it is information ‘*used*’ and/or ‘*prepared*’ by Crime Stoppers: QPS advice to OIC, 29 January 2019.

¹⁶ A ‘*non-technical term defined according to its natural and ordinary meaning*’: *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167, at [52]. Carmody J in that decision adopted the Oxford English Dictionary definition of ‘*about*’: ‘*concerning, regarding, with regard to, in reference to; in the matter of*’ (at [57]). That is the meaning to which I have had regard in this decision.

¹⁷ Section 67(2) of the IP Act, an obligation I have borne in mind in making my decision.

¹⁸ Or, in the absence of submissions from QPS on the point, ought.

31. This exemption will apply where:¹⁹
- a) there exists an identifiable system or procedure,
 - b) it is a system or procedure for the protection of persons, property or the environment; and
 - c) disclosure of information could reasonably be expected²⁰ to prejudice²¹ that system or procedure.

32. The Crime Stoppers program involves:²²

provision of a telephone hotline, website and mobile app for members of the community to provide anonymous information about suspicious or criminal activity. This information is electronically sent to a central unit within the Queensland Police Service known as the Crime Stoppers Police Unit (CSPU), who then distribute it to the police establishment nearest to where the crime or suspicious activity is occurring for investigation.

33. I am satisfied that the functions and methods described above form a sufficiently coherent and organised scheme so as to comprise a 'system'.²³ I am also satisfied that this system – fielding and disseminating information about suspected criminal activity – is a system for the protection of persons, property or the environment. This fulfils requirements a) and b) as stated in paragraph 31.

34. I also consider that disclosure of segments 2, 4-6 and 15-16 could reasonably be expected to prejudice that system. The Crime Stoppers program is premised on anonymity and confidentiality.²⁴ Unconditional disclosure²⁵ of information such as that in issue before me – about or given by callers to Crime Stoppers, in expectation of anonymity and confidentiality – could reasonably be expected to:

- deter or discourage people from making Crime Stoppers reports in the future, and, by inhibiting the flow of information to Crime Stoppers,
- detrimentally affect – prejudice – Crime Stoppers as a system for protecting persons, property or the environment.

35. Accordingly, I consider that requirement c) above is satisfied. I therefore find that relevant segments comprise exempt information, on the basis their disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.²⁶

36. In considering the application of schedule 3, section 10(1)(i) of the RTI Act, I have taken into account what I understand to be submissions by the applicant questioning the motives of the caller, and challenging the veracity of any 'false' information supplied.²⁷ I also note that information released to the applicant records a QPS officer's view that the Crime Stoppers report 'appears to be vexatious'.²⁸

¹⁹ *94NNEZ and Department of Community Safety* (Unreported, Queensland Information Commissioner, 29 November 2010), citing *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at [27]-[36] (**Ferrier**), the latter which considered the identically-worded section 42(1)(h) of the *Freedom of Information Act 1992* (Qld).

²⁰ A reasonable expectation is one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97.

²¹ Using the ordinary meaning of this word, which includes to 'affect disadvantageously or detrimentally': *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010), at [16].

²² https://www.crimestoppersqld.com.au/discover/about_us.jsp (accessed 24 June 2019).

²³ An 'organised scheme or plan of action, esp. a complex or comprehensive one; an orderly or regular procedure or method...'; a 'co-ordinated body of methods, or a complex scheme or plan of procedure ...': dictionary definitions cited and applied in *Ferrier*, at [28], which I adopt for the purpose of this decision.

²⁴ The Crime Stoppers organisation specifically attributes its success to the 'Queensland public trusting us to anonymously and confidentially manage their crime intelligence information': https://www.crimestoppersqld.com.au/discover/our_results.jsp#_XRmiDeszapo (accessed 26 June 2019).

²⁵ As noted below (note 74), once information is disclosed under the RTI or IP Acts, its dissemination cannot be controlled.

²⁶ Exceptions to schedule 3, section 10(1)(i) are set out in schedule 3, section 10(2) of the RTI Act. None appear applicable in this case.

²⁷ See for example submissions dated 29 April 2019.

²⁸ Appearing on one of the pages released by QPS to the applicant in full – an untitled page numbered '5' at the bottom right, comprising what appears to be a 'screen dump' of QPS operational notes.

37. On one view, it may be argued that deterring malicious complainants from making false complaints could reasonably be expected to enhance, rather than prejudice, the Crime Stoppers system.
38. There is, however, nothing before me establishing that the caller in this case **was** motivated by ill-will, and/or did not believe the accuracy of information supplied.
39. Additionally, I note that a caller to Crime Stoppers may be maliciously motivated, but nevertheless supply useful information – or, alternatively, provide inaccurate or mistaken information, but do so in good faith (or even be motivated by malice, and supply information that proves to be mistaken, but was nevertheless honestly believed to be accurate). As I have explained above, my view is that it is reasonable – and not irrational, absurd or ridiculous – to expect that unconditional disclosure of information supplied to Crime Stoppers by such a caller or callers, in expectation of and under a system premised on anonymity and confidentiality, would inhibit members of the community from using this system in the future.
40. Segments 2, 4-6 and 15-16 comprise exempt information, to which access may be refused under section 47(3)(a) of the RTI Act and section 67(1) of the IP Act.

Applicant's submissions

41. OIC conveyed the thrust of the above reasoning to the applicant by letters dated 18 March 2019, 27 May 2019 and 6 June 2019.
42. The applicant made considered submissions in response, some extensive, and many of which sought to argue that the public interest²⁹ favoured granting him access to segments 1-6 and 15-16.³⁰
43. As explained to the applicant,³¹ a finding that information comprises exempt information means that I have no power to consider any public interest arguments concerning its disclosure.³²
44. This is because Parliament has prescribed that disclosure of exempt information – such as information subject to the Crime Stoppers and Prejudice System Exemption – would, on balance, be contrary to the public interest.³³
45. In other words, Parliament has conclusively determined that it considers disclosure of exempt information would be contrary to the public interest. I therefore have no jurisdiction or authority to consider public interest considerations³⁴ in relation to exempt information.
46. All segments of information identified in the table at paragraph 19 comprise exempt information, to which access may be refused under section 47(3)(a) of the RTI Act and section 67(1) of the IP Act.

Contrary to public interest information

47. The remainder of the information in issue comprises:

²⁹ And '*personal interest issues*': submissions dated 2 June 2019.

³⁰ See particularly submissions dated 29 April 2019, 2 June 2019 and 7 June 2019. The applicant also asked a number of questions in his 29 April 2019 submissions, concerning the nature of information actually released to him, and/or various actions taken (or not taken) by QPS. As the applicant was advised by OIC letter dated 27 May 2019, these questions are beyond OIC's jurisdiction – on external review, we are only empowered to review QPS' decision to refuse an applicant access to information, and to assess whether or not that decision was justified. Helpfully, the applicant clarified that these were rhetorical questions, and not ones to which he required an answer: submissions dated 2 June 2019.

³¹ Letter dated 27 May 2019.

³² And nor, as was noted in my 18 March 2019 letter to the applicant, does OIC have any discretion to direct release of such information: section 118(2) of the IP Act.

³³ Section 48(2) of the RTI Act.

³⁴ Let alone '*personal interest issues*'.

- (a) particulars of an individual identified as an '*occupant*' of the applicant's premises,³⁵
 - (b) a signature on the final page of the Supervisor's Checklist,³⁶
 - (c) the name of the Justice of the Peace (**JP**) who issued the search warrant executed against the applicant's premises;³⁷ and
 - (d) information concerning another third party, some of which was supplied by the applicant to QPS.³⁸
48. Disclosure of the above information would, on balance, be contrary to the public interest: another ground on which access to information may be refused under the IP Act.³⁹
49. The RTI Act lists factors which may be relevant to deciding the balance of the public interest⁴⁰ and sets out the following steps for deciding the balance of the public interest:⁴¹
- 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.
50. The phrase 'public interest' refers⁴² 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.⁴³
51. As I have noted above, I am satisfied that disclosure of the information identified at paragraph 47 would, on balance, be contrary to the public interest. In reaching this conclusion, I have followed the requirements prescribed by section 49 of the RTI Act; and, in doing so, have taken no irrelevant factors into account. I have also kept in mind the IP Act's pro-disclosure bias and Parliament's requirement that grounds for refusing access to information be interpreted narrowly, and I have carefully scrutinised both:
- the factors for deciding the public interest in schedule 4 to the RTI Act; and
 - the applicant's various submissions as to the balance of the public interest, as made throughout the external review.⁴⁴

Personal information

52. As discussed further below, all of the information listed at paragraph 47 comprises '*personal information*', which is:

*...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.***⁴⁵
(Emphasis added.)

³⁵ Segment 17.

³⁶ Segment 18.

³⁷ Segment 11.

³⁸ Segments 7-9 and 12.

³⁹ Section 67(1) of the IP Act, and section 47(3)(b) of the RTI Act.

⁴⁰ Schedule 4, these lists being non-exhaustive.

⁴¹ Section 49(3) of the RTI Act.

⁴² Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

⁴³ An important point, as in his 2 June 2019 submissions the applicant, as noted above, stated that he was relying not just on the public interest, but various '*personal interest issues*' in support of his case for access. There are some recognised public interest considerations that may apply for the benefit of an individual, and to the extent any arise in this case, I have taken them into account in reaching my decision.

⁴⁴ Including application for external review dated 14 June 2018. I have also had regard to the applicant's internal review application, dated 9 May 2018.

⁴⁵ See schedule 5 of the RTI Act which adopts the definition in section 12 of the IP Act.

53. The above is relevant, as the RTI Act provides for a public interest harm factor favouring nondisclosure of information as follows: *‘[d]isclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead’*.⁴⁶
54. I have considered the application of this public interest harm factor⁴⁷ to the several categories of personal information identified at paragraph 47.

Category (a) – ‘occupant’ particulars

55. This segment comprises the personal information of a person other than the applicant.⁴⁸ Disclosure would reveal this personal information, giving rise to the factor favouring nondisclosure because of the public interest harm caused by disclosure noted in paragraph 53.
56. I also consider that this segment comprises information the disclosure of which could reasonably be expected to prejudice protection of that person’s right to privacy.⁴⁹ Given contemporary community concern for protection of personal privacy, and ensuring that government safeguards personal information, I am inclined to the view that the public interest harm arising from disclosure of this personal information would be relatively substantial, and that the prejudice privacy nondisclosure factor should be given comparatively substantial weight in balancing the public interest.
57. Favours disclosure, I recognise the general public interest in promoting access to government-held information,⁵⁰ and the public interest in enhancing QPS transparency and accountability for the information it holds concerning members of the community.⁵¹ It might also be argued that this segment comprises background or contextual information relied on by QPS in making decisions to prepare and execute the warrant against the applicant’s premises.⁵²
58. The above are important considerations, warranting not-inconsiderable weight. Nevertheless, in the circumstances of this case, I give more weight to and prefer the considerations stated in paragraph 56. I consider that the disclosure of an individual’s personal information as appearing in police documentation would, on balance, be contrary to the public interest.
59. The applicant has strenuously asserted his right to access this segment.⁵³ He notes that there are only two occupants of his home, such that a suggestion as to additional occupants indicates inaccuracy (noting, in this regard, that a factor favouring disclosure will arise where disclosure of the information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant).⁵⁴
60. In a related vein, he argues to the effect that information about who QPS identifies as occupying his home is his personal information.⁵⁵
61. What may be his personal information is the fact that QPS has recorded the existence of an additional occupant of his home – a matter disclosed to him by the information on this page

⁴⁶ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁷ Together with other relevant factors both for and against disclosure, as required by section 49 of the RTI Act.

⁴⁸ Or the applicant’s spouse, who gave authority for their personal information to be disclosed.

⁴⁹ Schedule 4, part 3, item 3 of the RTI Act. The concept of ‘privacy’ is not defined in either the RTI or IP Acts; it can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others (Paraphrasing the Australian Law Reform Commission’s definition of the concept in *For your information: Australian Privacy Law and Practice* (Report No. 108, August 2008) vol 1, 148 [1.56]). I am satisfied a person’s particulars as recorded in a police record is a matter coming within their ‘personal sphere’.

⁵⁰ Implicit, for example, in the preamble to the RTI Act.

⁵¹ As generally embodied in schedule 4, part 2, items 1-3 of the RTI Act. The latter submission canvassed in this paragraph I take particularly to be a consideration pressed by the applicant in his submissions, especially those dated 2 June 2019 – as discussed again in paragraph 59 below, he stresses that there are only two occupants of his residence, and reference to a third therefore indicates inaccuracy.

⁵² Schedule 4, part 2, item 11 of the RTI Act.

⁵³ See particularly submissions dated 29 April and 2 June 2019.

⁵⁴ Schedule 4, part 2, item 12.

⁵⁵ For example, submissions dated 2 June 2019.

that has been released. The actual particulars of that putative occupant, however, are clearly that individual's personal information: ie, the personal information of someone other than the applicant (or his spouse).⁵⁶

62. Similarly, there is nothing before me to suggest that this specific segment is inaccurate, etc., such that its disclosure could reasonably be expected to reveal same and further the public interest noted in paragraph 59. That QPS has recorded an additional occupant may, as the applicant submits, be inaccurate: this has, however, been revealed to him by information that has been disclosed, and there is, as noted, nothing before me to indicate that the actual information concerning this 'occupant' is inaccurate, misleading etc, such that its disclosure could reasonably be expected to reveal same.⁵⁷
63. For the reasons explained above, I am satisfied that QPS may refuse access to this third party personal information, under section 47(3)(b) of the RTI Act and 67(1) of the IP Act.

Category (b) – signature

64. The applicant has not made any particular submissions about this segment, however given his submission that '*...any and all matters identified and not identified, are not waived, and all legal rights are reserved...*',⁵⁸ it is appropriate that I deal with it.
65. The signature is information about a person, whose identity can be reasonably ascertained from the context in which it appears. It therefore comprises the personal information of someone other than the applicant, disclosure of which would disclose that personal information and could therefore reasonably be expected to cause a public interest harm in accordance with schedule 4, part 4, section 6 of the RTI Act.
66. Signatures are also generally recognised as inherently private information – as being exclusive and private to the individual to whom a signature belongs, and circulation of which the individual is entitled to control.⁵⁹ Unconditional disclosure of signatures could therefore reasonably be expected to prejudice protection of an individual's right to privacy.⁶⁰ Given the innately private nature of such information, I consider these considerations favouring nondisclosure warrant relatively significant weight.
67. Balanced against this, I can identify no considerations of any appreciable weight favouring disclosure of a signature⁶¹ – the general public interest in promoting access to government-held information being, in my view, of only marginal weight in this context, and insufficient to displace considerations weighing against disclosure discussed in the preceding paragraphs.
68. Disclosure of the signature would, on balance, be contrary to the public interest. Access to this information may therefore also be refused.

Category (c) – JP name

69. The name of the JP is information about and identifying the JP, and is therefore that individual's personal information. Disclosing it could, therefore, reasonably be expected to cause the public interest harm prescribed in schedule 4, part 4, section 6 of the RTI Act.

⁵⁶ And, accordingly, the applicant does not obtain the benefit of schedule 4, part 2, item 7 of the RTI Act as regards this segment of information.

⁵⁷ Having carefully reviewed the list of factors favouring disclosure of information in schedule 4, part 2 of the RTI Act, and the applicant's detailed submissions, I can identify no other considerations or factors favouring disclosure of this information.

⁵⁸ Submissions dated 2 June 2019.

⁵⁹ *Corkin and Department of Immigration and Ethnic Affairs* [1984] AATA 448, at [14].

⁶⁰ See note 49.

⁶¹ Noting that I cannot see how disclosure of this signature could, for example, reasonably be expected to promote QPS accountability or transparency – while important that the relevant form was signed, this material fact is disclosed by the presence of the signature, itself evidenced by its redaction, rather than the particulars of that signature. I can identify no other considerations or factors favouring disclosure of this signature.

70. In view of the fact that the JP was discharging a public duty, and that a public register of JPs is available for inspection at offices of the Registrar of JPs under the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld), it is arguable that the public interest harm the RTI Act presumes will follow disclosure of the JP's name may be relatively modest.⁶² I also accept that there is a public interest in ensuring that public officers discharge their official duties transparently and accountably.⁶³
71. Nevertheless, I do not think it unreasonable to expect that there may be some reluctance on the part of JPs to discharge particular duties were their identities, as connected to these duties, to be made routinely available on request under general information access legislation.⁶⁴ I also note that concerns of this kind appear to be recognised by the Department of Justice and Attorney-General,⁶⁵ which both advises JPs they are not obliged to endorse warrants with their names,⁶⁶ and appears to take care not to link JP registration numbers with names via online search facilities – the latter due, expressly, to privacy concerns.⁶⁷
72. There is nothing before me suggesting that the JP issued the warrant in anything other than good faith and/or proper exercise of their duties. I understand the executed warrant was served on the applicant,⁶⁸ and, in the circumstances, I consider applicable accountability and transparency interests have been adequately served. I therefore attribute this, and the general public interest in promoting access to government held information, moderate weight.
73. On the other hand, the matters highlighted in paragraph 71 above, together with the general public interest in ensuring that government properly safeguards personal information, lead me to consider that the public interest harm that could reasonably be expected to follow disclosure of this information, while arguably attenuated, would nevertheless be of relatively significant weight – sufficient to displace any considerations telling in favour of disclosure.
74. Accordingly, I am satisfied disclosure of the JP name would, on balance, be contrary to the public interest.

Category (d) – other third party personal information

75. As for the remaining personal information, segment 9 (the final segment redacted from the third page of the ILS) is sensitive personal information of a person other than the applicant. Disclosure would disclose that personal information, and also prejudice protection of an individual's right to privacy⁶⁹ – giving rise to the public interest harm and nondisclosure factors discussed above. Any public interests which might be served by disclosure of this information⁷⁰ are of insufficient weight to justify the serious intrusion into personal privacy that would result from release.
76. To be clear, the public interest considerations favouring nondisclosure of segment 9 warrant very heavy weight, and outweigh the considerations favouring disclosure, which I accord only modest weight.

⁶² And, in this regard, I have not taken the prejudice protection of privacy nondisclosure factor in schedule 4, part 3, item 3 of the RTI Act into account in assessing where the balance of the public interest lies as regards disclosure of this name.

⁶³ See factors cited at note 51, and which public interest favours disclosure, together with the general public interest in promoting access to government-held information. I can identify no other considerations or factors favouring disclosure of this name.

⁶⁴ Rather than via actual attendance at an office and inspection of a physical register, which offers a degree of 'practical obscurity' or de facto privacy protection.

⁶⁵ Which administers the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld): *Administrative Arrangements Order (No 2) 2018*.

⁶⁶ See 'The Duties of Justices of the Peace Qualified Handbook', (**JP Handbook**), page 5.4/3, paragraph 7, downloadable via a link at <https://publications.qld.gov.au/dataset/justice-of-the-peace-handbook/resource/1fd6388c-000b-46fd-8f9f-d03ce4af80b7> (accessed 21 June 2019).

⁶⁷ See <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace/registered#> (accessed 22 May 2019).

⁶⁸ QPS email dated 22 May 2019.

⁶⁹ The matters recorded in this segment being within an individual's 'personal sphere'.

⁷⁰ Being, in this case, the general public interest in furthering access to government-held information, and to a lesser degree, informing the community of QPS operations and disclosing contextual or background information (schedule 4, part 2, items 3 and 11 of the RTI Act), although I note that this particular segment does not appear to have been relied on by QPS in making any decision. I cannot see how its disclosure could reasonably be expected to further QPS accountability, nor advance any other factors favouring disclosure in the public interest – certainly, not to an extent sufficient to displace the significant public interest considerations favouring nondisclosure.

77. I am also of the view that disclosure of the information about this third party supplied to QPS by the applicant – segments 7, 8 and 12 – would, on balance, be contrary to the public interest, although I acknowledge the issue is not as ‘clear cut’ as the segment discussed in the preceding paragraph. This is because while this information comprises personal information, as information understood to have been supplied by the applicant,⁷¹ it may be said that releasing it to him would not ‘*disclose [to him] personal information of a person*’,⁷² thus the personal information public interest harm factor does not arise to be considered in balancing the public interest.⁷³
78. I do, however, consider that personal information of this kind – name and allegations as appearing in police records – falls within the identified individual’s ‘*personal sphere*’, and that unrestricted release under the IP Act could reasonably be expected to both prejudice protection of the identified third party’s right to privacy,⁷⁴ and deprive the individual of the capacity to control circulation of their personal information, as appearing in official records. The question, then, is the weight to be afforded these considerations.
79. There is judicial authority for the proposition that where:⁷⁵

the person seeking the information is the sole and only source of the information ... the protection of the privacy of third parties is necessarily rendered substantially irrelevant as the release of this information will not of itself constitute an invasion of their privacy, as it is information known to the person who is the sole and only source of the information.

80. As against this, the information comprises relatively serious allegations, and appears in police records, in a context where the source of that information is not clear from the face of the information itself. Bearing in mind contemporary community sensitivities around privacy,⁷⁶ and the unconditional nature of release under the IP Act, I accord considerations identified in paragraph 78 relatively substantial weight.
81. In reaching this conclusion, I acknowledge the fact that the applicant supplied the information could be said to lessen the privacy interest attaching to this information, at least as against the applicant. It also, however, negates – or at least commensurately reduces the weight of – certain public interest considerations that might be said to favour disclosure: as the source of the information, it is difficult to see how release of that information to him would inform him of QPS operational information,⁷⁷ or reveal to the applicant any background or contextual information QPS may have taken into account in its decision making.⁷⁸
82. I also acknowledge that as information or opinion about events conveyed by and concerning the applicant, relevant segments may be said to comprise his personal information, entitling him to the benefit of the public interest in disclosing to a person their own personal information,⁷⁹ an important factor attracting considerable weight. However, moderating the

⁷¹ An understanding premised on advice from QPS as regards segments 7 and 8 (19 February 2019), and review of other information released to the applicant (particularly an audio recording of the execution of the warrant).

⁷² Relevant phrasing from schedule 4, part 4, section 6 of the RTI Act.

⁷³ See *TE66LB and Queensland University of Technology; H9P6ZM (Third Party) & Ors* [2019] QICmr 9 (29 March 2019), where the Assistant Information Commissioner, citing other OIC decisions, noted that ‘*the personal information harm factor only arises if disclosure would disclose the personal information*’, at [122], going on to state that ‘*...where releasing personal information would not involve conveying to any person or entity information not already known to them, it cannot be said such release would disclose personal information within the meaning of the personal information harm factor, and that factor will therefore not apply*’, at [129].

⁷⁴ Noting that once information is disclosed under the RTI or IP Acts, its dissemination cannot be controlled: *Troiani and Queensland Police Service* (Unreported, Queensland Information Commissioner, 21 August 2012), at [25].

⁷⁵ *S v Department for Child Protection and Family Support* [2017] WASC 305 (26 October 2017) (S), at [70], the court earlier noting that such ‘*a matter could ... constitute a relevant matter in determining and weighing the public interest*’ (at [68]).

⁷⁶ Noting here that schedule 4, part 3, item 3 of the RTI Act only requires a reasonable apprehension or expectation of prejudice to the protection of the right to privacy, not the actual right itself, as seems to have been the focus of concern in the passage from S extracted in paragraph 79.

⁷⁷ See schedule 4, part 2, item 3 of the RTI Act.

⁷⁸ Nor, by way of further example, reveal that the information is incorrect, irrelevant etc, for the purposes of schedule 4, part 2, item 12 of the RTI Act.

⁷⁹ Schedule 4, part 2, item 7 of the RTI Act.

impact of this pro-disclosure factor is the fact that this information is inextricably interwoven⁸⁰ with the third party's personal information. Accordingly, it is not possible to disclose to the applicant this information without causing the public interest prejudice discussed above.

83. Having carefully considered the applicant's submissions and all relevant circumstances, and balanced competing factors and considerations against one another, I find that, as with segment 9, disclosure of segments 7, 8 and 12 would, on balance, be contrary to the public interest.

Applicant's public interest submissions

84. In reaching the above conclusions, I have, as noted, had regard to the extensive public interest arguments set out in the applicant's submissions, the thrust of which⁸¹ are that he is entitled to know the identity of (or information concerning) an informant and other refused information in the interests of fairness and/or so as to evaluate possible legal remedies the applicant contends may be available to him.⁸²
85. It is worth bearing in mind that information relied on by QPS was supplied anonymously. In any event, disclosure of none of the personal information dealt with in paragraphs 47-83 – details of a person named as occupant of premises, a signature, a JP's name, or third party personal information, much of which was supplied by the applicant⁸³ – would assist him to identify any informant or evaluate remedies, or otherwise secure fair treatment.
86. I have also carefully considered the applicant's submissions that disclosing this information would disclose to him the nature of the complaint, and how QPS dealt with it.⁸⁴ The substance of the complaint and how QPS dealt with it have, however, been disclosed or otherwise made known to the applicant.
87. In this regard, I note that as a consequence of the external review process, the applicant secured access to a considerable amount of information to which QPS had originally refused him access, and additional documents not actually dealt with by it in the decision under review – many of which contain information addressing the concerns canvassed in the preceding paragraph. Accordingly, I cannot see how disclosure of the personal information discussed above would further assist the applicant in the manner contended.
88. For the sake of completeness, I also record that I cannot see how disclosure of the limited types of personal information identified in paragraph 47 could reasonably be expected to further other public interest factors arguably arising from the applicant's submissions, or any other information before me.
89. The applicant questions, for example, the conduct of QPS officers, and whether enforcement action should be taken, which could be construed as an argument for the relevance of schedule 4, part 2, items 5, 6 and 18 of the RTI Act, respectively favouring disclosure of information where disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in official conduct or administration, reveal or substantiate misconduct, negligent, improper or unlawful conduct, or contribute to enforcement of the criminal law.
90. I cannot, however, identify how disclosure of the specific personal information in issue before me – a name, signature, or other third party particulars discussed above – could reasonably be expected to assist inquiry into QPS conduct, reveal or substantiate misconduct etc, or

⁸⁰ In his submissions dated 2 June 2019, the applicant took issue with OIC's use of the expression '*inextricably interwoven*'. OIC and other tribunals and decision-making bodies have used the phrase and its variants in a number of decisions, particularly in the context of '*mixed*' or '*shared*' personal information, where, as here, it is not possible to sever or extract an applicant's personal information from that of a third party or parties. See, for example, *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at [176], and *White and Secretary, Department of Education, Training and Youth Affairs* [1999] AATA 698 (17 September 1999), at [13] and [17].

⁸¹ Beyond those directly addressed above, such as at paragraph 59.

⁸² See generally schedule 4, part 2, items 10 and 16-17 of the RTI Act.

⁸³ And/or does not otherwise bear on matters of concern to him.

⁸⁴ Particularly his 29 April 2019 submissions.

contribute to enforcement of the criminal law. I therefore do not consider that such factors favouring disclosure arise for consideration in the specific circumstances of this matter.⁸⁵

Nonexistent/unlocatable information – final Warrant Application

91. As noted above, one of the documents identified by QPS and largely disclosed to the applicant comprises an unsigned version of the Warrant Application. The applicant questions the whereabouts of the final version of this document, as executed by the issuing JP.⁸⁶
92. This query was raised with QPS. QPS advised⁸⁷ that it does not retain signed search warrant applications – these are retained by the issuing Magistrate or JP. Accordingly, OIC advised the applicant by letter dated 27 May 2019 that no such final document is in QPS' possession or under its control. OIC's letter noted that QPS' advice in this regard was consistent with both the JP Handbook,⁸⁸ and QPS' 'Operations Procedure Manual' (**OPM**), the latter which notes that '*the signed application form remains with the issuing officer*'.⁸⁹
93. The applicant contested the above interpretation of relevant matters, specifically questioning how the requirement stated in QPS' OPM that a final signed search warrant application '*remains with the issuing officer*' can be taken to support the view that QPS is not in possession of the final version of this document. In this regard, the applicant, as I understand, contends that the reference to '*officer*' is a reference to a QPS officer.
94. I am satisfied, however, that the reference to an '*officer*' in the relevant excerpt from the OPM is not to a QPS officer, but the judicial officer issuing the warrant – ie, a Magistrate or JP. This interpretation is supported by the JP Handbook, which, as noted, expressly requires that the '*issuing*' JP retain the signed application, explaining why QPS has been unable to locate such a document.⁹⁰
95. An agency may refuse access to information, to the extent that it is nonexistent or unlocatable.⁹¹ The facts and circumstances set out above adequately explain or account for the absence of the final version of the Warrant Application – ie, why such a document is not in QPS' possession or under its control. As far as QPS is concerned, then, such a document is nonexistent or unlocatable, and access may be refused on this basis.

Conclusion

96. The applicant has, as noted, made detailed and sincere submissions through the course of the review, and I acknowledge his concern as to matters preceding the making of his IP access application to QPS.⁹² I also acknowledge his desire to access all information in issue in this review, in exercise of the right of access conferred by section 40 of the IP Act.
97. That right of access is not, however, absolute – it is subject to various exclusions, exceptions and grounds for deletion or refusal, under which an agency such as QPS may justifiably withhold information. For the reasons explained above, I am satisfied that, as regards the limited amount of information remaining in issue in this review, certain of those grounds are made out.

⁸⁵ To avoid any doubt, nor can I identify any other factors favouring disclosure of this information: disclosure could not reasonably be expected to contribute, for example, to innovation and the facilitation of research (schedule 4, part 2, item 19 of the RTI Act).

⁸⁶ Submissions dated 29 April 2019.

⁸⁷ QPS email dated 22 May 2019.

⁸⁸ Which requires an issuing JP to '*retain the original of the search warrant application*': page 5.4/3, paragraph 8.

⁸⁹ OIC's letter to the applicant dated 27 May 2019 cited Issue 69 of the OPM. On 5 June 2019 QPS published Issue 70 – relevant text remains unchanged: see Chapter 2, page 90, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter2.pdf> (accessed 21 June 2019).

⁹⁰ See also *Van Veenendaal and Queensland Police Service* [2018] QICmr 12 (20 March 2018), at [50]-[53], where the same issue arose and was determined consistently with the approach adopted in these reasons.

⁹¹ Sections 47(3)(e) and 52 of the RTI Act, applicable, as with other grounds for refusing access, to applications under the IP Act: section 67 of the latter. Principles generally applicable to these provisions (and their FOI predecessors) have been discussed in various OIC decisions, including *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21].

⁹² Which, out of regard for his personal privacy, I will not recite in these reasons.

DECISION

98. The decision under review did not rely on the Crime Stoppers Exemption or the Prejudice System Exemption, nor did it deal with some issues and information addressed above.⁹³ I therefore vary the decision under review, under section 123(1) of the IP Act. I find that some information may be deleted as irrelevant, under section 88 of the IP Act, while access to the balance of the information in issue, and the final version of the Warrant Application, may be refused, for the reasons explained above.
99. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 27 June 2019

⁹³ Such as the JP name or the signature, which appear on documents only located during the course of the external review.

APPENDIX**Significant procedural steps**

Date	Event
14 June 2018	OIC received the applicant's external review application. OIC notified QPS and the applicant that the review application had been received and requested procedural documents from QPS.
28 June 2018	OIC received the requested documents from QPS.
3 July 2018	OIC notified QPS and the applicant that the application for external review had been accepted and requested further documents from QPS.
6 August 2018	OIC received the requested documents from QPS.
6 September 2018	OIC conveyed an initial preliminary view to QPS.
19 October 2018	QPS responded to OIC's preliminary view, including agreeing to release additional information.
24 October 2018	OIC notified the applicant that QPS had agreed to release additional information. The applicant's spouse supplied an authority to release information.
30 October 2018	OIC requested that QPS release the additional information to the applicant and requested a submission addressing various issues, including the sufficiency of searches.
16 November 2018	QPS advised that it was considering OIC's letter and had not released the additional information.
2 December 2018	OIC received a submission from QPS advising it would not be releasing the additional information.
11 December 2018	OIC reiterated its 30 October 2018 request of QPS for a submission and requested a response by 18 January 2019.
29 January 2019	QPS provided advice to OIC clarifying the status of information in issue.
30 January 2019	OIC received further information from QPS.
7 February 2019	QPS notified OIC that it had located additional documents responsive to the applicant's access application.
19 February 2019	OIC received the additional documents and information from QPS.
26 February 2019	OIC requested QPS confirm its position in relation to the additional documents and existing information in issue.
15 March 2019	QPS provided the advice requested by OIC on 26 February 2019, and agreed to release additional information.
18 March 2019	OIC notified the applicant that additional information would be released to him and conveyed a preliminary view in relation to some of the information remaining in issue. OIC requested QPS release relevant information to the applicant.
28 March 2019	QPS authorised OIC to release some of the additional information to the applicant on QPS' behalf. OIC forwarded relevant documents to the applicant.
3 April 2019	QPS released a further additional document to the applicant.

Date	Event
29 April 2019	OIC received submissions from the applicant. OIC requested further information from QPS.
9;14; 22 May 2019	OIC received further information from QPS.
23 May 2019	OIC confirmed information received from QPS, and requested additional advice.
27 May 2019	OIC conveyed a preliminary view to the applicant.
30 May 2019	QPS provided requested advice to OIC. QPS authorised OIC to release further information to the applicant on behalf of QPS. OIC forwarded relevant information to the applicant.
2 June 2019	OIC received a submission from the applicant.
6 June 2019	OIC conveyed a further preliminary view to the applicant.
7 June 2019	OIC received a submission from the applicant.