



Decision and Reasons for Decision

Citation:	<i>T95 and Queensland Police Service</i> [2020] QICmr 9 (18 February 2020)
Application Number:	314738
Applicant:	T95
Respondent:	Queensland Police Service
Decision Date:	18 February 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - agency previously decided to refuse access to the requested documents - whether the later application, on its face, discloses any reasonable basis for again seeking access to the documents - section 62 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information about other individuals - accountability and transparency - revealing or assisting inquiry into possible deficiencies in agency conduct - administration of justice - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for information about interactions between police and individuals known to the applicant - whether section 69 of the <i>Information Privacy Act 2009</i> (Qld) applies to neither confirm nor deny the existence of the requested documents</p>

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 a range of documents concerning the actions of a particular police officer, correspondence involving that officer and his

interactions with the applicant, in connection with an Examination Authority issued under the *Mental Health Act 2016* (Qld) (**MH Act**).

2. QPS decided¹ to refuse access to the majority of the information on the grounds that it would, on balance, be contrary to the public interest to disclose. QPS also decided to neither confirm nor deny the existence of certain information, refused to deal with a component of the application on the basis that the applicant had previously applied to QPS to access the same documents, and refused to deal with a category of documents on the basis they formed an exempt class.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the QPS decision. During the review, QPS reconsidered its position in relation to the exempt class of documents and released these, in part, to the applicant. However, this disclosure of additional information did not resolve the applicant's concerns. The applicant maintains that *'open transparency and accountability must be weighted heavily in favour of release of the documents requested'*.²
4. For the reasons set out below, I vary QPS's decision³ and find as follows:
 - part of the application constitutes a previous application for same documents⁴
 - access to information may be refused on the basis that disclosure would, on balance, be contrary to the public interest;⁵ and
 - the neither confirm nor deny provision applies to the part of the application seeking access to QPS communications with third parties.⁶

Background

5. Significant procedural steps taken in the external review are set out in the Appendix.
6. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including in footnotes and Appendix). I have also had regard to the *Human Rights Act 2019* (Qld),⁷ particularly the right to seek and receive information.⁸ I consider a decision-maker will be *'respecting and acting compatibly with'* that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation¹⁰: *'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.'*¹¹

Information in issue

7. Following the disclosure of information by QPS during the review, the following information remains in issue:

¹ Decision dated 26 June 2019.

² Submission to OIC dated 8 December 2019.

³ Being the 'reviewable decision' dated 26 June 2019.

⁴ Under section 62 of the IP Act.

⁵ Under section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁶ Section 69 of the IP Act.

⁷ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ *XYZ* at [573].

- parts of four pages of emails involving the named officer (**Emails**); and
- parts of 12 pages of the QPRIME Activity Report (**QPRIME Report**).¹²

8. I have also considered the information that was located in response to the applicant's previous access application to QPS.¹³

Issues for determination

9. The issues for determination are whether:

- QPS was entitled to refuse to deal with part of the application on the basis that the applicant has previously applied to access the same documents from QPS¹⁴
- access to parts of the Emails and the QPRIME Activity Report may be refused on the basis that disclosure would, on balance, be contrary to the public interest;¹⁵ and
- the neither confirm nor deny provision applies to part of the application seeking access to QPS communications with third parties.¹⁶

Findings

10. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁷ That right is subject to certain limitations, as set out in the IP Act and RTI Act, with the relevant provisions in this matter, examined below.

Refusal to deal – previous application for same documents

11. The IP Act requires an agency to deal with an application unless dealing with it would not be in the public interest.¹⁸ One of the few circumstances where it is not in the public interest to deal with an access application is where an applicant has *previously applied to the same agency to access the same documents*.¹⁹ In practice, an agency can refuse to deal with a later application where:

- an applicant has made an earlier access application under the RTI Act or the IP Act
- the applicant makes a later application under the RTI Act or IP Act to the same agency for access to one or more of the same documents that were sought under the earlier application; and
- the later application does not on its face disclose a reasonable basis for seeking access to those same documents.

12. In September 2018, the applicant applied to QPS (**First Application**) for access to all documents relating to '*an examination authority*'.²⁰ In response to the First Application, QPS granted access to 11 full pages and six part pages, and refused access to the remaining parts of those six pages under the IP Act.

13. The later application which is the subject of this review (**Later Application**) requested access to all documents held by QPS relating to '*execution of involuntary order to the*

¹² Pages numbered 1, 5-13 and 15-16 of 17 in the QPRIME Report.

¹³ 17 pages. QPS reference no. RTI/24829. Decision dated 17 November 2018.

¹⁴ Under section 62 of the IP Act.

¹⁵ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁶ Section 69 of the IP Act.

¹⁷ Section 40 of the IP Act.

¹⁸ Section 58(1) of the IP Act.

¹⁹ Section 62 of the IP Act.

²⁰ QPS reference RTI/24829. The date range specified in the application was May 2018 to September 2018.

mental health board'.²¹ While the scope of the Later Application is not phrased in exactly the same terms as the Earlier Application, having considered the subject matter of the information requested by the applicant and the nature of the documents located by QPS on the First Application, I am satisfied that the Later Application captures the same information that was requested in the First Application.²²

14. I am also satisfied that the Later Application does not, on its face, disclose a reasonable basis for again seeking access to these documents. Although the applicant's submissions detail her concerns about the actions of a particular police officer,²³ the applicant did not advance any argument to justify reapplying for the same documents.
15. Given the above, I find that section 62 of the IP Act applies to the part of the Later Application seeking documents associated with '*execution of the involuntary order*' and I refuse to deal with it on that basis.

Contrary to public interest information

16. Access to information may be refused if its disclosure would, on balance, be contrary to the public interest.²⁴ The term '*public interest*' is not defined in the legislation, but is widely accepted to refer to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. A public interest consideration is generally common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.²⁵
17. In deciding where the balance of the public interest lies, a decision-maker is required to take specific steps²⁶ and consider relevant factors for and against disclosure.²⁷ I have set out below my assessment of, and findings in relation to, the public interest factors which I consider are relevant in this case.²⁸
18. The information in the Emails and QPRIME Report to which QPS refused access, comprises the names, contact and address details and car registration information of other individuals. I am satisfied that it comprises the '*personal information*' of those individuals.²⁹ While the information appears in documents also containing the personal information of the applicant, the refused information is not about the applicant and is therefore, not her personal information.³⁰ The applicant submits³¹ that release of the information remaining in issue in the Emails and QPRIME Report may be facilitated by the redaction of '*any identifying features*' that may identify other individuals, however, all

²¹ QPS reference RTI/27079. The date range applicable to the Later Application is June 2018 to January 2019.

²² In so far as it covers part of the same date range, ie. June 2018 to September 2018. With respect to the remaining part of the date range of the Later Application, ie. October 2018 to January 2019, QPS advised that, in processing the Later Application, it undertook searches for documents relating to the examination authority/involuntary order within the date range specified and, apart from the documents previously located in respect of the First Application, it only located the additional emails which were partially released to the applicant. Based on the information available to OIC, there is nothing to suggest that any further documents exist within the date range not covered by the First Application.

²³ Submissions received on 8 December 2019 and 19 January 2020. To avoid identifying the applicant, I am unable to provide further details about those submissions in these reasons.

²⁴ Section 67 of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

²⁵ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²⁶ Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

²⁷ Including the non-exhaustive list of factors in schedule 4 of the RTI Act.

²⁸ No irrelevant factors arise in the circumstances of this case. I have however, taken into account the pro-disclosure bias in section 64 of the IP Act.

²⁹ '*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*'.

³⁰ Therefore, the factor in schedule 4, part 2, item 7 of the RTI Act does not apply.

³¹ Submissions received on 8 December 2019 and 19 January 2020.

of this information remaining in issue is of a nature which could reasonably be expected to lead to the identification of those other individuals.

19. There are several public interest factors which favour disclosure of the refused information in the Emails and QPRIME Report in terms of enhancing QPS's transparency and accountability; assisting inquiry into possible deficiencies in agency conduct; and contributing to procedural fairness for the applicant.³² However, due to the limited nature of information which remains redacted in the Emails and QPRIME Report, and taking into account the information that has already been disclosed to the applicant in those documents, and others, I find that disclosure would only slightly advance these factors. Accordingly, I afford them low weight in favour of disclosure.³³
20. On the other hand, public interest nondisclosure factors which are intended to protect other people's personal information and safeguard their privacy³⁴ also apply to the refused information. As this information appears in the sensitive context of an application for examination and assessment under the MH Act and QPS's QPRIME database,³⁵ I find that the prejudice to privacy and public interest harm that would result from disclosure is at the higher end of the scale, notwithstanding that a small portion of information relates to public sector officers. Accordingly, I find that these factors deserve significant weight in favour of nondisclosure which outweighs the relevant pro-disclosure factors.
21. For these reasons, I find that access to the information remaining in issue in the Emails and QPRIME Report may be refused on the basis that disclosure, would, on balance, be contrary to the public interest.³⁶

Neither confirm nor deny

22. Section 69 of the IP Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it exists, would contain '*prescribed information*'. '*Prescribed information*' is defined³⁷ as including personal information the disclosure of which would, on balance, be contrary to the public interest.³⁸
23. The Information Commissioner has previously decided³⁹ that the neither confirm nor deny provision will apply where, due to the particular way the access application is framed, acknowledging the existence or non-existence of the requested information is liable to cause the very kind of detriment that the prescribed information provisions are intended to avoid.
24. As noted above, part of the application seeks access to information concerning interactions between a QPS officer and '*tenants*' of a nominated address and a named

³² Schedule 4, part 2, items 1, 5, 11 and 16 of the RTI Act.

³³ Having carefully considered all factors favouring disclosure listed in schedule 4, part 2 of the RTI Act, I can identify no other relevant public interest considerations telling in favour of nondisclosure. Taking into consideration the nature of the information remaining in issue in the Emails and QPRIME Report, I cannot see how its disclosure could, for example, reveal or substantiate than an agency or official has engaged in misconduct or negligent, improper or unlawful conduct (schedule 4, part 2, item 6 of the RTI Act); advance the fair treatment of the applicant in future dealings with agencies (schedule 4, part 2, item 10 of the RTI Act); contribute to the administration of justice for the applicant (schedule 4, part 2, item 17 of the RTI Act); or reveal information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act).

³⁴ Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

³⁵ Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

³⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

³⁷ In schedule 5 to the IP Act.

³⁸ In practice, the section requires the decision-maker to undertake the balancing exercise, as outlined above in footnote 26 above, based on the *nature* of the requested documents (without confirming or denying their existence).

³⁹ *Tolone and Department of Police* (Unreported, Queensland Information Commissioner, 9 October 2009) at [47]-[50], *Phylard and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [30] and *Winchester and Queensland Police Service* [2017] QICmr 56 (4 December 2017) at [16].

real estate agency. I am satisfied that if such documents existed, they would identify other individuals, connect them to a QPS matter, and would be likely to include information obtained from those individuals in the context of QPS inquiries. I consider that any level of involvement with QPS attracts a level of sensitivity and forms part of an individual's private sphere. Therefore, I am satisfied that there are strong public interest factors favouring nondisclosure of such information, particularly the factors relating to the protection of third party personal information and safeguarding the right to privacy of third parties.⁴⁰ Further, I consider that disclosing identifying details of individuals who may have had contact with QPS as part of an investigation process could reasonably be expected to prejudice the flow of information to QPS by community members.⁴¹

25. I accept that there may be factors favouring disclosure of the requested information, if it exists, in terms of enhancing QPS accountability and transparency. Also, given the applicant's familiarity with the surrounding circumstances and close proximity of the nominated address to the applicant's residence, I accept that there may be some weight to afford to the factor favouring disclosure of the applicant's personal information. However, I do not consider those factors carry sufficient weight to override the public interest factors favouring nondisclosure identified in the preceding paragraph.
26. For these reasons, I consider that disclosure of the requested documents (if they exist) would, on balance, be contrary to the public interest. Therefore, I find that section 69 of the IP Act applies to the part of the application seeking access to QPS communications with third parties.

DECISION

27. I vary the QPS decision dated 26 June 2019 and find that:
- the part of the application seeking information about the '*involuntary order*' constitutes a previous application for same documents⁴²
 - access to information in the Emails and QPRIME Report may be refused on the basis that disclosure would, on balance, be contrary to the public interest;⁴³ and
 - the neither confirm nor deny provision applies to the part of the application seeking access to QPS communications with named third parties.⁴⁴
28. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 18 February 2020

⁴⁰ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

⁴¹ Schedule 4, part 3, item 16 and schedule 4, part 4, section 8(1) of the RTI Act.

⁴² Under section 62 of the IP Act.

⁴³ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁴⁴ Section 69 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
28 July 2019	OIC received the application for external review.
31 July 2019	OIC requested procedural documents from QPS.
12 August 2019	OIC received submissions from the applicant.
27 August 2019	OIC notified the applicant and QPS that the external review application had been accepted. OIC requested additional information from QPS.
11 September 2019	OIC conveyed a preliminary view to QPS and requested additional searches.
16 September 2019	OIC received some requested information from QPS.
24 September 2019	OIC spoke to the applicant, provided an update on the status of the review and received submissions in response.
8 October 2019	OIC received some requested information from QPS.
15 October 2019	OIC wrote to QPS and confirmed the preliminary view. OIC spoke to QPS and received submissions.
17 October 2019	OIC spoke to the applicant and received additional submissions.
18 October 2019	OIC received additional information from QPS.
21 October 2019	OIC received submissions from the applicant.
22 October 2019	OIC received notification from the applicant requesting further contact in writing.
23 October 2019	OIC received a copy of the applicant's submissions sent to QPS. OIC spoke to the applicant and requested the applicant only make submissions to this Office on external review.
14 November 2019	OIC conveyed a preliminary view to the applicant and requested submissions in response.
8 December 2019	OIC received the requested submissions from the applicant.
19 January 2020	OIC received additional submissions from the applicant.