



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>X61 and Queensland Police Service [2020] QICmr 41 (24 July 2020)</i></b>
<b>Application Number:</b>	<b>314710</b>
<b>Applicant:</b>	<b>X61</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>24 July 2020</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS - applicant seeks information about access to their personal information within a police incident database, also known as a QPRIME Activity Report - whether work involved in dealing with the access application would, if carried out, substantially and unreasonably divert resources of the agency from their use by the agency in performing its functions - section 60 of the <i>Information Privacy Act 2009 (Qld)</i></b>

### 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 six categories of information.<sup>1</sup>
2. QPS did not make a decision within the timeframe prescribed by the IP Act and notified the applicant, on 30 June 2019, that it was deemed to have refused access to all information requested in the access application.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of QPS's decision.<sup>2</sup>
4. During the course of the review, QPS disclosed some of the requested information to the applicant.
5. The applicant continues to seek access to information their QPRIME access file '*which shows when [the applicant's] file has been accessed and also by who*'.<sup>3</sup>

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<sup>1</sup> Application received 27 April 2019, being the date on which the applicant confirmed the application scope to QPS.

<sup>2</sup> On 7 July 2019.

<sup>3</sup> This information is also known as a QPRIME Activity Report. 'QPRIME' refers to the 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. This part of the application was not limited by any timeframe in the access application.

6. For the reasons set out below, I set aside QPS's decision and find that QPS may refuse to deal with this part of the application under section 60(1)(a) of the IP Act, as dealing with it would substantially and unreasonably divert QPS's resources from their use in the performance of QPS's functions.

## Background

7. A number of issues were resolved between the applicant and QPS during the external review through the disclosure of additional documents.<sup>4</sup> The information remaining for consideration was requested at item 2 of the access application.
8. QPS initially submitted that it was entitled to refuse to deal with this part of the application under section 59 of the IP Act, on the basis that the responsive information comprised exempt information.<sup>5</sup> Subsequently, QPS submitted that it was entitled to refuse to deal with item 2 of the application under section 60 of the IP Act, on the basis that the work involved in dealing with it would substantially and unreasonably divert QPS's resources from their use in the performance of QPS's functions.
9. The applicant's submissions on external review raise concerns about a specific officer accessing their personal information within QPRIME.<sup>6</sup> The IP Act requires the Information Commissioner to identify opportunities for early resolution and to promote settlement of external review applications.<sup>7</sup> The applicant was invited to consider limiting the scope of item 2 by specifying a timeframe and/or QPS officers sought to be captured.<sup>8</sup> In response, the applicant confirmed that they sought access to the date, time, QPS registration number, rank and name of each QPS officer who had accessed their QPRIME file since 2008.<sup>9</sup>
10. I wrote to the applicant on 20 March 2020, outlining the work that would be involved in QPS dealing with item 2 of the application and conveying a preliminary view that QPS was entitled to refuse to deal with item 2, on the basis such work would constitute a substantial and unreasonable diversion of QPS's resources. I again invited the applicant to consider narrowing the scope of item 2 and noted that QPS had suggested it may be able to process this part of the application if the timeframe was significantly narrowed or it was limited to QPRIME activity in relation to a specific incident. In response,<sup>10</sup> the applicant proposed a narrowed scope of item 2 to all access activity on the applicant's QPRIME file from 2013 to 2017 and from 30 January 2019 to the date of the access application (**Narrowed Application**).<sup>11</sup>
11. QPS maintains that dealing with the Narrowed Application would constitute a substantial and unreasonable diversion of its resources. The applicant does not accept that QPS is entitled to refuse to deal with the Narrowed Application on this basis.
12. Significant procedural steps relating to this review are set out in the Appendix.

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<sup>4</sup> As noted in paragraph 4, QPS disclosed some of the requested information to the applicant. The applicant did not contest OIC's view that QPS was entitled to refuse to deal with other parts of the application under section 62 of the IP Act and that access may be refused to certain information on the grounds it did not exist and disclosure would, on balance, be contrary to the public interest. OIC confirmed to the applicant on 23 January 2020 that item 2 of the application was the only part of the application remaining in issue in the review.

<sup>5</sup> On 7 November 2019, OIC conveyed a view to QPS that section 59 of the IP Act did not apply.

<sup>6</sup> External review application and submissions dated 4 June 2020.

<sup>7</sup> Section 103(1) of the IP Act.

<sup>8</sup> On 7 November 2019.

<sup>9</sup> Submissions received 15 November 2019 (by email dated 6 November 2019, which attached the applicant's letter to OIC dated 12 November 2019).

<sup>10</sup> On 23 March 2020.

<sup>11</sup> Under section 47 of the IP Act, an application is taken to only apply to documents that are, or may be, in existence on the day the application is received. As the access application was received by QPS on 27 April 2019, the narrowed scope can only extend until 27 April 2019.

## Reviewable decision and evidence considered

13. The decision under review is the deemed decision QPS is taken to have made under section 66 of the IP Act.
14. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix). I have also had regard to the *Human Rights Act 2019* (Qld),<sup>12</sup> particularly the right to seek and receive information.<sup>13</sup> 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 *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>14</sup> 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 legislation:<sup>15</sup> ‘*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*’.<sup>16</sup>

## Information in issue

15. QPS confirmed that information responding to item 2 of the application would be contained in a document known as a QPRIME Activity Report.<sup>17</sup> QPS provided OIC with a copy of this document on external review.

## Issue for determination

16. The issue for determination is whether the Narrowed Application may be the subject of a refusal to deal decision under section 60 of the IP Act. QPS no longer relies on section 59 of the IP Act and therefore, the application of that provision is not considered in these reasons for decision.

## Relevant law

17. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.<sup>18</sup> One of the circumstances in which it would not be in the public interest to deal with an access application is where the work involved in dealing with the application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.<sup>19</sup>
18. In deciding to refuse to deal with an application on this basis, an agency must:

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<sup>12</sup> Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

<sup>13</sup> Section 21 of the HR Act.

<sup>14</sup> *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 [111].

<sup>15</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>16</sup> **XYZ** at [573].

<sup>17</sup> On 10 December 2019.

<sup>18</sup> Section 58 of the IP Act.

<sup>19</sup> Section 60(1)(a) of the IP Act. Before making a decision to refuse to deal with an application under section 60(1)(a), an agency must satisfy certain procedural prerequisites set out in section 61 of the IP Act, for the purpose of allowing the applicant an opportunity to narrow the scope of the application, so that the agency can manage processing of the application. However, in this case, as the issue of substantial and unreasonable diversion of the resources was raised by QPS on external review, I am not required to make any determination regarding QPS’s satisfaction of the procedural requirements in section 61 of the IP Act.

- a) not have regard to any reasons the applicant gives for applying for access or the agency's belief about what are the applicant's reasons for applying for access;<sup>20</sup> and
  - b) have regard to the resources that would be used for:<sup>21</sup>
    - identifying, locating or collating the documents
    - making copies, or edited copies of any documents
    - deciding whether to give, refuse or defer access to any documents, including resources that would have to be used in examining any documents or conducting third party consultations; or
    - notifying any final decision on the application.
19. Whether the work involved in dealing with an application would, if carried out, substantially and unreasonably divert the resources of an agency is a question of fact in each individual case.<sup>22</sup> In each case, it is necessary to assess the work required to deal with the application in the context of the agency's other functions.

### Procedural matters

20. External review by the Information Commissioner is merits review and the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.<sup>23</sup> However, in circumstances where the issue of substantial and unreasonable diversion of resources is raised on external review, the IP Act does not expressly address the procedural requirements to be met by the Information Commissioner before making a decision to refuse to deal with an application under section 60 of the IP Act. Generally, the IP Act provides that the procedure to be taken on external review is, subject to the IP Act, at the discretion of the Information Commissioner.<sup>24</sup>
21. In the course of the review, the applicant was given the opportunity to respond to OIC regarding the issue of substantial and unreasonable diversion of resources, as outlined in the Background section of this decision. I consider that the steps that were taken by OIC are similar to those outlined in section 61 of the IP Act, and have afforded procedural fairness to the applicant.<sup>25</sup>
22. The applicant provided OIC with submissions in support of their case. I have carefully considered those submissions.<sup>26</sup> I have summarised and addressed the applicant's submissions below to the extent they are relevant to the issue for determination.<sup>27</sup>

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<sup>20</sup> Section 60(3) of the IP Act.

<sup>21</sup> Section 60(2) of the IP Act.

<sup>22</sup> *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2013) at [28].

<sup>23</sup> Section 118(1) of the IP Act.

<sup>24</sup> Section 108(1)(a) of the IP Act.

<sup>25</sup> As noted in paragraphs 9 and 10 above, the applicant was invited on two occasions to narrow the scope of item 2. Although the applicant proposed a further narrowed scope of item 2 on 4 June 2020, which they considered would ensure that section 60 of the IP Act had no application, I am satisfied that the applicant had already been afforded a reasonable opportunity to narrow the scope of item 2 as contemplated by the IP Act and accordingly, that further narrowed scope is not being considered in this review. OIC notified the applicant of this on 18 June 2020 and confirmed that, at the conclusion of this review, the applicant may make a fresh application to QPS to access documents within that further narrowed scope.

<sup>26</sup> As set out in the Appendix.

<sup>27</sup> The applicant's submissions, in the main, raise concerns about the actions of specified officers, breaches of their privacy by certain of those officers and why the applicant considers information is not exempt under schedule 3, section 10(1)(f) of the RTI Act. As notified to the applicant on 18 June 2020, their concerns about officer actions and a breach of their privacy cannot be addressed in this external review and QPS seeks to refuse to deal with the Narrowed Application under section 60, not section 59, of the IP Act.

## Analysis - Substantial and unreasonable diversion of resources

23. I have not had regard to the factors referred to in paragraph 18a) above.

### ***What work would be involved in dealing with the access application?***

24. On external review QPS claimed that to confirm the exact number of pages and entries that fell within the Narrowed Application would, in effect, reveal exempt information.<sup>28</sup> Under section 121(3) of the IP Act, I must not include any information in this decision that is claimed to be exempt by QPS. This has therefore limited the level of detail I have provided in the following paragraphs.

25. QPS submits that in order to assess whether information within the Narrowed Application can be disclosed to the applicant, its decision-maker would be required to undertake enquiries with the officers responsible for the recorded QPRIME actions, to identify why the actions were undertaken and what those actions relate to.<sup>29</sup> While QPS indicated that it is difficult to provide a concise estimate of the time required to deal with the Narrowed Application, it estimates that:

- there are over 500 pages of information that require close consideration
- undertaking the enquiries referenced above would take in excess of 85 hours; and
- additional processing time would also be required to identify whether any information had been dealt with in the applicant's previous access applications.<sup>30</sup>

26. While an agency is required to consider how much time an access application is likely to take to process, a precise assessment is not required. As such, where a precise assessment may substantially and unreasonably divert the agency's resources, an estimate is acceptable.<sup>31</sup> The applicant has not directly challenged QPS's estimate of the work involved in dealing with the Narrowed Application but contends that QPS is using section 60 of the IP Act to prevent their access to the QPRIME Activity Report.<sup>32</sup>

27. In considering whether QPS's processing estimate is reasonable, I note that in dealing with the application under the IP Act, the QPS decision-maker will need to assess the responsive information, to determine if grounds for refusal apply to any part of it,<sup>33</sup> redact documents and prepare a written decision. QPS explained that while consideration of some of the entries within the responsive information could be completed relatively quickly, the decision-maker's consideration of other entries could take considerable time, given the nature of information.<sup>34</sup>

28. On the information before me, it is difficult to reach an estimate regarding the amount of time that would be required to identify whether any of the information has been dealt with in the applicant's prior applications, redact information and prepare a written decision. However, I consider it reasonable to expect that, if QPS was to deal with the Narrowed Application, some time in addition to the estimated hours would be required to complete these further steps.

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<sup>28</sup> Email from QPS to OIC dated 20 July 2020.

<sup>29</sup> Submissions dated 10 March 2020.

<sup>30</sup> Submissions dated 10 March 2020.

<sup>31</sup> Refer to *McIntosh v Victoria Police (General)* [2008] VCAT 916 at [10].

<sup>32</sup> Submissions dated 4 June 2020.

<sup>33</sup> Grounds for refusal of access are set out in section 47 of the RTI Act. Section 67(1) of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

<sup>34</sup> Submissions dated 10 March 2020. Under section 121(3) of the IP Act, the Information Commissioner must not, in a decision, or in reasons for a decision, include information that is claimed to be exempt information or contrary to the public interest information. For this reason, I am unable to any further details about the nature of the responsive information.

29. Based on careful consideration of the material before me, including the responsive information, I accept QPS's contention that processing the Narrowed Application would take in excess of 85 hours.

***Would the impact on QPS's functions be substantial and unreasonable?***

30. As at 30 June 2019, QPS employed 15,285.27 full-time equivalent staff.<sup>35</sup> The QPS Right to Information and Privacy Unit (**RTI&P Unit**) comprises a small team within QPS (of approximately 10 members). This unit processes large volumes of access applications,<sup>36</sup> together with internal reviews and external reviews.
31. QPS's minimum estimate of work in this review equates to more than 10 business days for one full time decision-maker working on the Narrowed Application to the exclusion of all other functions of that officer.<sup>37</sup> This estimate is only for the time required to assess the responsive information to establish whether any grounds of refusal may arise. This represents almost half the entire processing time usually allowed under the IP Act for processing an application.<sup>38</sup> I also note that the Narrowed Application being considered here is only one part of the initial six-part access application. QPS has already expended a significant amount of time considering and responding to the remaining five parts of the access application, which has included the disclosure of several other documents to the applicant.<sup>39</sup>
32. Taking into account the additional time that will be required to identify whether any of the information responding to the Narrowed Application has been dealt with in the applicant's prior applications, redact information and prepare a written decision, I am satisfied that the time required to deal with the Narrowed Application may exceed the usual processing period.
33. It reasonable to expect that taking a decision-maker offline for such a long period would interfere with QPS's ability to attend to its IP Act and RTI Act functions for persons other than the applicant over this period. I consider the consequent delays in processing other applications and attending to other matters would have a considerable impact on QPS's functions. I am therefore satisfied that the work involved in dealing with the Narrowed Application would, if carried out, substantially divert the resources of QPS from their use in the performance of its functions.
34. In determining whether the work involved in dealing with an application is unreasonable, it is not necessary to show that the extent of the unreasonableness is overwhelming. Rather, it is necessary to weigh up the considerations for and against, and form a balanced judgement of reasonableness, based on objective evidence.<sup>40</sup> Factors that have been taken into account in considering this question include:<sup>41</sup>

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<sup>35</sup> As set out at page 87 of QPS's 2018-19 Annual Report (Accessed at <<https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/annual-report-2018-2019>> on 16 July 2020).

<sup>36</sup> The QPS disclosure logs indicate that between October 2019 and January 2020, the RTI&P unit finalized between 75 and 100 applications each month. Refer to <<https://www.police.qld.gov.au/index.php/knowledge-centre-rti>>. The Department of Justice and Attorney-General's Annual Report for the RTI and IP Acts in 2018-2019 (which may be accessed at <<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T976.pdf>>) records that QPS received a total of 2410 access and amendment applications and was involved in 78 internal reviews and 159 external reviews in 2018-19.

<sup>37</sup> Based on an 8 hour working day.

<sup>38</sup> Under section 22 of the IP Act, the usual time allowed for processing an application is 25 business days. Whilst this period can be extended in certain circumstances, it is relevant to have regard to this timeframe when considering whether the time involved in processing a single access application will have a substantial impact on an agency's resources. In this review, it is important to note that the Narrowed Application being considered in this decision is only one part of a six part application that was made by the access applicant.

<sup>39</sup> This was set out in a letter to the applicant from OIC dated 9 December 2019.

<sup>40</sup> *ROM212 and Queensland Fire and Emergency Services* [2016] QICmr 35 (9 September 2016) at [42], adopting *Smeaton v Victorian WorkCover Authority (General)* [2012] VCAT 1550 (**Smeaton**) at [30].

<sup>41</sup> *Smeaton* at [39]. As the issue of substantial and unreasonable diversion of resources only arose on external review, some of these factors are not relevant in this case.

- whether the terms of the request offer a sufficiently precise description to permit the agency, as a practical matter, to locate the documents sought
  - the public interest in disclosure of documents
  - whether the request is a reasonably manageable one, giving due but not conclusive, regard to the size of the agency and the extent of its resources usually available for dealing with access applications
  - the agency's estimate of the number of documents affected by the request, and by extension the number of pages and the amount of officer time
  - the reasonableness or otherwise of the agency's initial assessment and whether the applicant has taken a cooperative approach in rescoping the application
  - the timelines binding on the agency
  - the degree of certainty that can be attached to the estimate that is made as to the documents affected and hours to be consumed; and in that regard, importantly whether there is a real possibility that processing time may exceed to some degree the estimate first made; and
  - whether the applicant is a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications.
35. The applicant contends that, in agreeing on the application scope with QPS in late April 2019, they assumed QPS would provide to them *'the very information that [QPS] deemed had been appropriately narrowed in order to successfully deliver'* the requested QPRIME information.<sup>42</sup> In confirming the scope of the access application, QPS was not, as the applicant contends, agreeing that the applicant *'should, and could'* obtain access to the information requested in that scope.<sup>43</sup>
36. The applicant submits that, as there is no auditing of police access to QPRIME, *'it is time for the community to question how each person in Qld will know if their personal information has been illegally accessed and used with dangerous consequences ...'*<sup>44</sup> I accept that there is public interest in the applicant having access to their own personal information and that disclosure of the responsive information may enhance the accountability and transparency of QPS. However, in deciding whether dealing with the Narrowed Application would be unreasonable, the public interest in disclosing the information is just one factor to be considered. In terms of promoting the transparency and accountability of QPS, this decision does not prevent the applicant making future applications of a more confined scope in order to access information of this nature. For this reason, I have not placed any significant weight on this factor in my considerations.
37. Having found that the resources reasonably required to deal with the Narrowed Application are substantial, and in light of the need for QPS to process other access applications and complete other functions, I do not regard the estimated workload in dealing with this request as being reasonably manageable. Taking into account the factors listed in paragraph 34 which are relevant in this case, I find that the work involved in dealing with the Narrowed Application would amount to a substantial and unreasonable diversion of QPS's resources.

## DECISION

38. For the reasons set out above, I set aside QPS's decision and find that QPS may refuse to deal with part of the access application, described as the Narrowed Application, on

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<sup>42</sup> Submissions dated 4 June 2020.

<sup>43</sup> Submissions dated 4 June 2020. On external review QPS had indicated it may be able to process the application if the timeframe was *significantly* narrowed or it was limited to QPRIME activity in relation to a specific incident. Ultimately, the applicant only agreed to narrow the request to their QPRIME access file for a six year period and did not limit it to a specific incident.

<sup>44</sup> Submissions dated 4 June 2020.

the basis that the work involved in dealing with it would substantially and unreasonably divert QPS's resources from their use in the performance of QPS's functions.<sup>45</sup>

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

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**S Martin**  
**Assistant Information Commissioner**

**Date: 24 July 2020**

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<sup>45</sup> Under section 60(1)(a) of the IP Act.



## APPENDIX

### Significant procedural steps

Date	Event
7 July 2019	OIC received the external review application.
16 July 2019	OIC notified the applicant and QPS that the external review application had been accepted.
5 and 7 August 2019	OIC asked QPS to provide further information.
19 August 2019	OIC received information from QPS.
27 August 2019	OIC asked QPS to provide further information and received the requested information from QPS.
9 September 2019	OIC received submissions from QPS.
7 November 2019	OIC conveyed a preliminary view to the applicant and QPS.
15 November 2019	OIC received the applicant's submissions (via an email dated 6 November 2019 which attached a letter dated 12 November 2019).
20 November 2019	QPS accepted OIC's preliminary view.
9 December 2019	OIC conveyed a further preliminary view to the applicant. OIC also asked QPS to provide further information and release certain redacted documents to the applicant.
10 December 2019	QPS confirmed release of redacted documents to the applicant.
19 December 2019	OIC spoke with the applicant.
20 December 2019	OIC wrote to the applicant.
21 January 2020	OIC spoke with the applicant.
23 January 2020	OIC wrote to the applicant confirming the remaining issue to be considered was the request to access the QPRIME Activity Report.
29 January 2020	OIC received information from QPS.
19 February 2020	OIC asked QPS to provide further information.
10 March 2020	OIC received submissions from QPS.
20 March 2020	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions and consider narrowing item 2 of the application.
23 March 2020	The applicant agreed to narrow the scope of item 2 of the application.
25 March 2020	OIC asked QPS whether it was able to process item 2 of the application with this narrowed scope.
7 May 2020	OIC received further submissions from QPS.
22 May 2020	OIC conveyed a further preliminary view to the applicant.
4 June 2020	OIC received the applicant's further submissions.