



## Decision and Reasons for Decision

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**Citation:** *P44 and Queensland Police Service [2020] QICmr 59 (13 October 2020)*

**Application Number:** 315322

**Applicant:** P44

**Respondent:** Queensland Police Service

**Decision Date:** 13 October 2020

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - agency consulted external review applicant as a third party under section 37 of the *Right to Information Act 2009 (Qld)* - external review applicant objected to disclosure - whether a decision not to disclose is justified - section 87(2) of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - address of an individual convicted for setting fire to access applicant's property - administration of justice for individual- whether disclosure would, on balance, be contrary to the public interest - section 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

### REASONS FOR DECISION

#### Summary

1. On 14 November 2019, the Queensland Police Service (**QPS**) received an application under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for information about the investigation of a fire which occurred on 5 April 2018 and damaged a residential property that was formerly leased to the external review applicant (**Applicant**) by the access applicant (**Landlord**).<sup>1</sup>
2. QPS located relevant information and consulted the Applicant about disclosure of that information.<sup>2</sup> The Applicant objected to disclosure.<sup>3</sup> After considering the Applicant's disclosure objections, QPS refused access to one page and one audio recording but decided to fully or partially disclose the remaining information.<sup>4</sup>

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<sup>1</sup> Application dated 14 November 2019. As the Landlord did not seek to participate in this external review, their identity is not disclosed in this decision.

<sup>2</sup> Under section 37 of the RTI Act.

<sup>3</sup> On 17 February 2020.

<sup>4</sup> On 9 March 2020. Access was deferred to the information which QPS decided to disclose. The information to which access was refused is not in issue in this review.

3. On 14 April 2020, the Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision to disclose information contrary to his objections.<sup>5</sup> The Applicant contends that disclosure of particular information QPS had decided to disclose would, on balance, be contrary to the public interest.
4. For the reasons set out below I affirm QPS's decision to disclose the Information in Issue and find that the Applicant has not discharged the onus of establishing that disclosure of the Information in Issue would, on balance, be contrary to the public interest and a decision not to disclose the Information in Issue is justified.

### Reviewable decision

5. The decision under review is QPS's decision dated 9 March 2020.

### Evidence considered

6. 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 given careful consideration to all relevant issues raised by the Applicant in his various submissions. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>6</sup> particularly the rights to privacy and reputation and to seek and receive information.<sup>7</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 *Information Privacy Act 2009* (Qld) (**IP Act**) and the RTI Act.<sup>8</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>9</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>10</sup>

### Information in issue

7. During the external review:
  - the Applicant identified the specific information which he maintains should not be disclosed
  - the Landlord accepted that access to some of that information may be refused;<sup>11</sup> and
  - QPS has released to the Landlord any remaining information that the Applicant has not specifically objected to the disclosure of.
8. The information remaining in issue appears on six pages.<sup>12</sup> The RTI Act limits the extent to which I can describe this information,<sup>13</sup> however, I can confirm that it comprises the Applicant's address and five additional words (**Information in Issue**).

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<sup>5</sup> Although the external review application was received four days outside the period specified in section 88 of the RTI Act, I decided, as a delegate of the Information Commissioner, to extend the time for the applicant to apply for review.

<sup>6</sup> Which came into force on 1 January 2020.

<sup>7</sup> Sections 21 and 25 of the HR Act.

<sup>8</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>9</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>10</sup> *XYZ* at [573].

<sup>11</sup> Being portions of information on 24 pages.

<sup>12</sup> Pages 2, 3, 10, 32, 47 and 55. I note that the deletion of certain other information appearing on these pages is not in issue in this review.

<sup>13</sup> Section 108(3) of the RTI Act.

## Onus on external review

9. The participant in the external review application who opposes the disclosure decision has the onus of establishing that a decision not to disclose the information is justified, or that the Information Commissioner should give a decision adverse to the person who wishes to be given access to the information.<sup>14</sup> Therefore, the Applicant bears the onus of establishing that, under the provisions of the RTI Act, the Information in Issue should not be disclosed to the Landlord.

## Issue for determination

10. The Applicant submits that access should be refused to the Information in Issue as its disclosure would, on balance, be contrary to the public interest. Accordingly, that is the issue for determination in this review.
11. The Applicant requested that his contact details be released '*ONLY to the legal representatives of the other party as per mentioned in the Right to Information Act*'.<sup>15</sup> The RTI Act confers no power on the Information Commissioner to exact any undertaking, or to impose any condition, concerning the disclosure and use of release information. For this reason, I am unable to impose any restrictions to ensure that only the legal representatives of the Landlord will have access to the Information in Issue.

## Relevant law

12. The RTI Act confers a general right to access documents of an agency,<sup>16</sup> however, this right is subject to limitations, including grounds for refusal of access.<sup>17</sup> It is Parliament's intention that these refusal grounds are to be interpreted narrowly<sup>18</sup> and that the RTI Act be administered with a pro-disclosure bias.<sup>19</sup> One such ground of refusal is where disclosure of information would, on balance, be contrary to the public interest.<sup>20</sup>
13. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>21</sup>
  - 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.

## Findings

### *Irrelevant factors*

14. I have taken no irrelevant factors into account in making my decision.

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<sup>14</sup> Section 87(2) of the RTI Act.

<sup>15</sup> Applicant's submissions dated 3 July 2020.

<sup>16</sup> Section 23 of the RTI Act.

<sup>17</sup> Section 47 of the RTI Act.

<sup>18</sup> Section 47(2)(a) of the RTI Act.

<sup>19</sup> Section 44 of the RTI Act.

<sup>20</sup> Sections 47(3)(b) and 49 of the RTI Act. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>21</sup> Section 49(3) of the RTI Act.

### **Factors favouring disclosure**

15. QPS must be transparent and accountable about how it investigates incidents of arson. In this matter, the Applicant was charged and convicted for starting a fire on the Landlord's property. I am satisfied that disclosure of the information which QPS decided to disclose (including the Information in Issue) could reasonably be expected to enhance QPS's accountability and transparency, as it would provide information about the investigative actions taken by QPS and reveal contextual information to the decision to charge the Applicant. This gives rise to factors favouring disclosure.<sup>22</sup> Given the limited nature of the Information in Issue, I consider these factors carry only moderate weight.
16. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to contribute to the administration of justice for a person.<sup>23</sup> In *Willsford and Brisbane City Council*<sup>24</sup> the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor arises if an access applicant demonstrates:
  - a. they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - b. they have a reasonable basis for seeking to pursue the remedy; and
  - c. disclosing the information in issue would assist the applicant to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.<sup>25</sup>
17. The approach of the Information Commissioner in *Willsford and Brisbane City Council* was more recently applied by the Assistant Information Commissioner in *EF9TO8 and Department of Transport and Main Roads*<sup>26</sup>(**EF9TO8**) in relation to the registered address of a vehicle that was required for the pursuit of a legal remedy.
18. Similar to the circumstances in *EF9TO8*, the Landlord in this case seeks the Applicant's address in order to pursue a legal remedy and requires address details to commence (and serve) those proceedings. It is not in dispute that the fire, for which the Applicant was convicted, caused damage to the Landlord's property and the Landlord has a reasonable basis for seeking to commence legal action against the Applicant.<sup>27</sup> In these circumstances, I am satisfied that the facts of this case meet the requirements set out in *Willsford* and that disclosure of the address could reasonably be expected to contribute to the administration of justice for the Landlord by enabling them to pursue a legal remedy by commencing civil action. On this basis, I afford significant weight to this factor favouring disclosure of the Applicant's address.

### **Factors favouring nondisclosure**

19. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>28</sup> and that disclosing information that could reasonably be expected to prejudice the protection of an individual's right to privacy will favour nondisclosure.<sup>29</sup>

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<sup>22</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>23</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>24</sup> (1996) 3 QAR 368 (*Willsford*).

<sup>25</sup> *Willsford* at paragraph 17. This approach was recently affirmed in *10S3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

<sup>26</sup> [2016] QICmr 19 (3 June 2016).

<sup>27</sup> Access applicant submissions dated 3 October 2020.

<sup>28</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>29</sup> Schedule 4, part 3, item 3 of the RTI Act.

20. Personal information is defined by section 12 of the IP Act as:<sup>30</sup>

*...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.*

21. I am satisfied that the Applicant's address comprises his personal information and that the above factors in relation to privacy and personal information apply. In relation to the Applicant's address, I consider that both these factors carry significant weight. However, as the remaining Information in Issue does not identify any individual or comprise personal information, I do not consider the personal information and privacy factors apply to that information.

22. The Applicant generally contends that disclosing the Information in Issue will be unjust, as the arson incident has already been dealt with in the completed criminal proceedings<sup>31</sup> and the prospect of being involved in further legal proceedings in respect of the arson incident is stressful to him.<sup>32</sup> Factors favouring nondisclosure will arise where disclosure of information could reasonably be expected to:

- prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;<sup>33</sup> and
- impede the administration of justice generally, including procedural fairness, or for a person.<sup>34</sup>

23. The Applicant acknowledges that he was convicted of setting the fire on 5 April 2019. In these circumstances, I am satisfied that the nondisclosure factor relating to fair treatment does not apply to the Information in Issue. While I acknowledge that the Applicant may be apprehensive about future civil proceedings being commenced against him in respect of the arson damage, the Applicant has not provided any evidence which reasonably indicates that disclosure of this particular Information in Issue could be expected impede procedural fairness or the administration of justice for him in any such future proceedings.

24. Although the Applicant bears the onus of establishing that disclosure of the Information in Issue would, as he contends, be contrary to the public interest, I have considered whether any other factors listed in schedule 4, parts 3 and 4 of the RTI Act apply. Taking into account the nature of the Information in Issue, I can identify no other public interest factors which favour nondisclosure.<sup>35</sup>

### ***Balancing the public interest***

25. In balancing the public interest, I will first consider the Applicant's address. This is the information that is the focus of the Landlord's access application and of core concern to the Applicant. I acknowledge that this information is the personal information of the Applicant and that the Applicant is concerned about the impact of any disclosure of this information on him personally. For this reason, I have attributed significant weight to the

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<sup>30</sup> This definition is adopted by schedule 5 of the RTI Act.

<sup>31</sup> External review application.

<sup>32</sup> External review application.

<sup>33</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>34</sup> Schedule 3, part 3, items 8 and 9 of the RT Act.

<sup>35</sup> For example, I cannot see how its disclosure could, for example, prejudice the flow of information to the police (Schedule 4, part 3, item 13 of the RTI Act) or prejudice an agency's ability to obtain confidential information (Schedule 4, part 3, item 16 and schedule 4, part 4, section 8 of the RTI Act). In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the combined weight that I have afforded to the public interest factors that favour the disclosure of the Information in Issue.

public interest factors favouring nondisclosure that seek to protect the privacy and personal information of the Applicant.

26. Weighing against these factors, however, is the significant weight I have attributed to the public interest factor favouring disclosure which relates to the administration of justice for the Landlord. It is not in dispute that the Applicant caused damage to the Landlord's property and has been criminally convicted as a result. The Landlord has established that there is a civil remedy available to them, however, in order to pursue this remedy and to commence proceedings against the Applicant, the Landlord requires the Applicant's address. The applicant has not provided any alternate address for the service of legal documents. Given this background, I am satisfied that the administration of justice factor carries significant and determinative weight in favour of disclosure of the address information.
27. With respect to the remaining information in issue, I consider that as it does not comprise the personal information of the Applicant, there is insufficient weight that can be attributed to any factors favouring nondisclosure of this information that would outweigh the general prodisclosure bias of the RTI Act, and the moderate weight that can be attributed to the factors relating to the transparency and accountability of QPS.
28. Accordingly, I find that disclosure of Information in Issue would not, on balance, be contrary to the public interest.<sup>36</sup>

## **DECISION**

29. I affirm QPS's decision to disclose the Information in Issue and find that the Applicant has not discharged the onus of establishing that disclosure of the Information in Issue would, on balance, be contrary to the public interest and a decision not to disclose the Information in Issue is justified.
30. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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

**Date: 13 October 2020**

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<sup>36</sup> Sections 47(3)(b) and 49 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
14 April 2020	OIC received the application for external review.
20 May 2020	OIC requested submissions from the Applicant to explain the delay in lodging the external review application and asked QPS to provide further information.
20 May 2020	OIC received submissions from the Applicant.
26 May 2020	OIC received the requested information from QPS.
27 May 2020	OIC advised the Applicant, QPS and the Landlord that the external review application had been accepted and asked the Applicant and the Landlord to provide information.
2 and 3 June 2020	QPS provided to the Applicant (via email) a copy of the located information, redacted to reflect its disclosure decision. The Applicant advised he was unable to open the emailed documents.
10 June 2020	The Applicant advised that information had been posted to him.
17 June 2020	The Landlord confirmed they continue to seek access to the requested information. The Applicant advised that he had not received the posted information.
19 June 2020	OIC notified the Applicant that documents were awaiting his collection and asked him to detail his disclosure concerns by 26 June 2020.
23 June 2020	OIC received the Applicant's submissions by telephone.
24 June 2020	OIC conveyed a preliminary view to the Applicant.
3 July 2020	OIC received the Applicant's further submissions.
8 July 2020	OIC wrote to the Landlord confirming that they wish to lodge an application with the Queensland Civil and Administrative Tribunal and they require information to support and serve that application.
11 August 2020	OIC conveyed a preliminary view to the Applicant and received further submissions from the Applicant. OIC conveyed a preliminary view to the Landlord and the Landlord confirmed that they accepted the preliminary view that access could be refused to some information.
25 August 2020	OIC received the Applicant's further submissions.
2 September 2020	OIC confirmed the preliminary view to the Applicant.
4 September 2020	OIC confirmed the preliminary view to the Applicant and received further submissions from the Applicant.
8 September 2020	OIC confirmed to the Applicant that QPS would disclose to the Landlord the information which was not the subject of his remaining disclosure objections. OIC also confirmed the preliminary view to the Applicant about his remaining disclosure objections and invited the Applicant to make final submissions by 22 September 2020.