



Decision and Reasons for Decision

Citation:	<i>L75 and Queensland Police Service [2020] QICmr 62 (23 October 2020)</i>
Application Number:	315050
Applicant:	L75
Respondent:	Queensland Police Service
Decision Date:	23 October 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS - applicant seeks information about access to and use of her 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>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for information about access to and use of the applicant's personal information within the QPRIME system from July 2013 to December 2015.¹
2. QPS initially refused to deal with the application under section 59 of the IP Act.² However, on 17 October 2019, QPS agreed to re-commence processing the application. After consulting with the applicant about the scope of the application,³ QPS decided to refuse to deal with the application under section 60 of the IP Act.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of QPS's decision.⁵
4. On external review OIC considered the application of section 59 of the IP Act and section 60 of the IP Act.

¹ Application dated 28 December 2018. The applicant identified the type of documents requested 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.

² QPS decision dated 29 January 2019. This decision was the subject of completed external review 314426.

³ By letter dated 18 November 2019.

⁴ On 4 December 2019.

⁵ On 4 December 2019.

5. For the reasons set out below, I affirm QPS's decision and find that QPS may refuse to deal with 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.
6. Given my finding under section 60(1)(a) of the IP Act, I do not consider it necessary to make any further finding in relation to the application of section 59 of the IP Act.

Reviewable decision and evidence considered

7. The decision under review is QPS's decision dated 4 December 2019.
8. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁶ particularly the right to seek and receive information.⁷ 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**).⁸ 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:⁹ '*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*'.¹⁰
10. Significant procedural steps relating to this review are set out in the Appendix.

Information in issue

11. During the review, QPS provided OIC with a copy of the document responding to the application, which is known as a QPRIME Activity Report (**Report**).¹¹

Issue for determination

12. The issue¹² for determination is whether QPS can refuse to deal with the application on the basis that the work involved in dealing with the access application would, if carried out, substantially and unreasonably divert QPS's resources.¹³
13. The applicant provided OIC with submissions in support of her case. I have carefully considered those submissions¹⁴ and addressed the applicant's submissions below to the extent they are relevant to the issue for determination.¹⁵
14. During external review OIC wrote to the applicant about the application of another refusal to deal provision under section 59 of the IP Act and the applicant made submissions in

⁶ Which came into force on 1 January 2020.

⁷ Section 21 of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

¹¹ This document comprises 260 pages.

¹² Section 118(1)(b) of the IP Act provides that on external review, the Information Commissioner, or her delegate, stands in the shoes of the decision-maker and looks at the whole matter afresh

¹³ Under section 60 of the IP Act.

¹⁴ As set out in the Appendix.

¹⁵ For this reason, I have not addressed the applicant's submissions that QPS is not entitled to refuse to deal with the application under section 59 of the IP Act.

relation to that provision.¹⁶ I have not addressed that provision in this decision and I have reached this decision in relation to the application of section 60(1)(a) of the IP Act only.

Relevant law

15. 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.¹⁷ 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.¹⁸
16. In deciding to refuse to deal with an application on this basis, an agency must:
 - a) disregard 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;¹⁹ and
 - b) have regard to the resources that would be used for:²⁰
 - 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.
17. 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.²¹ 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. Neither of the terms 'substantial' or 'unreasonable' are defined in the IP Act, and are therefore to be accorded their ordinary meanings.
18. The power to refuse to deal with an application under section 60 of the IP Act can only be exercised if an applicant has first been given an opportunity to narrow the scope of the application, so as to re-frame it into a form that can be processed by an agency.²²

Requirement to consult

19. By letter dated 18 November 2019, QPS:
 - notified the applicant of its intention to refuse to deal with the application under section 60 of the IP Act
 - advised the applicant that she had until a specified date²³ to consult with a view to making the application in a form that would remove and this ground as a basis for refusing to deal with the access application

¹⁶ This was in addition to submissions in relation to section 60 of the IP Act, which is the section that I have based this decision on.

¹⁷ Section 58 of the IP Act.

¹⁸ 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.

¹⁹ Section 60(3) of the IP Act.

²⁰ Section 60(2) of the IP Act.

²¹ *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2013) at [28].

²² Section 61 of the IP Act.

²³ Being 2 December 2019.

- provided examples of how the application could be narrowed;²⁴ and
 - invited the applicant to confirm or narrow the scope of the access application.
20. Having considered the content of QPS's letter, I am satisfied that it complied with the requirements of section 61 of the IP Act.
21. The applicant notified QPS that she did not accept dealing with the application would substantially and unreasonably divert QPS's resources and confirmed she required the information requested in the application.²⁵

Analysis - Substantial and unreasonable diversion of resources

22. I have not had regard to the factors referred to in paragraph 16 a) above.

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

23. The requested information comprises entries in the QPRIME Database. This database can be described as:²⁶

"...a database kept by the Queensland Police Service of the information obtained by the QPS in its law enforcement functions. It is a dynamic and constantly updated central record for the QPS. The QPS would describe it as an intelligence tool, which allows police to record information about criminal activity, the circumstances in which criminal activity is likely to occur or has occurred, the identity of those involved or suspected to be involved in criminal activities and the identities of their associates. But it also records information obtained by police officers in the course of their investigations and records criminal intelligence which has been obtained. The QPRIME system also maintains activity reports, whereby a record is kept of the access to particular QPRIME records by, amongst others, serving police officers".

24. The Applicant seeks access to all entries in the QPRIME database that comprise her personal information for an 18-month period. QPS identified 260 pages of information in response to this request. Within these pages there are over 1400 individual QPRIME entries recorded. I have assessed a copy of these 260 pages in reaching this decision.
25. While QPS indicated that it is difficult to provide a concise estimate of the time required to deal with the application, it estimates that:²⁷
- there are over 1400 individual entries which indicate different types of QPRIME activity and require close consideration to assess whether the Report, or parts of it, can be disclosed to the applicant
 - the nature of the entries is such that, although some could be considered relatively quickly, a 'considerable amount' of the entries would require the QPS decision-maker to undertake enquiries with officers responsible those recorded QPRIME actions, to identify why the actions were undertaken and what those actions relate to;²⁸ and
 - undertaking these enquiries would take between 122 and 244 hours.²⁹
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

²⁴ The applicant was invited to consider reducing the timeframe and/or specifying the QPS officers whose access and use was sought to be captured.

²⁵ By email dated 20 November 2019.

²⁶ *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 at [1].

²⁷ QPS submissions dated 1 May 2020.

²⁸ 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 entries with the Report.

²⁹ Based upon an enquiry taking between 5 and 10 minutes to complete.

assessment may substantially and unreasonably divert the agency's resources, an estimate is acceptable.³⁰

27. The applicant does not accept that there is any need for QPS to conduct enquiries about why recorded actions were undertaken and what they relate to. The applicant submits that she is not the subject of any ongoing investigation or covert activity³¹ and that if the enquiries are intended to determine whether the recorded action was lawful, this is beyond the QPS decision-maker's authority.³² Otherwise, the applicant has not directly challenged QPS's estimate of the work involved in dealing with the application.
28. 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 contents of the Report, to determine if grounds for refusal apply to any part of it,³³ redact information and prepare a written decision. QPS may also be required to undertake consultation with other individuals should it appear that disclosure of information may be of concern to third parties.³⁴
29. Having considered the responding 260 pages, I am satisfied that each entry must be assessed by QPS separately to determine whether there is any basis for refusing access to information. In some cases, I accept that this assessment will require consultation with QPS officers outside of the RTI unit.
30. On the information before me, it is difficult to reach an estimate regarding the amount of time that would be required to redact information and prepare a written decision. However, I consider it reasonable to expect that, if QPS was to deal with the application, some time in addition to the estimated hours would be required to complete these further steps. Based on careful consideration of the material before me, including the responsive information, I accept QPS's contention that processing the application is likely to take between 122 and 244 hours.

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

31. As at 30 June 2020, QPS employed approximately 15,580 full-time equivalent staff.³⁵ 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,³⁶ together with internal reviews and external reviews.
32. QPS's minimum estimate of work in this review equates to between 15 and 30 days for one full time decision-maker working on the application to the exclusion of all other functions of that officer.³⁷ This estimate is only for the time required to assess information within the Report to establish whether any grounds of refusal may arise. This equates

³⁰ Refer to *McIntosh v Victoria Police (General)* [2008] VCAT 916 at [10] and *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [42].

³¹ In the event the applicant was subject to any covert surveillance, it is unlikely that the applicant would be aware of this.

³² Submissions dated 24 June 2020. In this regard, it appears the applicant is referring to making a determination that information is not exempt due to the application of schedule 3, section 10(2)(a) of the RTI Act.

³³ 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.

³⁴ Under section 56 of the IP Act. This section may, for example, be enlivened where a QPRIME entry includes the shared personal information of the applicant and another individual.

³⁵ As set out at page 74 of QPS's 2019-20 Annual Report (Accessed at <https://www.police.qld.gov.au/sites/default/files/2020-09/QPS-AR-2019-20-Full-Report.pdf> on 20 October 2020).

³⁶ The QPS disclosure logs indicate that between January 2020 and March 2020, the RTI&P unit finalized between 88 and 97 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 at page 7 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.

³⁷ Based on an 8-hour work day without breaks.

to between over half and the entire processing time usually allowed under the IP Act for processing an application.³⁸

33. Taking into account the additional time that will be required to redact information and prepare a written decision, I am satisfied that the time required to deal with the application is likely to exceed the usual processing period.
34. It is 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 other applicants 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 application would, if carried out, substantially divert the resources of QPS from their use in the performance of its functions.
35. 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 evidence³⁹ and a range of factors that may be relevant to the circumstances of each case, including:⁴⁰
 - 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.
36. I accept that the terms of the application are sufficiently precise to permit QPS to locate the requested information and that QPS has in fact located the relevant information. The most onerous task for QPS in this case, is the assessment of the located information to establish whether access can be granted.
37. The applicant was provided with an opportunity to redraw the boundaries of the application, however, the applicant did not use this opportunity to narrow the scope.⁴¹ While the applicant has made previous applications to QPS, there is insufficient evidence

³⁸ 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.

³⁹ *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].

⁴⁰ *Smeaton* at [39].

⁴¹ By letter dated 1 November 2019, QPS invited the applicant to consider narrowing the application scope and, in her response on 20 November 2019, the applicant did not agree to limit the scope of the application.

before me to indicate that those previous applications have requested the information within the Report.

38. The applicant submits that exemption provisions of the RTI Act will not apply to the requested QPRIME Report entries as *'it will be apparent, on the face of an activity report, that legitimate investigatory bounds have been exceeded "from the identities of those who have been obtaining access" and by "the frequency of access"'*.⁴² Having considered the responsive information, it is not apparent to me on the face of the activity report that legitimate investigatory bounds have been exceeded and I accept the QPS submission that further enquiries will need to be made in order to establish whether this is the case with respect to each discrete entry.
39. I accept that there is public interest in the applicant having access to her own personal information and that disclosure of the responsive information may enhance the accountability and transparency of QPS.⁴³ However, I note that a decision refusing to deal with an application on the basis that it is a substantial and unreasonable diversion of an agency's resources 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.
40. Having found that the resources reasonably required to deal with the application are substantial, and in light of the need for QPS to process other access applications and complete other functions, I consider that dealing with this application would be unreasonable. Considering the relevant factors listed in paragraph 35, I find that the work involved in dealing with the application would amount to a substantial and unreasonable diversion of QPS's resources.

DECISION

41. For the reasons set out above, as a delegate of the Information Commissioner,⁴⁴ I affirm QPS's decision and find that dealing with the application would substantially and unreasonably divert QPS's resources from their use in the performance of QPS's functions.⁴⁵

S Martin
Assistant Information Commissioner

Date: 23 October 2020

⁴² Applicant's submissions dated 24 June 2020.

⁴³ The factors favouring disclosure in schedule 4, part 2, items 1, 2, 3, 5, 6, 7 and 11 of the RTI Act generally relate to accountability and transparency considerations.

⁴⁴ Under section 139 of the IP Act.

⁴⁵ Under section 60(1)(a) of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
4 December 2019	OIC received the external review application.
22 January 2020	OIC notified the applicant and QPS that the external review application had been accepted.
28 January 2020	OIC asked QPS to provide further information.
13 February 2020	OIC received information from QPS.
19 February 2020	OIC asked QPS, if it continued to rely on 60 of the IP Act, to provide submissions and information in support of its position.
18 March 2020	OIC granted QPS an extension to provide the requested submissions and notified the applicant of this.
21 March 2020	OIC received the applicant's objection to the granted extension and requested OIC issue a formal decision to finalise the review.
9 April 2020	OIC emailed the applicant confirming the timeframe for QPS's response and the external review process.
9 April 2020	OIC received the applicant's written submissions.
1 May 2020	OIC issued a Notice to QPS pursuant to section 116 of the IP Act, requiring provision of the requested submissions and information. OIC received the requested submissions and information from QPS.
2 June 2020	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions if she did not accept the preliminary view.
24 June 2020	OIC received the applicant's submissions.
23 July 2020	OIC received the applicant's request that a formal decision be issued to finalise the review.