



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>L80 and Queensland Police Service [2023] QICmr 28 (19 June 2023)</i></b>
<b>Application Numbers:</b>	<b>316699 and 316781</b>
<b>Applicant:</b>	<b>L80</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>19 June 2023</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - witness information and statements given to police - body worn camera footage - personal information and privacy of individuals other than the applicant - flow of information to the police - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant made two related access applications to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) seeking access to information about an incident involving him.<sup>1</sup> The first application<sup>2</sup> sought access to the police incident report, including any witness statement, and the second application<sup>3</sup> sought access to the body worn camera recordings recorded by three QPS officers who attended the incident.
2. On the first application, QPS located a four page occurrence report<sup>4</sup> regarding the incident (**Occurrence Report**) and decided<sup>5</sup> to partly disclose the report to the applicant, subject to the redaction of information identifying other individuals and information they had provided to QPS.<sup>6</sup>

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<sup>1</sup> The incident occurred on 14 January 2021.

<sup>2</sup> Dated 24 January 2022.

<sup>3</sup> Dated 11 May 2022.

<sup>4</sup> In the Queensland Police Records and Information Management Exchange (**QPRIME**), which is a database kept by QPS of the information obtained by the QPS in its law enforcement functions.

<sup>5</sup> Decision notice dated 5 May 2022. This was made outside the statutory timeframe and therefore, constitutes a deemed decision under section 66 of the IP Act.

<sup>6</sup> Pursuant to section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

3. On the second application, QPS located one BWC recording and decided<sup>7</sup> to also release it partially to the applicant, edited so as to remove the audio and images of other individuals.<sup>8</sup>
4. The applicant applied to the Information Commissioner for external review of both decisions.<sup>9</sup> The applicant made submissions to OIC contesting QPS's refusal of access to information on both applications; he also raised concerns about the adequacy of QPS' searches.
5. In External Review No. 316699, QPS agreed to release some additional information in the Occurrence Report to the applicant. In that review, the applicant maintains his concern that he had not been given access to a witness statement requested in the first application.
6. In External Review No. 316781, QPS conducted further searches and located 17 further BWC recordings responsive to the second application, and agreed to release 12 of those recordings to the applicant.<sup>10</sup> In that review, the applicant continues to seek access to full, unedited copies of all located BWC recordings.
7. For the reasons set out below I have decided:
  - in External Review No. 316699, to vary QPS's deemed decision by finding that access to the remaining parts of the Occurrence Report may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest; and
  - in External Review No. 316781, to affirm QPS's refusal of access decision and find that access to the remaining BWC recordings<sup>11</sup> may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

## Background

8. The decisions under review are:
  - QPS's deemed decision refusing access to all requested information (External Review No. 316699); and
  - the decision made by QPS on 29 June 2022 refusing access to parts of one BWC recording on the basis that disclosure would, on balance, be contrary to the public interest (External Review No. 316781).
9. Significant procedural steps relating to the external reviews are set out in the appendix.
10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to recognition and equality before the law and the right to seek and receive information.<sup>12</sup> I consider a decision-maker will be '*respecting and acting compatibly with*'

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<sup>7</sup> On 29 June 2022. QPS requested further time to process the access application, and there is no material before me of the applicant refusing the requested extensions.

<sup>8</sup> Pursuant to section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>9</sup> On 9 May 2022 (External Review No. 316699) and on 1 July 2022 (External Review No. 316781).

<sup>10</sup> QPS disclosed 10 full BWC files and 2 edited BWC files on 14 and 28 March 2023.

<sup>11</sup> Including the additionally located files.

<sup>12</sup> Sections 15 and 21 of the HR Act.

these rights and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.<sup>13</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>14</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>15</sup>

12. The applicant raised a number of concerns outside the Information Commissioner's external review jurisdiction, including complaints about the conduct of QPS officers, and allegations of breaches of his human rights. I acknowledge the applicant has ongoing concerns about his arrest and dealings with QPS generally. However, the Information Commissioner has no jurisdiction to investigate complaints of this nature. To the extent the applicant's submissions raise relevant public interest factors in relation to disclosure of the information remaining in issue, I have taken them into account in making my decisions in these reviews.

### Information in issue

13. As set out above, the applicant obtained access to some further information during each review process, thereby reducing the information in issue in each review, as set out below.
14. In External Review No. 316699, the information that remains in issue appears in parts of the four page Occurrence Report pertaining to the incident involving the applicant on 14 January 2021.
15. In External Review No. 316781, seven files of BWC recordings (**BWC Recordings**) from the three attending QPS officers<sup>16</sup> remain in issue, as described in the table below:

Officer	Filename of BWC Recording	Duration of recording that remains in issue
1	AXON Body 2 Video 2021-01-14-1159	Full recording - 14:03 minutes
1	AXON Body 2 Video 2021-01-14-1245	Full recording - 0:35 minutes
2	AXON Body 2 Video 2021-01-14-1245	Full recording - 1:17 minutes
2	AXON Body 2 Video 2021-01-14-1246	Full recording - 6:09 minutes
1	AXON Body 2 Video 2021-01-14-1149	Part recording - from the start of the recording to 4:54 minutes
2	AXON Body 2 Video 2021-01-14-1149	Part recording - from the start of the recording until 3:08 minutes
3	AXON Body 2 Video 2021-01-14-1149	Part recording – from the start of the recording until 3:23 minutes

16. The extent to which I can describe the information remaining in issue in these reasons is limited by the IP Act.<sup>17</sup> What I can say, in general terms, is that it identifies other individuals who were involved in the incident including personal details, images of their person, audio recordings of their voices, and information that those individuals provided to QPS in relation to the incident (both in audio recorded format and within the Occurrence Report).

<sup>13</sup> XYZ v Victoria Police (General) [2010] VCAT 255 (16 March 2010) at [573]; Horrocks v Department of Justice (General) [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by QCAT Judicial Member McGill in Lawrence v Queensland Police Service [2022] QCATA 134, noting that he saw 'no reason to differ' from our position ([23]).

<sup>14</sup> Freedom of Information Act 1982 (Vic) and the Charter of Human Rights and Responsibilities Act 2006 (Vic).

<sup>15</sup> The applicant disclosed information to OIC about his health but did not request any adjustments over the course of the reviews.

<sup>16</sup> Four entire MP4 files and parts of three MP4 files identified by QPS as responsive to the access application.

<sup>17</sup> Section 121 of the IP Act.

## Issue for determination

17. The issue requiring determination is whether access may be refused to parts of the Occurrence Report (in External Review No. 316699) and the remaining BWC Recordings (in External Review No. 316781), on the ground that disclosure of the information would, on balance, be contrary to the public interest.<sup>18</sup>
18. As noted in paragraph 6 above, QPS located additional documents as a result of further searches that were conducted at OIC's request, during External Review No. 316781. While the sufficiency of QPS' searches was examined by OIC during the external reviews, the applicant did not contest OIC's view that QPS had taken all reasonable steps to locate responsive information and therefore, I have made no findings on that issue in these reasons for decision.

## Relevant law

19. An individual has a right, under the IP Act, to be given access to documents to the extent they contain the individual's personal information.<sup>19</sup> However, this right is subject to the provisions of the IP Act and the RTI Act, including grounds for refusing access to information.<sup>20</sup> Relevantly, access may be refused to information where its disclosure would, on balance, be contrary to the public interest.<sup>21</sup>
20. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:<sup>22</sup>
  - a. identify and disregard any irrelevant factors
  - b. identify factors in favour of disclosure
  - c. identify factors in favour of nondisclosure; and
  - d. decide whether, on balance, disclosure of the information would be contrary to the public interest.
21. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,<sup>23</sup> together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias<sup>24</sup> and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.<sup>25</sup>

## Findings

22. The applicant's submissions<sup>26</sup> demonstrate that he is seeking access to information in connection with an ongoing dispute with his neighbour, and to address his concerns

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<sup>18</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>19</sup> Section 40 of the IP Act.

<sup>20</sup> Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

<sup>21</sup> Section 67(1) of the IP Act and section 47(3)(b) 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>22</sup> Section 49(3) of the RTI Act.

<sup>23</sup> I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning innovation and the facilitation of research. I note the lists in Schedule 4 are non-exhaustive.

<sup>24</sup> Section 64 of the IP Act.

<sup>25</sup> Section 67(2) of the IP Act and section 47(2) of the RTI Act.

<sup>26</sup> Including emails dated 1 July 2022, 4 October 2022, 21 November 2022, 27 February 2023 and 19 April 2023, and attachments.

about the conduct of QPS officers during their attendance at the subject incident. The applicant has also submitted that he considers QPS fraudulently altered the BWC Recordings prior to disclosing it to him.

23. The applicant submits that he needs complete and unedited access to the Occurrence Report and BWC Recordings as he was *'the subject of Police brutality'* and because he intends to *'press charges of assault'* against the officers involved.<sup>27</sup> The applicant also claims that he was *'assaulted'* and that his human rights were *'abused and violated by the QPS'*.<sup>28</sup>
24. In the context of External Review No. 316699, the applicant has questioned why he has not been given access to information that he believes was given to QPS by a witness which he believes to be *'exonerating'*.<sup>29</sup> The applicant also contends that parts of the Occurrence Report released to him contain incorrect statements.
25. In making this decision, I have not taken into account any irrelevant factors.<sup>30</sup>

### **Factors favouring disclosure**

26. A public interest factor in favour of disclosure is raised where information is the applicant's personal information.<sup>31</sup> Because the applicant was involved in the incident, his personal information inevitably appears within the Occurrence Report and BWC Recordings and therefore, this factor is relevant to consider in both reviews.
27. Through the two applications and review processes, the applicant has been granted access to his personal information where it appears in the Occurrence Report and a significant percentage of the BWC Recordings (including recordings of his interactions with QPS officers).<sup>32</sup> Disclosure of this information has, in my view, served to discharge this public interest factor to a significant degree. However, there are instances, both within the Occurrence Report and the BWC Recordings, where the applicant's personal information is inextricably intertwined with the personal information of other individuals connected to the incident. That information has not been disclosed as to do so would disclose the personal information of other individuals.<sup>33</sup> In other words, some of the applicant's personal information cannot be extracted to permit release without divulging the personal information of others.
28. In the course of investigating an incident, QPS officers will routinely speak with other individuals about their involvement and record their version of events to establish facts and obtain evidence. During these conversations (generally referred to as witness statements), it is not uncommon for those individuals to identify other people in connection with an incident, thereby intertwining their version of events with the personal information of others. As set out in paragraph 16 and 27 above, the information remaining in issue in the Occurrence Report and BWC Recordings includes intertwined personal information of this nature.
29. I recognise the significance of the public interest in the applicant obtaining access to his own personal information. I am also conscious of the applicant's desire to obtain an

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<sup>27</sup> Email dated 4 October 2022.

<sup>28</sup> Ibid.

<sup>29</sup> Email dated 19 April 2023.

<sup>30</sup> Including any set out in schedule 4, part 1 of the RTI Act.

<sup>31</sup> Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act defines *personal information* 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.'*

<sup>32</sup> The applicant has received access to more than 2 hours of BWC footage in 13 separate recordings.

<sup>33</sup> The RTI Act recognises that there are public interest factors favouring nondisclosure of other people's personal information: see paragraphs 41 to 46 of these reasons.

unedited copy of the Occurrence Report and full copies of BWC Recordings. However, taking into account that QPS has released the applicant's personal information to him (where it appears in a non-intertwined way) and that any of his remaining personal information is combined with that of others, I afford this factor moderate weight.

30. The public interest will also favour disclosure of information which would enhance the Government's accountability, inform the community of the Government's operations, and reveal background/contextual information that has informed a government decision.<sup>34</sup> To the extent that the information remaining in issue in the Occurrence Report, and within the BWC Recordings discloses information about the way QPS dealt with the incident, and the actions it took subsequently, and in reporting it, I consider these factors apply. However, as QPS has released most of the Occurrence Report, and a significant amount of footage to the applicant, save for those portions of the BWC Recordings containing personal information of other individuals, I am satisfied that the weight of these factors is somewhat reduced. For these reasons I consider these public interest factors carry moderate weight in favour of disclosure.<sup>35</sup>
31. The applicant has raised concerns about the conduct of QPS and considers he is being refused information to 'cover up' the actions of the QPS officers.<sup>36</sup> It is not my role to determine whether there has been any maladministration or wrongdoing on the part of QPS in attending an incident. The Information Commissioner's role is limited to merits review of government agency decisions made under the IP Act and RTI Act with respect to access to information. However, given the applicant's submissions, I have considered whether disclosure of the information remaining in issue in the Occurrence Report and BWC Recordings could reasonably be expected to:
- a. allow or assist inquiry into possible deficiencies of conduct or administration by an agency or official;<sup>37</sup>
  - b. reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;<sup>38</sup> and/or
  - c. reveal that the information was—incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant.<sup>39</sup>
32. For the factor at i. above to apply, there must be a reasonable expectation<sup>40</sup> that disclosure of information could 'allow' or 'assist' inquiry into 'possible' deficiencies in an agency's or official's conduct or administration. This factor imposes a lower threshold than what is required for the factor at ii. to apply; that factor requires a reasonable expectation that disclosure could 'reveal' or 'substantiate' the conduct described therein.
33. As I have canvassed earlier in these reasons, the applicant has been granted access to most of the Occurrence Report and the BWC footage comprising images and audio of him, and his interactions with QPS. To my mind, disclosure of that information has already provided him with material which could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of QPS officers, with respect to how the applicant was treated. For example, the applicant has been given access to recordings of him being restrained and placed into a police vehicle. In view of

<sup>34</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>35</sup> Schedule 4, part 2, items 1, 3, and 11 of the RTI Act.

<sup>36</sup> Applicant's email dated 27 February 2023.

<sup>37</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>38</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>39</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>40</sup> The words 'could reasonably be expected' are to be given their ordinary meaning and the relevant expectation must be reasonably based and not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockroft* (1986) 64 ALR 97, per Bowen CJ and Beaumont J at 106. Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected: see *Murphy and Treasury Department* (1995) 2 QAR 744 at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

this, I am satisfied that this public interest factor<sup>41</sup> has already been significantly discharged and that disclosure of the remaining information in issue would only marginally allow or assist the applicant's inquiry. Therefore, while this factor applies, I afford it low weight.

34. I do not however consider that factors ii. or iii. cited at paragraph 31 above apply to favour disclosure of any information remaining in issue in the Occurrence Report and BWC Recordings. As set out above, what remains in issue in those documents comprises the personal information of other individuals and intertwined personal information. I have carefully considered that information and am satisfied that its disclosure could not reasonably be expected to reveal or substantiate misconduct or negligent, improper or unlawful conduct, nor is there any evidence available to me to establish that the remaining information is of a kind mentioned in the factor at iii. Accordingly I find that those factors do not apply.<sup>42</sup>
35. The applicant has made submissions about his '*wrongful arrest*' and '*excessive force*' by QPS and has indicated that he intends to '*press charges of assault*'.<sup>43</sup> I have therefore, considered whether disclosure of any of the remaining information in issue in the Occurrence Report or BWC Recordings could reasonably be expected to contribute to the administration of justice for the applicant.<sup>44</sup> For this factor to apply, the Information Commissioner has consistently held that an applicant must be able to establish all of the below requirements :
- a) loss, damage or some kind of legal wrong has been suffered, in respect of which a legal remedy is, or may be available
  - b) they have a reasonable basis for pursuing the legal remedy; and
  - c) disclosure of would assist the applicant to pursue that remedy or evaluate whether they may pursue that legal remedy.<sup>45</sup>
36. I acknowledge the applicant's concerns about how he was treated by QPS during their attendance at the incident. As previously stated in these reasons, the applicant has been given access to BWC footage which contains images of him interacting with QPS officers during the incident, being restrained and also placed into the QPS vehicle. As that information is in his possession, it is already available to him to assess in respect of pursuing any potential legal remedy.<sup>46</sup>
37. The applicant has also indicated that he intends to take some form of action against other individuals within the context of the ongoing neighbourhood dispute.<sup>47</sup> I acknowledge the applicant remains distressed by the events of that day and the ongoing challenges at his residence. However, the applicant's submissions have not articulated a loss, damage or legal wrong suffered in respect of which a legal remedy is available. For these reasons, I am satisfied the administration of justice factor does not apply to favour disclosure of the Occurrence Report and BWC Recordings.<sup>48</sup>

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<sup>41</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>42</sup> Schedule 4, part 2, items 6 and 12 of the RTI Act.

<sup>43</sup> Applicant's submission dated 4 October 2022.

<sup>44</sup> Schedule 4, part 2, item 17 of the RTI Act. See *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] (**Willsford**).

<sup>45</sup> *Willsford* at [17].

<sup>46</sup> I make no finding on whether any of the released recordings establish any of the applicant's claims.

<sup>47</sup> Email sent to his local police station on 21 November 2022, a copy of which was provided to OIC.

<sup>48</sup> Schedule 4, part 2, item 17 of the RTI Act.

38. Given the applicant's submissions regarding how he was treated by QPS, I have considered whether disclosing the Occurrence Report and BWC Recordings could reasonably be expected to advance his fair treatment.<sup>49</sup>
39. As set out in paragraph 36 above, the applicant has been given access to BWC footage containing images of him interacting with QPS officers during the incident, being restrained and also placed into the QPS vehicle. That disclosure, in my view, has served to discharge this factor significantly as he is in possession of material showing how he was treated by QPS during and after the incident; the applicant may consider using the released information to inform any subsequent complaint process. To the extent this factor applies to the remaining information in issue (particularly the intertwined personal information), I afford it low weight.
40. I have not identified any further public interest factor to favour disclosure<sup>50</sup> of the information remaining in issue in the Occurrence Report or the BWC Recordings.

### **Factors favouring nondisclosure**

41. In addition to recognising an applicant's right to access their own personal information held by government agencies, the RTI Act also identifies that it is in the public interest to protect personal information and privacy of individuals other than the applicant.<sup>51</sup>
42. The information remaining in issue in the Occurrence Report identifies other individuals, contains their address/contact details and other inherently private information such as dates of birth. The Occurrence Report also records information that was provided to QPS by those individuals in connection with the relevant incident, e.g. descriptions of circumstances of the incident, including personal opinions/expressions. I am satisfied that such information in the Occurrence Report comprises the '*personal information*'<sup>52</sup> of individuals other than the applicant.
43. The BWC Recordings also contain inherently personal information such as the images, voices, tone and expression of the individuals who appear in the recordings. The Information Commissioner has previously found that disclosure of such 'lexical' and 'non-lexical'<sup>53</sup> information in audio-visual recordings would result in a significant public interest harm.<sup>54</sup> Based on my analysis of the BWC Recordings, I am satisfied that disclosure would lead to significant public interest harm by disclosing the audio-visual personal information of other individuals in the context of a visibly distressing incident attended by QPS.
44. The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>55</sup> I am satisfied disclosing the remaining information in the Occurrence Report and the BWC Recordings could reasonably be expected to lead

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<sup>49</sup> Schedule 4, part 2, item 10 of the RTI Act. See discussion of this public interest in *Pemberton and The University of Queensland* (1994) 2 QAR 293 at paragraph 190. The Information Commissioner's comments were made in the context of the now repealed *Freedom of Information Act 1992* (Qld) (FOI Act) but provide guidance on interpreting this factor under the RTI Act.

<sup>50</sup> In reaching this decision, I have had regard to all factors set out in schedule 4, part 2 of the RTI Act.

<sup>51</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>52</sup> As defined in section 12 of the IP Act.

<sup>53</sup> I.e., both words spoken, and an individual's tone, demeanour or emotional state in speaking those words or interacting with government: see generally *New York Times Co. and National Aeronautics and Space Administration*, 920 F.2d 1002 (D.C. Cir. 1990, 1006), discussed and applied in *Williamson and Department of Police; "A" (Third Party)* (2005) 7 QAR 51 of *Information Act 1992* (Qld) FOI Act to an audio and video recording of a police interview. *Williamson* considered the application of the former 'personal affairs' exemption under the repealed FOI Act; however, it remains relevant as a guide to interpretation in this case.

<sup>54</sup> *82PNLR and Queensland Police Service* [2019] QICmr 21 (13 June 2019) at [39] to [43].

<sup>55</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.



to a significant intrusion into the privacy of the individuals as it would reveal their involvement in, and views expressed in relation to, an incident attended by QPS officers. This factor is deserving of significant weight, given the particularly sensitive context.

45. The RTI Act also recognises a public interest in protecting the free flow of information to law enforcement agencies.<sup>56</sup> I am satisfied that this factor is relevant to consider given the information remaining in issue in the Occurrence Report and BWC Recordings includes statements provided to QPS by other individuals in relation to an incident which was investigated by the law enforcement agency that is QPS.
46. Obtaining contemporaneous information from parties involved in an incident of alleged violence<sup>57</sup> is integral to the effectiveness of a QPS discharging its law enforcement responsibilities. If the recordings of those statements/conversations were subject to routine and unconditional disclosure under the RTI Act, members of the community may be reluctant to provide full and frank statements to QPS at the time of an incident, thereby prejudicing QPS ability to effectively conduct investigations for the purpose of law enforcement.<sup>58</sup> I am satisfied that this important public interest factor is enlivened by the information remaining in issue in the Occurrence Report and BWC Recordings, and I afford it significant weight in favour of nondisclosure.

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

47. In balancing the factors for and against disclosure<sup>59</sup> of the information remaining in issue in the Occurrence Report (in External Review No. 316699) and the BWC Recordings (in External Review No. 316781), I have taken into account the pro-disclosure bias and the applicant's right to obtain access to his own personal information held by QPS, to which I have afforded moderate weight. Similarly, I have afforded the public interest factors associated with enhancing QPS' accountability and transparency in relation to its investigation of the incident moderate weight. I am also satisfied that low weight can be ascribed to the public interest in allowing or assisting inquiry into possible deficiencies in QPS conduct, and to advance the fair treatment of the applicant.
48. Weighing against this are several key factors favouring nondisclosure: prejudice to other individuals' right to privacy and to the flow of information to QPS, and the public interest harm in disclosing personal information of individuals other than the applicant. I am satisfied that these factors carry significant and determinative weight to support a conclusion favouring nondisclosure of the remaining information in issue.
49. Accordingly I find that disclosure of the remaining information in issue in both reviews would, on balance, be contrary to the public interest.<sup>60</sup>

### **DECISION**

50. In External Review No. 316699, I vary QPS's deemed decision by finding that access to the remaining parts of the Occurrence Report may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that disclosure would, on balance, be contrary to the public interest.

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<sup>56</sup> Schedule 4, part 3, item 13 of the RTI Act. See *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015) at [27]-[31], *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) at [35]-[40], *SW5Z7D and Queensland Police Service* [2016] OICmr 1 (15 January 2016) at [27]-[31].

<sup>57</sup> The Occurrence Report describes the occurrence type as 'Assault, Common' and this has been disclosed to the applicant.

<sup>58</sup> See *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [29], also involving a QPS investigation of a neighbourhood dispute related incident.

<sup>59</sup> Section 49(3) of the RTI Act.

<sup>60</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

51. In External Review No. 316781, I affirm QPS's decision to refuse access to the remaining BWC Recordings<sup>61</sup> under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that disclosure would, on balance, be contrary to the public interest.
52. I have made these decisions under section 123(1) of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 19 June 2023**

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<sup>61</sup> Including the additionally located files as described at paragraph 13 in these reasons.

**APPENDIX****Significant procedural steps**

<b>External Review No. 316699</b>	
<b>Date</b>	<b>Event</b>
9 May 2022	OIC received the external review application.
10 May 2022	OIC requested preliminary documents and information from QPS. OIC confirmed receipt of the external review application with the applicant.
11, 24, 26 and 27 May 2022	OIC received correspondence from the applicant.
8 June 2022	OIC notified the applicant it had accepted the external review application. OIC notified QPS it had accepted the external review application and asked QPS to provide OIC with relevant information relating to the review.
1 July 2022	OIC followed up QPS regarding the request for information.
21 July 2022	OIC followed up QPS regarding the request for information. OIC received the requested documents and information from QPS.
4 October 2022	OIC issued a preliminary view to the applicant. OIC received submissions from the applicant by telephone and email contesting the preliminary view.
20 October 2022	OIC issued a preliminary view to QPS.
10 November 2022	QPS advised OIC it accepted its preliminary view on further disclosure of information to the applicant.
21 November 2022 and 27 February 2023	OIC received correspondence from the applicant.
9 March 2023	OIC issued a further preliminary view to the applicant. OIC requested QPS disclose the further information to the applicant.
29 March 2023	OIC followed up QPS regarding disclosure of the further information to the applicant.
4 April 2023	QPS disclosed the further information to the applicant. OIC granted the applicant further time to respond to the preliminary view.
19 April 2023	OIC received submissions from the applicant contesting part of the preliminary view.
15 May 2023	OIC contacted QPS and the applicant to confirm this review would proceed to a decision to finalise the review.

<b>External Review No. 316781</b>	
<b>Date</b>	<b>Event</b>
1 July 2022	OIC received the external review application.
5 July 2022	OIC requested preliminary documents and information from QPS. OIC confirmed receipt of the external review application with the applicant.
27 July 2022	OIC received documents from QPS.
4 August 2022	OIC notified the applicant it had accepted the external review application. OIC notified QPS it had accepted the external review application and requested copies of relevant information.
5 August 2022	OIC received the information from QPS.
4 October 2022	OIC issued a preliminary view to the applicant. OIC received submissions from the applicant by telephone and email contesting the preliminary view.
20 October 2022	OIC issued a preliminary view to QPS.
10 November 2022	QPS provided OIC with additional documents it located upon further searches required by OIC.
21 December 2022	OIC issued a preliminary view to QPS about disclosure of the further documents.
27 February 2023	OIC received correspondence from the applicant.
9 March 2023	OIC issued a further preliminary view to the applicant. OIC requested QPS disclose the further information to the applicant.
14 and 28 March 2023	QPS advised OIC it had disclosed the further documents to the applicant.
4 April 2023	OIC granted the applicant further time to respond to the preliminary view
19 April 2023	OIC received submissions from the applicant contesting part of the preliminary view.
15 May 2023	OIC contacted QPS and the applicant to confirm this review would proceed to a decision to finalise the review.
7 June 2023	OIC contacted QPS to advise that it had identified some further footage solely of the applicant which could be released consistent with OIC's earlier preliminary view.
8 June 2023	QPS agreed that the additional portion of BWC footage could be disclosed to the applicant in accordance with OIC's preliminary view.