



Decision and Reasons for Decision

Citation:	<i>B70 and Office of the Director of Public Prosecutions [2023] QICmr 49 (11 September 2023)</i>
Application Number:	316992
Applicant:	B70
Respondent:	Office of the Director of Public Prosecutions
Decision Date:	11 September 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - request for brief of evidence relating to the applicant's historical conviction - personal information, privacy and flow of information - fair treatment, administration of justice, accountability and transparency - whether disclosure 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>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Office of the Director of Public Prosecutions (**ODPP**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to a full brief of evidence in relation to an offence for which she was convicted and sentenced in 2004.
2. ODPP located information relevant to the application and decided² to disclose 52 pages to the applicant and refuse access, on various grounds, to 417 pages and parts of 222 pages (**Undisclosed Information**).
3. The applicant then applied³ to the Office of the Information Commissioner (**OIC**) for review of the ODPP's decision.
4. For the reasons set out below, I affirm ODPP's decision and find that access may be refused to the information in issue in this review, on the basis its disclosure would, on balance, be contrary to the public interest.⁴

¹ Access application dated 30 August 2022. The access application was lodged with the Department of Justice and Attorney-General (**DJAG**), which has delegated power to deal with applications made under the IP Act seeking access to documents in ODPP's possession or control.

² Decision dated 14 October 2022.

³ External review application dated 11 November 2022.

⁴ Under section 67(1) of the IP Act and sections 47(3)(a), 47(3)(b), 48 and 49 of the *Right to Information Act 2009 (Qld)* (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

Background

5. The applicant was convicted of an offence and sentenced in 2004. Appeals against her conviction were dismissed in 2005 and 2006.⁵ The applicant is currently serving a life sentence on parole.⁶
6. On external review, the applicant confirmed that she applied to access the full brief of evidence to assist with preparation of a petition to the Governor, seeking a pardon of her conviction or sentence.⁷

Reviewable decision

7. The decision under review is ODPP's decision dated 14 October 2022.

Evidence considered

8. 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). The significant procedural steps taken during the external review are set out in the Appendix.
9. The applicant asserts that an accused's right to disclosure is '*entrenched*' in sections 32(2)(a) and 32(4) of the *Human Rights Act 2019 (HR Act)*.⁸ Those sections provide that:
 - a person charged with a criminal offence is entitled to '*be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication the person speaks or understands*'; and
 - a person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with the law.
10. Here, the applicant confirmed⁹ that she has exercised the appeal rights that were available to her; she already possesses copies of '*some documents*' requested in the access application;¹⁰ and the requested brief of evidence '*undoubtedly would have been made available to her and her lawyers by the ODPP at the time of her trial.*'¹¹
11. Noting this, I have had regard to the HR Act, including the right to seek and receive information¹² and the rights specified in paragraph 9 above. I consider a decision-maker will be '*respecting and acting compatibly with*' these rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the following observations made by Bell J, on the interaction between equivalent

⁵ To avoid identifying the applicant, I am unable to provide further details about these court decisions. However, I can confirm that decisions about the applicant's two appeals are publicly accessible.

⁶ As confirmed in the applicant's submissions dated 11 April 2023.

⁷ Applicant's submissions dated 11 April 2023.

⁸ Applicant's submissions dated 11 April 2023.

⁹ Applicant's submissions dated 11 April 2023.

¹⁰ The applicant did not particularise the documents which she does possess and submitted on 11 April 2023 that '*it is impossible to know what documents are missing*'.

¹¹ Applicant's submissions dated 11 April 2023.

¹² Section 21(2) of the HR Act.

¹³ *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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

pieces of Victorian legislation,¹⁴ that *'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'*.¹⁵

Information in issue

12. During the review, OIC conveyed a preliminary view to the applicant that ODPP was entitled to refuse access to the Undisclosed Information.¹⁶ In response, the applicant confirmed that she:¹⁷
 - only seeks to access *'documents within the brief of evidence which would have been disclosed to [her] at the time of prosecution'*; and
 - did not seek access to the refused information which ODPP described in the decision under review as comprising *'the legal advice supplied by the ODPP's legal advisor in relation to the direction, progress and the strengths and weaknesses of the prosecution case against [the applicant] and the co-offenders'*.¹⁸
13. As a result, the information remaining in issue appears on 415 full pages and parts of 220 pages (**Information in Issue**). This information relates to the investigation and prosecution of a murder and broadly comprises:¹⁹
 - the names (in some instances, only middle names) and other personal details (such as residential addresses, telephone numbers, dates of birth/ages, medical and health information, personal circumstances information, autopsy reports, photographs and signatures) of individuals other than the applicant (including the victim and witnesses); and
 - statements and records of interview obtained by the Queensland Police Service (**QPS**) from individuals other than the applicant (including those of witnesses and co-offenders).

Issues for determination

14. The issue for determination in this review is whether access to the Information in Issue may be refused on the ground that disclosure would, on balance, be contrary to the public interest.
15. For completeness, I note that the applicant generally observed that *'[d]ocuments expected to be present in such a brief of evidence were not included or were expressly refused'*.²⁰ I acknowledge that, in making this observation, the applicant is not aware of the content of the Information in Issue, yet she has also submitted that she would have previously received the brief of evidence during her criminal proceedings.²¹ There is nothing before me to indicate that the documents located by ODPP in response to the access application did not comprise the requested full brief of evidence. I also note that,

¹⁴ Namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁵ In *XYZ* at [573].

¹⁶ On 14 March 2023. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

¹⁷ Applicant's submissions dated 11 April 2023.

¹⁸ Accordingly, that information is not considered as part of this decision. For completeness, I also note that the applicant's 11 April 2023 submissions incorrectly refer to the access application seeking both the brief of evidence and *'[a]ll exhibits tendered at sentencing'*—tendered exhibits were not requested in the access application and the applicant's entitlement to access such information is not considered as part of this decision.

¹⁹ Section 121 of the IP prevents me from describing the Information in Issue in any more detail in this decision.

²⁰ Applicant's submissions dated 11 April 2023.

²¹ I have also referenced this submission in paragraph 32 of this decision.

apart from this one observation, the applicant did not contend that ODPP had failed to locate all documents relevant to the access application. In these circumstances, the sufficiency of ODPP's searches is not an issue requiring determination in this decision.

Relevant law

16. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.²² However, this right is subject to limitations, including the grounds for refusal of access.²³
17. One refusal ground is where disclosing information would, on balance, be contrary to the public interest.²⁴ 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.²⁵
18. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁶
 - 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.
19. I have had regard to all the public interest factors listed in Schedule 4 of the RTI Act,²⁷ and to the applicant's submissions, in reaching my decision. I have also applied the IP Act's pro-disclosure bias²⁸ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²⁹

Findings

20. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

21. Some, but not all, of the Information in Issue relates to the applicant and comprises her personal information. This gives rise to a factor favouring disclosure of the applicant's personal information,³⁰ to which I attribute high weight. However, this information about the applicant is intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (giving rise to factors favouring nondisclosure discussed below).

²² Section 40 of the IP Act. '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

²³ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

²⁴ Sections 47(3)(b) and 49 of the RTI Act.

²⁵ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²⁶ Section 49(3) of the RTI Act.

²⁷ Relevant factors are discussed below.

²⁸ Section 64 of the IP Act.

²⁹ Section 67(2) of the IP Act.

³⁰ Schedule 4, part 2, item 7 of the RTI Act.

22. The applicant submitted that:

- as she has exhausted ‘*all her appeal avenues*’, there is no available court process for her to seek access to the Information in Issue³¹
- she was, and continues to be, significantly disadvantaged due to her age and background³²
- without access to a ‘*complete and unredacted copy of the Full Brief of Evidence*’, the ability to assess the applicant’s prospects of successfully seeking a pardon is ‘*significantly impeded*’ and the ‘*assessment and preparation for a petition for pardon is impossible*’; and
- nondisclosure of the Information in Issue ‘*presents access to justice issues*’.³³

23. Under the RTI Act, public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;³⁴
- contribute to the administration of justice generally, including procedural fairness;³⁵ and
- contribute to the administration of justice for a person.³⁶

24. The applicant has raised general fairness arguments, referencing various disclosure rules³⁷ and case law regarding the rights of an accused person to ‘*fair disclosure*’ during trial and appeal processes.³⁸ However, the applicant has acknowledged that she, or her legal representatives, would have previously received the full brief of evidence. I also note that the applicant’s criminal trial and her two appeals were completed some years ago. In these circumstances, I do not consider that the rules and case law relied on by the applicant in this regard are relevant to my consideration of the disclosure of the Information in Issue under the IP Act. Further, there is no information before me to suggest that the applicant was not provided with ‘*fair disclosure*’ or the opportunity to respond to the charges against her during the completed court processes.

25. I accept that enquiries made by the applicant’s representative³⁹ indicate that, due to the passage of time since the applicant’s conviction and appeals, the Supreme Court registries no longer hold copies of the applicant’s ‘*bail file*’⁴⁰ or the Appeal Record Book relating to the applicant’s initial appeal. However, those enquiries also confirmed that a

³¹ Applicant’s submissions dated 11 April 2023.

³² Applicant’s submissions dated 11 April 2023. To avoid identifying the applicant, I cannot further detail the applicant’s submissions in this regard.

³³ Applicant’s submissions dated 11 April 2023. In this context, the applicant asserted that the public interest factor in schedule 4, part 2, item 17 of the RTI Act applies to favour disclosure of the Information in Issue.

³⁴ Schedule 4, part 2, item 10 of the RTI Act.

³⁵ Schedule 4, part 2, item 16 of the RTI Act. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

³⁶ Schedule 4, part 2, item 17 of the RTI Act.

³⁷ Specifically, sections 590AH and 590AJ of the *Criminal Code* (refer to schedule 1 of the *Criminal Code Act 1899*); section 29 of the ‘*Director’s Guidelines*’, issued by the Director of Public Prosecutions; and Rule 29.5 of the Australia Solicitors’ Conduct Rules. In this regard, I note that the information access regime under the IP Act is not intended to replicate (nor serve as an adjunct to or replacement for) court processes concerning the disclosure of documents for the purposes of a fair trial (refer to *3FG6LI and Queensland Police Service* [2014] QICmr 32 (29 July 2014) (**3FG6LI**) at [30] and *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24]).

³⁸ Applicant’s submissions dated 11 April 2023.

³⁹ Evidence of which was attached to the applicant’s submissions dated 7 December 2022.

⁴⁰ In the Applicant’s submissions dated 11 April 2023, the file which the applicant’s representative requested from the Supreme Court registry was described as the applicant’s bail file.

large volume of archived documents relating to the applicant's second appeal is available for inspection by the applicant's representative (at the court) for the purpose of enabling the applicant's representative to identify any documents the applicant seeks (and to request copies of those documents).⁴¹ While the applicant's representative described the cost of copying *all* those archived documents as '*prohibitive*',⁴² access to them is nonetheless available to the applicant under that separate process.

26. Taking these matters into account, I consider that, to the extent the fair treatment and general administration of justice factors⁴³ apply, these deserve only low weight.
27. In determining whether the disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant,⁴⁴ I must consider whether:⁴⁵
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.
28. The applicant submitted⁴⁶ that the success of her pardon will turn on her demonstrating that a miscarriage of justice occurred and access to witness statements, in particular, may identify exculpatory evidence and enable new lines of enquiry to be followed.
29. As noted above,⁴⁷ the applicant confirmed that she has exhausted the appeal rights that were available to her. In these circumstances, petitioning the Governor for a pardon does not appear to equate to the pursuit of a remedy for an actionable wrong. However, assuming the foreshadowed petition does fall within the principles in *Willsford*, I consider it is reasonable to expect that, as a result of her involvement in the completed trial and appeal processes (and the information disclosures that would have been made in those processes), the applicant would be aware of at least some of the Information in Issue. This awareness, together with the information which the applicant already possesses (including information disclosed in response to the access application) and the information which is otherwise available to her (including in published decisions and information that is available via the separate process referenced in paragraph 25 above), would in my view assist the applicant to assess, and prepare, the foreshadowed petition to the Governor. Although I acknowledge that disclosing the Information in Issue may further assist the assessment and preparation of that foreshadowed petition, I do not consider these processes are '*impossible*' in its absence.⁴⁸ Taking into account the nature of the Information in Issue and the information already disclosed, I afford only low weight to this factor, to the extent it applies to favour disclosure.
30. Public interest factors relating to government accountability and transparency also favour disclosure.⁴⁹ As noted above, the applicant confirmed that she, or her legal representatives, would have previously received the brief of evidence in the context of

⁴¹ It is unclear whether the applicant's representative has conducted the offered inspection of those located documents.

⁴² The applicant estimated that this cost would be 'in excess of \$1000' in submissions dated 11 April 2023.

⁴³ Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴⁴ Schedule 4, part 2, item 17 of the RTI Act.

⁴⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 (*Willsford*) at [17] and confirmed in *1OS3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

⁴⁶ Applicant's submissions dated 11 April 2023.

⁴⁷ At paragraph 22.

⁴⁸ As submitted by the applicant in her submissions dated 11 April 2023.

⁴⁹ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

her completed court proceedings. ODPP has also disclosed some information in response to the access application. I consider that these disclosures have substantially advanced ODPP's accountability and transparency. While I accept that disclosing the Information in Issue would give the applicant a complete picture of the information which was included in that previously disclosed brief of evidence, I am not satisfied disclosure of the Information in Issue would, given its nature, further advance ODPP's accountability and transparency to any significant extent. In these circumstances, I attribute low weight to these factors.

31. The applicant submitted that the fact she was entitled to the material when charged and prosecuted is a '*crucial factor*' favouring disclosure.⁵⁰ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant. Given this, I have considered this submission in the context of an additional factor favouring disclosure.
32. I accept that the applicant may have been entitled to receive the brief of evidence during her criminal proceedings and note the applicant submitted that such a brief would have been disclosed to her at the time of her prosecution. As I have already noted, there is also nothing before me to indicate that the documents located by ODPP in response to the access application did not comprise the requested full brief of evidence (and some of these have been disclosed to the applicant in response to the access application). However, I am not satisfied that the applicant's previous entitlement (and receipt) of information during criminal proceedings, of itself, raises a factor favouring disclosure of the Information in Issue. The entitlement to receive information during a criminal prosecution is separate to, and different from, the access entitlement under the IP Act. The fact the applicant may have previously received information under that separate process does not equate to an entitlement to receive that information again (or to the same extent) under the IP Act.
33. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁵¹

Factors favouring nondisclosure

34. The RTI Act recognises that there is a public interest harm⁵² in disclosing an individual's personal information to someone else and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁵³
35. Having carefully reviewed the Information in Issue, I am satisfied that it comprises the personal information of individuals other than the applicant. This information is of a highly sensitive and personal nature, appearing in the context of a murder investigation.

⁵⁰ Applicant's submissions dated 11 April 2023.

⁵¹ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); allow assist, reveal or substantiate agency conduct deficiencies (schedule 4, part 2, items 5 and 6 of the RTI Act); or reveal the information to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

⁵² Schedule 4, part 4, section 6 of the RTI Act.

⁵³ Schedule 4, part 3, item 3 of the RTI Act. 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 (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).

As noted above, some of this information is intertwined with the applicant's personal information.

36. The applicant submitted that:⁵⁴
- documents in the brief of evidence would have been made available to the applicant in their entirety for the purpose of criminal proceedings and, in the ordinary course, she would have '*been shown and taken through each document at the relevant time*'
 - refusing access to victim/co-offenders' names in the disclosed documents is '*illogical*', given the applicant was prosecuted for the offence involving the victim and was tried with her co-accused's, and any suggestion of prejudice to the protection of their identities cannot be maintained
 - witnesses voluntarily revealed their identities and agreed to evidence⁵⁵ and have waived any right to privacy
 - witness names have been redacted, despite their statements having been provided voluntarily and in the knowledge that they would be given to the applicant,⁵⁶ and
 - her prosecution means that the information and material sought is already in the public domain.
37. The fact that the applicant may have previously received the entire, unredacted brief of evidence for the purpose of her court proceedings does not provide the applicant with an unfettered and automatic right to access those documents again, in the same format, under the IP Act. The right of access under the IP Act is subject to the other provisions of the IP Act, including grounds upon which access may be refused—in pursuing access under the right of access conferred by the IP Act, the applicant must accept the limitations which are legislatively imposed on that right.⁵⁷
38. I acknowledge that persons who provide information to a police investigation of a murder will have a reasonable expectation that their identities, and the information they provide, may be disclosed for the purposes of criminal proceedings taken in respect of that offence. However, I do not consider that such an expectation extends to disclosure of the information under the IP Act some years after the finalisation of all court processes concerning the offence. Witnesses assisting police with inquiries into a serious offence would, in my view, have a legitimate expectation that in doing so, their privacy will be maintained and respected as far as is possible.⁵⁸ For these reasons, I do not accept the applicant's submission that witnesses have waived their right to privacy.
39. I accept the names of some individuals (including the victim and co-accused) would have been disclosed in court processes associated with the applicant's conviction.⁵⁹ As I have noted above, it is also reasonable to expect that, as a result of her involvement in the completed court processes (and the document disclosures that occurred in those processes), the applicant would have some awareness of the Information in Issue. I also note that the Right to Information Commissioner has previously recognised⁶⁰ that while the right to privacy may be diminished in respect of information that is in the public domain, it is not destroyed and a residual right to privacy remains.

⁵⁴ Applicant's submissions dated 11 April 2023.

⁵⁵ The applicant further submitted that some of their evidence was heard in open court in the submissions dated 11 April 2023.

⁵⁶ On this basis, the applicant argued there can be '*no suggestion of prejudice to the witnesses by disclosure of their information*'.

⁵⁷ 3FG6L1 at [30].

⁵⁸ *Marshall and Department of the Police* (Unreported, Queensland Information Commissioner, 25 February 2011) (**Marshall**) at [28].

⁵⁹ These, together with summaries of (or references to) provided evidence, may also be recorded in decisions published about the applicant's conviction and appeals.

⁶⁰ In *Queensland Newspapers Pty Ltd and Department of Justice and Attorney-General* [2018] QICmr 52 (18 December 2018).

40. Given the sensitive and highly personal nature of the Information in Issue, I am satisfied that its disclosure would be a significant intrusion into the privacy of these other individuals. Although the circumstances outlined in paragraph 39 above may, in some respects, reduce the weight of privacy considerations for some of the Information in Issue, I find that this factor favouring nondisclosure of the Information in Issue is deserving of significant weight.⁶¹ I am also satisfied that the extent of the harm that could be expected to arise from disclosing the Information in Issue would, given its nature, be significant. On this basis, I also afford significant weight to the public interest harm factor favouring nondisclosure.⁶²
41. The applicant also argued that placing any reliance on the fact that, once the information is disclosed under the IP Act, *'its dissemination cannot be controlled'* is unjustified.⁶³ She also contended that finding disclosure of the Information in Issue would be a significant intrusion into the privacy of other individuals ignores and *'is at odds with the principles underpinning disclosure in the criminal justice system'*.⁶⁴ In this regard, the applicant more specifically submitted that:⁶⁵
- in general, there is no legal prohibition or restriction on a defendant's use of material disclosed by the prosecution in criminal proceedings
 - no information beyond what was disclosed in the criminal proceedings is sought by the applicant; and
 - she does not intend to use or disseminate disclosed information for any purpose other than for use in the foreshadowed petition for pardon.
42. I consider that, in these submissions, the applicant is seeking to correlate the disclosure of information during criminal proceedings with the disclosure of information under the IP Act. As I have noted above, these are different processes. There can also be no restriction on the use, dissemination or republication of information disclosed under the IP Act, notwithstanding the applicant's submission that she will only use it for a stated purpose. Accordingly, for the reasons previously outlined, I consider disclosing the Information in Issue under the IP Act, including to the applicant, would be a significant intrusion into the privacy of other individuals and could reasonably be expected to cause a significant public interest harm.
43. A public interest factor favouring nondisclosure also arise where disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies.⁶⁶
44. The applicant argued that disclosure of the Information in Issue will in no way impede or interfere with the flow of information to law enforcement agencies because:⁶⁷
- witnesses voluntarily revealed their identities and agreed to give evidence on behalf of the prosecution, some of which was heard in open court; and
 - all information concerning the charge and witnesses was previously shared with, and released to, the relevant law enforcement agencies and the applicant (through her legal representatives).

⁶¹ Schedule 4, part 3, item 3 of the RTI Act.

⁶² Schedule 4, part 4, section 6 of the RTI Act.

⁶³ Applicant's submissions dated 11 April 2023.

⁶⁴ Applicant's submissions dated 11 April 2023.

⁶⁵ Applicant's submissions dated 11 April 2023.

⁶⁶ Schedule 4, part 3, item 13 of the RTI Act.

⁶⁷ Applicant's submissions dated 11 April 2023.

45. I again note that while persons who provided information to a police investigation may have had an expectation that their identities, and the information they provide, may be disclosed for the purposes of criminal proceedings, I do not consider that expectation would extend to disclosure of such information under the IP Act, some years after the completion of the criminal proceedings. While I acknowledge that QPS possesses certain coercive powers when investigating possible contraventions of the law, there is a strong public interest in protecting the free flow of information to law enforcement agencies and the ability of those agencies to obtain information which is relevant to their investigation, including the opinions and observations of concerned individuals (whether they are complainants, witnesses, informers or the subjects of investigation).⁶⁸ The efficient and effective use of QPS resources is, in my view, facilitated by it being able to co-operatively seek and obtain information from various community members. The routine disclosure of this type of information under the IP Act would tend to discourage individuals from coming forward with relevant information or participating openly in future investigations, particularly where the information involves sensitive or personal matters. Taking the nature of the Information in Issue into account, I afford significant weight to this factor favouring nondisclosure.

Balancing the relevant public interest factors

46. For the reasons set out above, I am satisfied that the nondisclosure factors relating to the protection of privacy and personal information of other individuals and the flow of information to law enforcement agencies are deserving of significant weight.
47. On the other hand, I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the Information in Issue. However, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional disclosure factors which favour disclosure of the Information in Issue (such as those relating to accountability and transparency, fair treatment and the administration of justice). Taking into account the nature of the Information in Issue and the information which has been disclosed to the applicant, I have afforded these factors only low weight.
48. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁶⁹

DECISION

49. For the reasons set out above, I affirm ODPP's decision and find that access to the Information in Issue may be refused, as its disclosure would, on balance, be contrary to the public interest.⁷⁰

⁶⁸ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016) and *Marshall*.

⁶⁹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁷⁰ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

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

T Lake
Principal Review Officer

Date: 11 September 2023

Appendix

Significant procedural steps

Date	Event
11 November 2022	OIC received the external review application.
28 November 2022	OIC notified the applicant's representative and ODPP that the application for external review had been accepted and requested information from ODPP.
7 December 2022	OIC received submissions from the applicant's representative.
9 December 2022	OIC received the requested information from ODPP.
14 March 2023	OIC conveyed a preliminary view to the applicant's representative and invited the applicant to provide a submission by 31 March 2023 if she did not accept the preliminary view.
31 March 2023	At the request of the applicant's representative, OIC extended the time for the applicant's response to the preliminary view to 6 April 2023.
11 April 2023	<p>In the absence of any response from the applicant (or her representative), OIC notified the applicant's representative and ODPP that the review had been finalised pursuant to section 103(4) of the IP Act.</p> <p>OIC then received submissions from the applicant's representative, responding to the preliminary view and requesting that a formal decision be issued to finalise the review.</p>
26 April 2023	OIC wrote to the applicant's representative and ODPP to confirm that the review had been re-opened and a formal decision would be issued to finalise the review. OIC also re-iterated the preliminary view to the applicant's representative.