



Decision and Reasons for Decision

Application Number: 310725

Applicant: Nine Network Australia Pty Ltd

Respondent: Queensland Police Service

Decision Date: 8 November 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - applicant sought access to information about 'glassing' incidents at licensed premises in Queensland - objections to disclosure raised by owners of two licensed premises on the basis that information is exempt under schedule 3, of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST - information concerning liquor-related incidents - issues of public safety, accountability and regulation of licensed premises - impact of disclosure on the business affairs of three licensed premises - whether disclosure of the information would, on balance, be contrary to the public interest - whether access to information may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. Nine Network Australia Pty Ltd (**Applicant**) applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information about 'glassing' incidents which occurred on licensed premises in Queensland between 2008 and 2010.
2. QPS granted partial access to a nine page document¹ containing information including:
 - a table detailing the reported number and rate of offences against the person where glass was used as a weapon in Queensland for the years 2008 to 2010

¹ Pages 1 and 9 (table and notes) were released in full while pages 2 to 8 (which comprise a spreadsheet) were partially released.

- notes relating to the table; and
 - a spreadsheet detailing incidents involving glass (**Spreadsheet**).²
3. The Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision³ refusing access to information identifying the licensed premises named in the Spreadsheet⁴ and agreed to narrow the scope to information relating to licensed premises where four or more 'glassing' incidents occurred in at least one of the years between 2008 and 2010.
 4. OIC identified six licensed premises falling within the reduced scope of the access application and consulted with these venues in relation to identifying information contained within the Spreadsheet. Three of the venues (**Venue One, Venue Two and Venue Three**, or collectively the **Venues**) applied to participate in the external review⁵ and provided submissions⁶ in support of their objections to disclosure of their identifying information.
 5. The remaining three venues consulted did not apply to participate in the external review and have not objected to their identifying information being released (**Non-objecting Venues**). QPS has agreed to release the identifying information of the Non-objecting Venues.⁷
 6. For the reasons set out below, QPS's decision refusing access to information identifying the Venues is set aside and a decision that the information is neither exempt, nor is its disclosure contrary to the public interest, is substituted.

Background

7. Significant procedural steps relating to the application and external review are set out in Appendix A.

Reviewable decision

8. The decision under review is QPS's decision dated 29 July 2011.

Material considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendices).

Information in issue

10. The information under consideration in this external review (**Information in Issue**) comprises the street address and name of the Venues contained within the Spreadsheet.⁸

² The spreadsheet comprises ten columns with the following headings: Financial year; Offence; Offence description; Where occurred; Street number; Street name; Street type; Suburb; Place name; and Count.

³ Dated 29 July 2011.

⁴ Information contained under the following headings, where included: Street number; Street name; Street type; and Place name.

⁵ Pursuant to section 89 of the RTI Act.

⁶ While Venues One and Two have provided separate submissions in support of their objections to disclosure, the submissions are largely identical in substance.

⁷ By correspondence dated 13 September 2012, QPS confirmed that it did not object to disclosure of the Non-objecting Venues identifying information and that it would be released to the Applicant. Accordingly, information relating to the Non-objecting Venues has not been considered in this decision.

⁸ Information contained under the following headings, where included: Street number; Street name; Street type; and Place name.

11. The Information in Issue does not include the names of any individuals involved in 'glassing' incidents detailed in the Spreadsheet.

Issues for determination

12. The issues for determination in this external review are whether:
 - (i) the Information in Issue is exempt information;⁹ or
 - (ii) disclosure of the Information in Issue would, on balance, be contrary to the public interest.¹⁰
13. The Venues made extensive submissions to OIC in support of their claims that the Information in Issue should not be disclosed.¹¹ I have carefully considered all of these submissions in making this decision.

Findings

14. Venues One and Two submit that the RTI Act does not intend all information held by government to be made publicly available and therefore, disclosure of the Information in Issue would be in conflict with the purpose and objects of the legislation.¹²
15. Venue Three submits that the Information in Issue is not '*genuinely of a kind which is within the scope of the preamble to the Act*' as it comprises information of a private nature, concerning a single business operation.¹³
16. I note that the RTI Act provides a general right of access to information in the possession or under the control of Queensland government agencies.¹⁴ While the legislation excludes certain documents and entities from the application of the RTI Act,¹⁵ I am satisfied that the Information in Issue is not subject to any of these exclusions. Accordingly, I find that the Information in Issue is in the possession of QPS and is therefore, subject to the RTI Act access scheme.
17. Venues One and Two also submit that individuals involved in the relevant incidents can be identified from the Information in Issue. As this issue arises for consideration throughout these reasons, I will make findings on this point before addressing whether the Information in Issue is exempt information and/or whether its disclosure would, on balance, be contrary to the public interest.

Are individuals identifiable from the Information in Issue?

18. No, for the reasons that follow.
19. As set out in paragraph 11 above, the Information in Issue names none of the individuals involved in relevant incidents. Rather, it refers only to the street addresses and names¹⁶ of the Venues.

⁹ Under sections 47(3)(a) and 48 and schedule 3 of the RTI Act.

¹⁰ Under sections 47(3)(b) and 49 of the RTI Act.

¹¹ Venues One and Two by submissions to OIC dated 10 January 2012 and 22 August 2012 and Venue Three by submissions to OIC dated 15 December 2011 and 15 June 2012.

¹² Submissions to OIC dated 10 January 2012 and 22 August 2012.

¹³ Submissions to OIC dated 15 June 2012.

¹⁴ Section 23 of the RTI Act. See also sections 12 and 14 of the RTI Act.

¹⁵ See sections 11 and 17 and schedules 1 and 2 of the RTI Act.

¹⁶ Where included.

20. Venues One and Two submit that media articles could be used in conjunction with the Information in Issue to identify individuals.¹⁷ While I acknowledge that some relevant incidents may have been the subject of media reports, searches undertaken by OIC staff have been unable to locate publicly available reporting of incidents detailed in the Spreadsheet.
21. On the basis of the matters set out above, I am satisfied that the individuals involved in relevant incidents cannot be identified from the Information in Issue as:
- the name of relevant individuals is not set out in the Information in Issue; and
 - it is unreasonable to expect that individuals' identities could be ascertained from media articles used in conjunction with the Information in Issue.

Is the Information in Issue exempt information?

22. No, for the reasons that follow.

Relevant law

23. Under the RTI Act, an individual has a right to be given access to a document of an agency.¹⁸ The right of access is subject to some limitations, including the grounds on which access to information may be refused.¹⁹ One ground for refusing access is where a document comprises exempt information.²⁰ Schedule 3 of the RTI Act sets out the types of information which the Parliament has considered to be exempt as their disclosure would, on balance, be contrary to the public interest.

Analysis

24. The full text of the exemptions claimed by the Venues in this review is set out in Appendix B to these reasons. I will examine each claim in turn.

Schedule 3, section 6(a) - contempt of court

25. The Information Commissioner has previously explained²¹ that the:
- concept of contempt of court is based on the protection and maintenance of public confidence in the effective administration of justice; and
 - public disclosure of matter that has the tendency to interfere, or is intended to interfere, with the pending fair trial of a criminal or civil proceeding will amount to a contempt of court.
26. Venues One and Two submit that:
- disclosure of relevant information would be in contempt of court, jeopardising a fair trial for potential suspects; and

¹⁷ Submissions from Venues One and Two dated 10 January 2012. Section 108 of the RTI Act provides that the Information Commissioner must not, in a decision on an external review or in reasons for a decision, include information that is claimed to be exempt information or contrary to public interest information. Accordingly, I am unable to set out the details of the submissions from Venues One and Two on this issue as they refer to information claimed to be exempt and/or contrary to public interest.

¹⁸ Section 44(1) of the RTI Act provides that access should be given to a document unless giving access would, on balance, be contrary to the public interest. This is referred to as the *pro-disclosure bias* in deciding access to documents.

¹⁹ Section 47(2) of the RTI Act provides that these grounds are to be interpreted narrowly and an agency may give access to a document even if a ground on which access may be refused applies.

²⁰ Sections 47(3)(a) and 48 of the RTI Act.

²¹ In *Henderson and Department of Education* (Unreported, Queensland Information Commissioner, 22 July 1997) at [23] in the context of the equivalent provision in section 50 of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**).

- the information contains unsubstantiated allegations which have not been determined by a court.

27. I acknowledge that the information contained within the Spreadsheet sets out details of alleged offences which may not yet have been determined by a court. However, where individuals are not named and given my finding that it is unreasonable to expect that individuals' identities could be ascertained from the Information in Issue considered in conjunction with other publicly available material, I consider that any pending criminal or civil proceedings associated with the incidents could not be connected to the Information in Issue or the Spreadsheet with any level of certainty. Accordingly, I am not satisfied that disclosure of the Information in Issue could interfere with any relevant proceeding so as to constitute a contempt of court.

28. I therefore find that the Information in Issue is not exempt under schedule 3, section 6(a) of the RTI Act.

Schedule 3, section 6(b) - contrary to an order or direction

29. Venues One and Two submit that:

- there is a real possibility that an order has been made or direction given by a royal commission or commission of inquiry or a person or body having power taking evidence on oath to which public disclosure would be contrary; and
- the decision-maker is compelled to check and ensure that no such orders have been made or directions given prior to any disclosure being contemplated.

30. Venues One and Two provide no evidence in support of these submissions.

31. In the absence of any available evidence to support these submissions, I find that the Information in Issue is not exempt under schedule 3, section 6(b) of the RTI Act.

Schedule 3, section 10(1)(a) - prejudice to an investigation

32. Venues One and Two submit that:

- all of the Information in Issue relates to contraventions or possible contraventions of the law, all of an allegedly criminal nature, some or all of which are likely to be subject to investigation and/or court proceedings
- the Information in Issue arguably allows for the identification of suspects and victims; and
- if the Information in Issue is disclosed, it could reasonably be expected to impact adversely on the ability of QPS to discharge its duties.

33. Venues One and Two provide no evidence that relevant investigations are currently being conducted by QPS (or any other law enforcement agency) in relation to the incidents detailed in the Spreadsheet. In the absence of any available evidence as to specific investigations and in view of my finding that it is not reasonable to expect that individuals' identities could be ascertained using the Information in Issue (even in conjunction with other publicly available material), I am satisfied that Venues One and Two have not established the requisite level of prejudice to satisfy this exemption.

34. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(a) of the RTI Act.

Schedule 3, section 10(1)(b) - reveal a confidential source

35. Venues One and Two submit that the Information in Issue could enable the identity of officers, victims, suspects, security personnel, witnesses and employees of Venues One and Two to be ascertained, many of which are likely to be confidential sources of information.
36. For this exemption to apply, a confidential source of information must exist in relation to the enforcement or administration of the law.²² In the absence of any available evidence supporting this claim and given my finding that it is not reasonable to expect that individuals' identities could be ascertained using the Information in Issue (even in conjunction with other publicly available material), I am satisfied that disclosure of the Information in Issue could not reasonably be expected to reveal a confidential source.
37. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(b) of the RTI Act.

Schedule 3, section 10(1)(c) - endanger a person's life or physical safety
Schedule 3, section 10(1)(d) - serious act of harassment or intimidation

38. Venues One and Two submit that it could reasonably be expected that a person who has divulged information or taken action against a person of interest, whose identity is reasonably determinable from this information, may reasonably fear their physical safety is in danger. Venues One and Two also submit that disclosure of the Information in Issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
39. I acknowledge that there may be cases in which witnesses to, and/or victims of, criminal offences, may have well-founded concerns of the nature submitted by Venues One and Two. However, given my finding that it is not reasonable to expect that individuals' identities could be ascertained using the Information in Issue (even in conjunction with other publicly available material), I:
- am not satisfied that the Information in Issue could be used for the purpose of committing acts which may endanger a person's life or physical safety and/or constitute serious harassment or intimidation; and
 - do not consider that the outcomes contemplated by these exemptions could reasonably be expected to²³ occur through disclosure of the Information in Issue.
40. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(c) or (d) of the RTI Act.

Schedule 3, section 10(1)(e) - prejudice a fair trial

41. Venues One and Two submit that disclosure would impact adversely on the impartiality of jurors and/or judicial officers as the Information in Issue identifies suspects and

²² *McEniery and the Medical Board of Queensland* (1994) 1 QAR 349 in the context of the equivalent provision in section 42(1)(b) of the repealed FOI Act.

²³ The phrase '*could reasonably be expected to*' requires that the expectation is reasonably based and not irrational, absurd or ridiculous (*Attorney-General v Cockcroft* (1986) 64 ALR 97 at [106]) nor merely a possibility (*Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**)). Whether the expected consequence is reasonable requires an objective examination of the relevant evidence (*Murphy* at [45-47]). It is not necessary for a decision-maker '*to be satisfied upon a balance of probabilities*' that disclosing the document will produce the anticipated prejudice, or, as in this case, a public good (*Sheridan and South Burnett Regional Council & Others* (Unreported, Queensland Information Commissioner, 9 April 2009)). Importantly, the expectation must arise as a result of disclosure, rather than from other circumstances (*Murphy* at [54]).

victims and discloses incidents of an allegedly criminal nature in the context of unsubstantiated accounts which have not been determined by a court.

42. A 'person's fair trial' refers only to a criminal trial and does not extend to civil proceedings.²⁴ The phrase 'impartial adjudication of a case' is wide enough to extend to civil proceedings or any case that is formally adjudicated by a decision maker.²⁵
43. For the reasons set out at paragraph 27 above, I am satisfied that the Information in Issue could not reasonably be expected to prejudice any criminal or civil proceedings relating to relevant incidents and is therefore, not exempt under schedule 3 section 10(1)(e) of the RTI Act.

Schedule 3, section 10(1)(f) and (i) - prejudice methods, systems or procedures

44. Venues One and Two submit that disclosure of the Information in Issue will:
 - negatively impact the important relationship between licensees, their staff and QPS, as licensees would be less likely to contact QPS in relation to liquor-related incidents; and
 - prejudice the effectiveness of the Liquor Enforcement and Proactive Strategy (**LEAPS**) project because voluntary participants would no longer cooperate to as full an extent, thereby decreasing the accuracy of the information obtained by LEAPS and the effectiveness of its efforts to address liquor-related issues or predict trends.
45. LEAPS is a program under which QPS works with the Office of Liquor and Gaming Regulation (**OLGR**) to ensure licensed venues' compliance with relevant legislation and regulations. QPS officers who attend or become aware of liquor-related incidents involving licensed venues create a report and forward this to the QPS LEAPS Coordinator. The LEAPS Coordinator then sends the information to OLGR which assesses it as part of its regulatory activities.²⁶
46. The Spreadsheet records alleged offences which have occurred at, or in the vicinity of licensed venues. I am satisfied that the attendance of QPS officers at licensed venues, either at the request of the venue, or through other intelligence sources, constitutes:
 - a lawful method for preventing, detecting and dealing with contraventions or possible contraventions of the law; and/or
 - a system for the protection of persons and property.
47. The *Liquor Act 1992* (Qld) (**Liquor Act**) places a number of obligations on licensed venues in relation to safety and security, for example:
 - licensees are required to maintain a safe environment for their patrons and staff²⁷
 - licensees must ensure liquor is served, supplied and promoted in a way that is compatible with minimising harm from the use of liquor and preserving the peace and good order of the neighbourhood of the premises;²⁸ and

²⁴ *Uksi and Redcliffe City Council; Cook (Third Party)* (1995) 2 QAR 629 (**Uksi**) at [34] in the context of the equivalent provision in section 42(1)(d) of the repealed FOI Act.

²⁵ *Uksi* at [35].

²⁶ See *Commissioner's Circular 27/2010 – Drink Safe Precincts and Banning Orders*, 2 December 2010 at page 2 (available at <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>).

²⁷ Section 148A(1)(a) of the Liquor Act.

²⁸ Section 148A(1)(b) of the Liquor Act.

- venues must keep a register about each incident at the licensed venue (i) in which a person is injured or (ii) requiring a person to be removed from the venue.²⁹

48. In view of the above legislative requirements and the regulatory environment in which licensed premises operate, I consider it reasonable to expect that:

- licensees would notify QPS of any incident at their venue requiring QPS attention to ensure the safety of their venue, staff and patrons; and
- maintaining open and regular communication with a law enforcement agency would be advantageous to a licensee as it would assist the venue manage and respond to liquor-related incidents, provide an added level of protection for staff and patrons and generally enhance venue safety.

49. For these reasons, I am not:

- persuaded that disclosure of information under the RTI Act would lead to licensees being reluctant to contact QPS about liquor-related incidents;³⁰ and
- satisfied that it is reasonable to expect that relevant methods, systems and/or procedures would be prejudiced by disclosure of the Information in Issue.

50. I therefore find that the Information in Issue is not exempt under schedule 3, section 10(f) or (i) of the RTI Act.

Schedule 3, section 10(4) and (5) – information obtained, used or prepared for an investigation

51. Venues One and Two submit that:

- it is a real possibility that the relevant information has been obtained, used or prepared:
 - for an investigation by:
 - the Crime and Misconduct Commission
 - the State Intelligence Group
 - the State Security Operations Group
 - by Crime Stoppers; and
- the decision-maker is compelled to check and ensure that the whole or any part of the Information in Issue has not been obtained, used or prepared for such an investigation.

52. Venues One and Two provide no evidence in support of the above claims.

53. In the absence of any available evidence to support these submissions, I find that the Information in Issue is not exempt under schedule 3, sections 10(4) or (5) of the RTI Act.

²⁹ Section 142A(1)(a) of the Liquor Act.

³⁰ Even if I was persuaded on this point, I am satisfied that licensees are not the only source of intelligence for QPS in relation to liquor-related incidents. I consider that victims, patrons and even venue staff, would still be likely to contact QPS to attend such incidents, notwithstanding the disclosure of related information under the RTI Act.

Would disclosure, on balance, be contrary to the public interest?

54. No, for the reasons that follow.

Relevant law

55. An agency may refuse access to information under the RTI Act where its disclosure would, on balance, be contrary to the public interest.³¹ The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest³² and explains the steps that a decision-maker must take³³ in deciding the public interest as follows:

- (i) identify any irrelevant factors and disregard them
- (ii) identify relevant public interest factors favouring disclosure and nondisclosure
- (iii) balance the relevant factors favouring disclosure and nondisclosure; and
- (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.³⁴

Analysis**(i) Irrelevant factors**

56. Venues One and Two question the Applicant's reasons for seeking access to the Information in Issue and the use to which the Information in Issue may be put if released.³⁵

57. Venue Three submits that release of the Information in Issue may cause '*confusion in the community*' and that it may be misinterpreted.³⁶ It also raises concerns about the way the access applicant may use the Information in Issue if released.³⁷

58. The RTI Act recognises the following factors as irrelevant to deciding the public interest:

- disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document;³⁸ and
- disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.³⁹

59. I also consider that the Applicant's reasons for seeking access to information under the RTI Act are irrelevant to the assessment of public interest.⁴⁰

³¹ Section 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³² 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 in a particular case.

³³ Section 49(3) of the RTI Act.

³⁴ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

³⁵ Submissions dated 22 August 2012.

³⁶ Venue Three's submissions to OIC dated 15 June 2012.

³⁷ Venue Three's submissions to OIC dated 15 June 2012.

³⁸ Schedule 4, part 1, item 2 of the RTI Act.

³⁹ Schedule 4, part 1, item 3 of the RTI Act.

⁴⁰ In *State of Qld v Albiets, Information Commissioner (Qld) & Anor* [1996] 1 Qd R 215, de Jersey J noted at [219] "... the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant". Although this decision was made in the context of the repealed FOI Act, I consider the reasoning equally applies when considering applications under the RTI Act.

60. I acknowledge that once information is released under the RTI Act, there is no limit on the use to which the information may be put.⁴¹ However, I am satisfied that the matters set out above (as raised by the Venues) are irrelevant to determining where the balance of the public interest lies in the circumstances of this case.

61. I do not consider any other irrelevant factors arise in this case.

(ii) Factors favouring disclosure

62. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability⁴²
- contribute to positive and informed debate on important issues or matters of serious interest,⁴³ and
- reveal environmental or health risks or measures relating to public health and safety.⁴⁴

63. Given the nature of the Information in Issue, as described at paragraphs 10 and 11 above, I consider that disclosure would allow the community to scrutinise QPS' response to liquor-related incidents. On this basis, I am satisfied that disclosure would enhance government accountability and promote open discussion of public affairs.

64. The occurrence of liquor-related incidents at licensed venues is an issue of serious interest and the impact this issue has on the community is well-recognised.⁴⁵ I consider that disclosure of the Information in Issue would allow members of the public to scrutinise the nature and frequency of liquor-related incidents recorded by QPS in relation to the Venues and the actions taken by QPS at the time of the incident. I am satisfied that this would reveal measures relating to public safety and would contribute to positive and informed debate on matters of serious interest to the community.

65. Venues One and Two argue strongly against the weight to be given to the above public interest factors on the basis that the information contained within the Spreadsheet describes alleged incidents which occurred some time ago and does not discuss the role of QPS, or measures taken to ensure safety or contribute to accountability.⁴⁶ Venues One and Two also submit that because the venues have a low incident rate in comparison to the number of patrons who attend the venues, the weight of these factors should be further reduced.⁴⁷

66. I acknowledge that the age of the information potentially reduces its utility for the purpose of public discussion. However, I am satisfied that disclosure of the Information

⁴¹ I also note that QPS has the discretion to place information released under the RTI Act on its disclosure log – see section 78 of the RTI Act.

⁴² Schedule 4, part 2, item 1 of the RTI Act.

⁴³ Schedule 4, part 2, item 2 of the RTI Act.

⁴⁴ Schedule 4, part 2, item 14 of the RTI Act.

⁴⁵ See, for example, Law, Justice and Safety Committee, 'Inquiry into Alcohol-Related Violence – Final Report (Report No. 74)', March 2010 at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf>; Queensland Government, 'Queensland Government Response to Law, Justice and Safety Committee's final report into alcohol-related violence', 27 August 2010 at <http://www.parliament.qld.gov.au/documents/Committees/LJSC/2009/alcohol-related-violence/responseReport74.pdf>; Ministerial Council on Drug Strategy, 'National Alcohol Strategy 2006-2009 – Towards Safer Drinking Cultures', May 2006 at [http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/\\$File/nas-06-09.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/$File/nas-06-09.pdf).

⁴⁶ Page 5 of the submissions from Venues One and Two to OIC dated 22 August 2012.

⁴⁷ Page 4 of submissions from Venues One and Two to OIC dated 10 January 2012.

in Issue, despite its date range, could still reasonably be expected to enhance government accountability, contribute to discussion and debate within the community on matters of serious interest and reveal measures relating to public safety.

67. In my view, whether the number of liquor-related incidents reported in relation to a licensed venue is high or low, disclosure still allows the public to see the way in which incidents are reported by QPS. Accordingly, I am satisfied that a venue's incident rate does not decrease the public interest in enhancing the accountability of QPS in relation to its responsibilities concerning liquor-related incidents and licensed premises.
68. Venue Three contends that the accountability of government could not be advanced through disclosure of information which is *'incorrect or unsubstantiated'* as there is *'no public interest in being incorrectly informed, or in the propagation of misleading or false information'*.⁴⁸ I acknowledge that the offences referred to in the Spreadsheet were alleged at the time they were recorded and that there is no reference to the outcomes of any related criminal and/or civil proceedings. However, the descriptions of the incidents were formulated by QPS officers who were present at the scene and there is no evidence to suggest that information was incorrectly recorded. Accordingly, I find that the weight of the factors listed at paragraph 62 is not reduced to any extent by Venue Three's submission.
69. For the reasons set out above, I afford the public interest factors identified at paragraph 62 significant weight in favour of disclosure.

(iii) Factors favouring nondisclosure

70. The Venues raise numerous public interest factors in schedule 4 of the RTI Act which they consider favour nondisclosure of the Information in Issue.⁴⁹
71. The primary concern of Venues One and Two is that disclosure of the Information in Issue will prejudice their business affairs and damage their reputations.⁵⁰ They also submit that disclosure would lead to decreased patronage and financial implications for their venues.
72. Venue Three considers that its business reputation may be seriously prejudiced by disclosure as the information contained within the Spreadsheet is not in a *'probative form'* and if read in isolation, could lead people to assume that the venue has not complied with liquor laws.⁵¹
73. QPS contends⁵² that in order to accurately determine which licensed venues are more likely to be the site of 'glassing' incidents, further information such as opening hours and patron numbers would be necessary and that *"the release of information which specifically identifies a business premises in this context, may adversely affect the business or commercial affairs of that entity."*
74. I consider it reasonable to expect that business and/or financial affairs of the Venues could suffer some level of prejudice through disclosure of the Information in Issue contained within the Spreadsheet as some members of the public may be less inclined to patronise the venues to avoid exposure to the types of incidents described therein. Accordingly, I find that the public interest factor in schedule 4, part 3, item 2 applies in

⁴⁸ Page 4 of Venue Three's submission to OIC dated 15 June 2012.

⁴⁹ These are listed in Appendix B.

⁵⁰ Submissions from Venues one and Two to OIC dated 22 August 2012.

⁵¹ Submissions from Venue Three to OIC dated 15 June 2012.

⁵² In its decision dated 29 July 2012.

this case. However, I afford this factor only moderate weight on the basis that members of the public are generally aware that liquor-related incidents (including ‘glassing’ incidents) occur in many licensed venues and still choose to attend the venues. I also consider that a venue’s history of ‘glassing’ incidents is only one factor considered by potential patrons in selecting a venue to attend.

75. Venues One and Two raise concerns that the information in the Spreadsheet is about allegations of criminal conduct which at the time of recording had not been tested by a court.
76. Venue Three raises concern about the unsubstantiated nature of the incidents. It considers that any information indicating non-compliance with laws would be likely to have a negative impact on the way regulatory authorities deal with Venue Three and its staff.⁵³ In particular, Venue Three contends that compliance officers may be more likely to attend its venue and “[o]rverzealousness in compliance activity creates considerable impact on businesses in this sector, and a disproportionate level of attendances by compliance officers is both intrusive to the normal conduct of business and enormously stressful for those involved.”⁵⁴
77. For the public interest factor in schedule 4, part 3, item 6 of the RTI Act to apply, it must be established that disclosure could reasonably be expected to prejudice the fair treatment of individuals⁵⁵ and that the information is about unsubstantiated allegations of unlawful conduct. I acknowledge that the information in the Spreadsheet refers to alleged offences which had not, at the time of recording, been tested in court. However, as no individuals are identified in the Spreadsheet, I find that the public interest factor in schedule 4, part 3, item 6 of the RTI Act does not apply in this case.
78. Venue Three submits that disclosure of the Information in Issue may lead people to think that the venue has poor safety measures which in turn may compromise the security and safety of the venue, as people wishing to take advantage of the situation may attend the venue with mischievous intentions.⁵⁶ As neither the Information in Issue nor the remaining information contained within the Spreadsheet details the security arrangements at the venue, I do not consider that disclosure could reasonably be expected to lead to the security or public safety risk submitted by Venue Three. Therefore, I find that the public interest factor in schedule 4, part 3, item 7 of the RTI Act does not apply in this case.⁵⁷
79. Venue Three submits that the ‘alleged incidents’ referred to in the Spreadsheet are the subject of proposed disciplinary action being undertaken by OLG and raises concerns that releasing the Information in Issue may prejudice the disciplinary action process.⁵⁸ Venue Three has not however, provided any direct evidence to show that particular incidents referred to in the Spreadsheet are the subject of current disciplinary proceedings. In the absence of any specific evidence in this regard, I do not consider it reasonable to expect that disclosure could impede the administration of justice for Venue Three or prejudice a deliberative process of government. Accordingly, I find that the public interest factors in schedule 4, part 3, items 9 and 20 of the RTI Act do not apply.

⁵³ Page 2 of Venue Three’s submissions dated 15 June 2012.

⁵⁴ Page 3 of Venue Three’s submissions dated 15 June 2012.

⁵⁵ As Venue Three is a corporation, it cannot be considered an individual for the purpose of this factor – see section 36 of the *Acts Interpretation Act 1954* (Qld). However, I accept that the factor may apply in relation to staff members of Venue Three.

⁵⁶ Page 4 of Venue Three’s submissions dated 15 June 2012.

⁵⁷ I note that Venues One and Two generally raise the public interest factor in schedule 4, part 3, item 7 of the RTI Act. However, they make no specific submissions in support of its application.

⁵⁸ Page 3 of Venue Three’s submissions dated 15 June 2012.

80. For the reasons set out at paragraph 27 above, I find that disclosure of the Information in Issue could not reasonably be expected to impede the administration of justice generally and therefore find that the public interest factor in schedule 4, part 3, item 8 of the RTI Act does not apply in the circumstances of this external review.
81. For the reasons set out at paragraph 48 above, I find that disclosure of the Information in Issue could not reasonably be expected to prejudice the flow of information to a law enforcement or regulatory agency and that therefore, the public interest factor in schedule 4, part 3, item 13 of the RTI Act does not apply in the circumstances of this external review.
82. There is no evidence available to indicate that the Information in Issue was communicated confidentially to QPS by persons involved in the incidents detailed in the Spreadsheet. I am therefore not satisfied the Information in Issue is confidential and accordingly, find that the public interest in schedule 4, part 3, item 16 does not apply in the circumstances of this external review.
83. Venue Three submits that section 48 of the Liquor Act⁵⁹ prohibits disclosure of the Information in Issue. However, section 6 of the RTI Act provides that the RTI Act overrides the provisions of other Acts prohibiting the disclosure of information. Accordingly, I find that the public interest factor in schedule 4, part 3, item 22 of the RTI Act does not apply in the circumstances of this external review.
84. As set out at paragraphs 18-21 above, I am satisfied that it is not reasonable to expect that individuals' identities could be ascertained using the Information in Issue in conjunction with other publicly available material. Accordingly, I find that disclosure of the Information in Issue would not reveal the personal information⁶⁰ of any individual and that therefore, the public interest factor in schedule 4, part 4, item 6 of the RTI Act does not apply in the circumstances of this external review.

(iv) Balancing the relevant public interest factors

85. Enhancing the accountability of law enforcement agencies which deal with liquor-related incidents (including 'glassing' incidents) in licensed venues is a factor carrying significant weight in favour of disclosure of the Information in Issue. Given that the occurrence of such incidents raises issues of public safety, I am also satisfied that disclosure of the Information in Issue would lead to open discussion of public affairs and positive and informed debate on matters of serious interest. Weighing against these factors is prejudice to the business and/or financial affairs of the Venues which may result from disclosure of the Information in Issue. However, with respect to any prejudice, I am satisfied that this factor favouring nondisclosure carries only moderate weight in the circumstances given the general level of public awareness of liquor-related incidents, including 'glassings' at licenced venues.
86. On balance, and in the circumstances of this case, I am satisfied that the public interest favours disclosure and find that disclosure of the Information in Issue would not be contrary to the public interest.

⁵⁹ This section is set out in Appendix B.

⁶⁰ As defined in section 12 of the *Information Privacy Act 2009* (Qld).

DECISION

87. I set aside the Queensland Police Service's decision to refuse access to the Information in Issue, and find that:
- the Information in Issue does not comprise exempt information under section 47(3)(a) of the RTI Act; and
 - disclosure of the Information in Issue would not, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
88. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Assistant Information Commissioner Henry

Date: 8 November 2012

APPENDIX A

Significant procedural steps

Date	Event
24 May 2011	QPS receive the applicant's application for access dated 16 May 2011.
21 June 2011	QPS issues a Charges Estimate Notice to the applicant.
22 July 2011	QPS receives payment as set out in the Charges Estimate Notice.
29 July 2011	QPS locates 9 documents and decides to partially refuse access on the basis that disclosure of some of the information would, on balance, be contrary to public interest.
8 August 2012	OIC receives the applicant's application for external review.
25 August 2011	OIC advises the applicant and QPS that the application has been accepted for review.
5 September 2011	OIC receives a copy of the relevant documents from QPS.
14 September 2011	The applicant agrees to narrow the scope of the application to the names of the top 10 licensed premises.
2 November 2011	The applicant agrees to narrow the scope of the application to information in relation to licensed premises between 2008 and 2010 where 4 or more 'glassing' incidents had occurred in at least one of the years specified.
5 December 2011	OIC consults with six licensed premises in relation to information identifying them. OIC invites the licensed premises to provide a submission setting out whether they wish to participate in this external review as a third party and, if so, outline the reasons for objecting to disclosure by 19 December 2011. If no response is received, OIC advises it will proceed on the basis that the licensed premises does not object to the information being disclosed.
15 December 2011	The legal representative for Venues One and Two confirms that Venues One and Two wish to participate in the external review and requests an extension of time to provide a submission in support of the objections of Venues One and Two to disclosure of information identifying them.
15 December 2011	The legal representative for Venue Three confirms that Venue Three wishes to participate in the external review and provides a submission in support of Venue Three's objection to disclosure of information identifying them.
16 December 2011	OIC grants Venue One and Venue Two an extension of time to provide a submission in support of their objection to disclosure of information identifying them.
20 December 2011	Three licensed venues do not respond to OIC's correspondence dated 5 December 2012 (Non-objecting Venues). OIC takes this to mean that these licensed venues do not wish to participate in the external review and do not object to disclosure of the information.
10 January 2012	OIC receives separate submissions on behalf of Venues One and Two from their legal representative.
23 January 2012	The applicant provides a verbal submission to OIC.
22 May 2012	OIC conveys a verbal preliminary view to QPS that disclosure of the Information in Issue is in the public interest.
23 May 2012	QPS submits to OIC that it continues to object to the disclosure of the Information in Issue.
1 June 2012	OIC conveys a written preliminary view to the legal representative for Venue Three that disclosure of the Information in Issue relating to Venue Three is not,

	<i>on balance, contrary to public interest. The legal representative is invited to provide a submission by 15 June 2012 on behalf of Venue Three if it does not accept the preliminary view.</i>
<i>15 June 2012</i>	<i>OIC receives a submission from the legal representative for Venue Three objecting to disclosure.</i>
<i>24 July 2012</i>	<i>OIC conveys written preliminary views to the legal representative for Venues One and Two that disclosure of the Information in Issue relating to them is not, on balance, contrary to public interest. The legal representative is invited to provide submission by 7 August 2012 on behalf of Venues One and Two if they do not accept the preliminary view.</i>
<i>3 August 2012</i>	<i>The legal representative for Venues One and Two requests an extension of time to provide submissions on behalf of Venues One and Two.</i>
<i>6 August 2012</i>	<i>OIC grants Venues One and Two an extension of time to provide a submission in response to the preliminary view.</i>
<i>22 August 2012</i>	<i>OIC receives separate submissions on behalf of Venues One and Two in response to the preliminary view.</i>
<i>4 September 2012</i>	<p><i>OIC writes to QPS seeking confirmation that QPS:</i></p> <ul style="list-style-type: none"> <i>• does not object to the information relating to the Non-objecting Venues being disclosed; and</i> <i>• continues to object to disclosure of the information relating to Venue One, Venue Two and Venue Three and, if so, provide a submission setting out the grounds for QPS's objection by 18 September 2011.</i>
<i>13 September 2012</i>	<p><i>QPS provides a submission confirming that it:</i></p> <ul style="list-style-type: none"> <i>• does not object to disclosure of the information relating to the Non-objecting Venues; and</i> <i>• does object to the disclosure of the information relating to The Venues.</i>

APPENDIX B

Schedule 3 of the RTI Act - Exempt information

6 Information disclosure of which would be contempt of court or Parliament

Information is exempt information if its public disclosure would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or*
- (b) be contrary to an order made or direction given by—*
 - (i) a royal commission or commission of inquiry; or*
 - (ii) a person or body having power to take evidence on oath; or*

...

10 Law enforcement or public safety information

(1) Information is exempt information if its disclosure could reasonably be expected to—

- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or*
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*
- (c) endanger a person's life or physical safety; or*
- (d) result in a person being subjected to a serious act of harassment or intimidation; or*
- or*
- (e) prejudice a person's fair trial or the impartial adjudication of a case; or*
- (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or*

...

- (i) prejudice a system or procedure for the protection of persons, property or the environment; or*

...

(4) Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.

(5) Also, information is exempt information if it consists of information obtained, used or prepared—

- (a) for an investigation by a part of the Queensland Police Service known as the State Intelligence Group; or*
- (b) for an investigation by a part of the Queensland Police Service known as the State Security Operations Group; or*
- (c) by Crime Stoppers Queensland Limited CAN 010 995 650.*

...

(9) In this section—

...

prescribed crime body means—

- (a) the Crime and Misconduct Commission; or*

...

prescribed functions means—

- (a) in relation to the Crime and Misconduct Commission—the crime function, the intelligence functions and the misconduct functions; and*

...

Schedule 4 of the RTI Act - Factors for deciding the public interest

Part 3 Factors favouring nondisclosure in the public interest

- 2 *Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.*
- ...
- 6 *Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.*
- 7 *Disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.*
- 8 *Disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.*
- 9 *Disclosure of the information could reasonably be expected to impede the administration of justice for a person.*
- ...
- 13 *Disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.*
- ...
- 16 *Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.*
- ...
- 20 *Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.*
- ...
- 22 *Disclosure of the information is prohibited by an Act.*

Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure

- 6 ***Disclosing personal information***
- (1) *Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.*

The Liquor Act 1992

48 Preservation of confidentiality

- (1) *Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.*

Maximum penalty—35 penalty units.

- (2) *Subsection (1) does not apply to—*
- (a) *disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or*
 - (b) *disclosing information in the register; or*
 - (c) *disclosing information about the status of an application required to be advertised under section 118(1); or*
 - (d) *disclosing information about the status of an application to the tribunal for a review and the names of the parties to the review; or*
 - (e) *doing anything for the purposes of this Act.*