



Decision and Reasons for Decision

Citation:	<i>C44 and Queensland Corrective Services [2024] QICmr 31 (25 July 2024)</i>
Application Number:	317651
Applicant:	C44
Respondent:	Queensland Corrective Services
Decision Date:	25 July 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY - applicant seeking access to documents relating to incarceration - whether application seeks access to a class of documents comprising exempt information - whether agency may refuse to deal with application - section 59 of the <i>Information Privacy Act 2009</i> (Qld) and section 48 and schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant, a prisoner, applied¹ to Queensland Corrective Services (**QCS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all information that informed the correctional facility's decision to place him on an Intensive Management Plan² (**IMP**).³
2. QCS decided⁴ to refuse to deal with the access application under section 59 of the IP Act on the basis that the information to which access was sought comprised exempt information under section 48 and schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
3. The applicant applied⁵ to the Office of the Information Commissioner for external review of QCS's decision refusing to deal with the access application.

¹ Access application dated 14 September 2023.

² An IMP is 'implemented for prisoners who have been identified as requiring a higher level of supervision and/or case management and/or intervention strategies.' See QCS Custodial Operations Practice Directives at [Safety Orders and IMPs – Intensive Management Plans – Queensland Corrective Services procedures – Publications | Queensland Government](#) accessed on 18 July 2024.

³ The date range for the access application was specified as 1 June 2023 to 8 September 2023.

⁴ Decision dated 27 October 2023.

⁵ External review application received on 9 November 2023.

4. For the reasons set out below, I affirm QCS's decision to refuse to deal with the access application under section 59 of the IP Act, on the basis that it requests access to all documents of a stated class, that relate to a stated subject matter, comprising exempt information.

Background and evidence considered

5. Significant procedural steps are set out in the Appendix to this decision.
6. Evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and the Appendix).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁶ particularly the right to seek and receive information.⁷ I consider that, in observing and applying the law prescribed in the RTI Act, a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act when applying the law prescribed in the RTI Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹⁰

Reviewable decision

8. The decision under review is the decision of QCS dated 27 October 2023.

Issue for determination

9. The issue for determination is whether QCS was entitled to refuse to deal with the access application under section 59 of the IP Act on the basis that it seeks access to all documents of a stated class, that relate to a stated subject matter, and which comprise exempt information.

Relevant law

10. Under the IP Act, an individual has a right to access their personal information¹¹ subject to certain limitations, including grounds for refusing access, which are set out in the IP Act and RTI Act.¹²
11. Section 59 of the IP Act allows an agency to refuse to deal with an application if:¹³
 - (a) the application requests all documents, or all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
 - (b) it appears to the agency that all of the documents to which the application relates are comprised of exempt information.

⁶ Relevant provisions of which commenced on 1 January 2020.

⁷ Section 21(2) of the HR Act.

⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *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 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]).

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

¹⁰ *XYZ* at [573].

¹¹ Section 40 of the IP Act.

¹² Section 67(1) of the IP Act and section 47 of the RTI Act.

¹³ Section 59(1) of the IP Act.

12. Schedule 3 to the RTI Act identifies the types of information which will comprise exempt information for the purposes of the IP Act.¹⁴
13. Relevantly, under schedule 3, section 10(1)(i) of the RTI Act, information will be exempt if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment (**System or Procedure Exemption**). For the System or Procedure Exemption to apply, the following three elements must be satisfied:¹⁵
 - there exists an identifiable system or procedure
 - it is a system or procedure for the protection of persons, property or the environment; and
 - disclosure could reasonably be expected to prejudice that system or procedure.
14. Schedule 3, section 10(2) sets out certain circumstances where the System or Procedure Exemption will not apply.¹⁶

Findings

Class of documents

15. To determine whether the first requirement of section 59 of the IP Act is met, it is necessary to examine the terms of the access application.
16. Relevantly, the applicant applied for access as follows:

I am requesting all information [the correctional facility] say they have on and against me that gave them the rights and power to put me on a pro-social Intensive Management Plan Implementation date [specified].

17. On an objective reading of the terms of the application, I am satisfied that it is framed as a request for 'all information' relating to a stated subject matter, ie, the correctional facility's decision to place the applicant on an IMP on a specified date.¹⁷ Accordingly, I find that the first requirement of section 59 of the IP Act is satisfied.

Exempt information

18. In relation to the second requirement, I must be satisfied that all the documents to which the application relates comprise exempt information.
19. As noted above, the applicant seeks access to information which informed the correctional facility's decision to place him on an IMP within the correctional facility at

¹⁴ Section 48(2) of the RTI Act defines 'exempt information' as the information described in the categories of information contained in schedule 3, the disclosure of which Parliament has deemed to be contrary to the public interest.

¹⁵ As set out in *I3C1ST and Department of Community Safety* (Unreported, Queensland Information Commissioner, 30 August 2011) at [12].

¹⁶ Schedule 3, section 10(2) provides that information is not exempt information 'if it consists of:

- (a) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
- (b) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
- (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the Crime and Corruption Act 2001; or
- (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.'

¹⁷ Consistent with the finding in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [14] (**Shelton**).

which he is located. To assess whether the System or Procedure Exemption applies to the information sought by the applicant, I have considered the documents located by QCS responding to the application (**Requested Documents**).¹⁸ I am constrained in describing the Requested Documents in any detail,¹⁹ but note that they were described in QCS's decision²⁰ as '*documents which relate to risk factors that describe the processes used by QCS for the management of offenders.*' It is QCS's position that the Requested Documents are comprised of exempt information under the System or Procedure Exemption.

20. In this case, I consider there exists an identifiable system or procedure, that is, the development and implementation of an IMP for a prisoner. QCS uses the IMP system to identify and assess an offender's risk within a correctional environment, to the community or themselves. Based on the information available to me, I am satisfied that process involves QCS examining a number of factors which then result in recommendations that are used to develop the IMP and manage the identified risks through implementation of the IMP. I am satisfied the IMP system is for the protection of persons both within the correctional facility environment and broader community.
21. I must now consider the issue of *prejudice* to the IMP system. QCS's decision set out that:²¹

...observations which are recorded within the identified documents determine whether an offender presents a risk within a correctional centre, the community, or themselves.

...if the type of information which has been refused becomes known, offenders may try to suppress information or provide misleading information, and in such circumstances, QCS will not obtain the accurate information it needs to make a proper assessment, and will not be able to properly consider all the relevant risk factors to arrive at a decision which takes proper account of the safety of a correctional centre and the community.

22. The applicant contends that as he has completed the IMP, giving access to the information will not affect the outcome or decision for the IMP.²² I have considered this submission in the context of prejudice to the IMP system. Based on the information before me, I am satisfied that if the assessments and risk analyses appearing in the Requested Documents were disclosed under the IP Act, it would reveal the types of behaviour which are considered indicators of risk within a correctional environment. Disclosure of such information under the IP Act where there are no limits on further dissemination of the information by an applicant, may, to my mind, allow prisoners to modify their behaviour, or provide misleading information (as a general observation), to avoid being the subject of a risk assessment or placed on an IMP. This would, in turn, compromise QCS's ability to ensure the safety and security of the correctional centre environment and the broader community, and minimise the effectiveness of the IMP system. For these reasons, I find that the Requested Documents *all* contain information which could reasonably be expected to prejudice the system or procedure by revealing

¹⁸ While section 59 of the IP Act does not require an agency to identify documents, examining the documents which respond to the terms of the request in the circumstances of this matter are necessary, as observed by the Court of Appeal in *Shelton* per Chief Justice Holmes at [48]:

... although s59(2) extends the discretion to refuse to deal with the application by enabling its exercise without any requirement to identify the relevant documents, the latter dispensation will have no practical content where a provision such as sch3 s10(2) makes the actual consideration of those documents a necessary earlier step, in deciding the exemption issue. However, that will not necessarily be the case for other categories of exempt information under sch3, which may permit the forming of an opinion in relation to the documents subject to a particular application by reference to the kind of information sought, without more.

¹⁹ Section 121(3) of the IP Act.

²⁰ At page 2.

²¹ At page 2.

²² External review application received on 9 November 2023 and submissions received on 1 and 14 March 2024.

- the particular factors taken into account by QCS when assessing risk and developing and implementing an IMP.
23. As noted at paragraph 19, I have considered the Requested Documents and turned my mind to whether any of the circumstances set out in schedule 3, section 10(2) of the RTI Act apply so as to enliven the exception to the exemption and find that none arise in this case.
24. The applicant submits that he has a right to know the reasons for being placed on the IMP in the first place.²³ I acknowledge that the applicant is seeking access to his own personal information and this would ordinarily raise a public interest factor favouring disclosure.²⁴ However, schedule 3 of the RTI Act prescribes categories of exempt information which Parliament has already decided are contrary to the public interest to release. Accordingly, where information meets the requirements of an exemption, the legislation does not allow a decision maker to take into account any public interest factors. To the extent the applicant's submissions raise public interest factors, they are not relevant to the application of the exemption and accordingly, I am unable to afford them any weight in making this decision.
25. Based on the reasons set out above, I find that it was open to QCS to refuse to deal with the access application under section 59 of the IP Act because all of the information sought by the applicant in his access application would comprise exempt information under schedule 3, section 10(1)(i) of the RTI Act, and none of the exceptions set out in schedule 3, section 10(2) of the RTI Act apply.

DECISION

26. I affirm QCS's decision refusing to deal with the access application under section 59 of the IP Act on the ground that it seeks access to all documents of a stated class that relate to a stated subject matter and which comprise exempt information under section 48 and schedule 3, section 10(1)(i) of the RTI Act.
27. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 25 July 2024

²³ External review application received on 9 November 2023 and submissions received on 1 and 14 March 2024.

²⁴ Schedule 4, part 2 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
9 November 2023	OIC received the application for external review. OIC advised QCS that the application for external review had been received and asked QCS to provide procedural documents.
15 November 2023	OIC received the procedural documents from QCS.
21 November 2023	OIC advised the applicant and QCS that the external review had been accepted. OIC conveyed a preliminary view to QCS, sought a copy of the Requested Documents and asked QCS to provide a further submission.
4 December 2023	OIC received a submission and a copy of the Requested Documents from QCS.
15 February 2024	OIC conveyed a preliminary view to the applicant that QCS had correctly decided to refuse to deal with the access application on the ground that the information to which the applicant seeks access comprises exempt information.
1 March 2024	OIC received a submission from the applicant.
5 March 2024	OIC conveyed a further preliminary view to the applicant.
14 March 2024	OIC received a further submission from the applicant.