



## Decision and Reasons for Decision

---

Citation:	<i>K91 and Department of Transport and Main Roads; N34 (Second Respondent) [2025] QICmr 28 (29 May 2025)</i>
Application Number:	318388
Applicant:	K91
Respondent:	Department of Transport and Main Roads
Second Respondent:	N34
Decision Date:	29 May 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - request for access to investigation report regarding complaint made by access applicant - consulted third party raised objections to disclosure - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld) - whether information is about the access applicant under schedule 3, section 10(6) of the <i>Right to Information Act 2009</i> (Qld) - whether access can be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and section 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld)

## REASONS FOR DECISION

### Background

1. The Second Respondent (**Access Applicant**) originally applied<sup>1</sup> to the Department of Transport and Main Roads (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to the investigation report regarding a complaint they made to the Department.
2. The Department located 200 pages comprising an investigation report (**Report**) and consulted with the Applicant (**Third Party**).<sup>2</sup> The Third Party objected<sup>3</sup> to disclosure of the Report to the Access Applicant. The Department decided<sup>4</sup> to disclose 116 pages and parts of 14 pages of the Report contrary to the Third Party's objections.<sup>5</sup>
3. The Third Party applied<sup>6</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to disclose information in the Report contrary to their objections.<sup>7</sup>

---

<sup>1</sup> Access application dated 30 September 2024.

<sup>2</sup> On 6 November 2024, in accordance with section 56 of the IP Act.

<sup>3</sup> Email to the Department on 8 November 2024, and submissions to the Department dated 22 and 29 November 2024.

<sup>4</sup> By separate decision notices to the Third Party and Access Applicant dated 9 December 2024.

<sup>5</sup> The Department refused access to the remaining information in parts of 14 pages and 70 full pages and issued a refusal of access decision on that information to the Access Applicant. The Access Applicant did not seek review of that refusal of access decision and as such, that information is not considered in these reasons for decision.

<sup>6</sup> On 20 December 2024.

<sup>7</sup> Defined as a 'disclosure decision' in section 100(3)(a) of the IP Act.

4. After accepting the application for review,<sup>8</sup> OIC obtained a copy of the Report from the Department. After examining the Third Party's objections and the Report, I reached a preliminary view that, the information in the Report that the Department had decided to disclose, comprised exempt information under schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**), and therefore, access could be refused to that information. I conveyed that view in writing to the Department and it accepted this view.<sup>9</sup>
5. The preliminary view was then conveyed to the Access Applicant as it was adverse to their interests.<sup>10</sup> The Access Applicant responded<sup>11</sup> that they did not accept the preliminary view, provided submissions and asked to participate in the external review.<sup>12</sup> I agreed to join the Access Applicant as a participant.<sup>13</sup>

### Issue for determination

6. As set out above, the Department decided to disclose 116 full pages and parts of 14 pages of the Report to the Access Applicant, contrary to the Third Party's objections (**Disclosure Decision**). The Disclosure Decision is the reviewable decision under external review and the issue I must determine is whether there are grounds to refuse access to the information that was the subject of the Disclosure Decision, ie. 116 full pages and parts of 14 pages (**Information in Issue**) under the RTI Act.<sup>14</sup>
7. Where the decision under review is a disclosure decision, the onus is on the participant who opposes the disclosure decision to establish that a decision not to disclose the information is justified.<sup>15</sup> In this case, I reviewed the Third Party's objections to disclosure<sup>16</sup>, as well as the Information in Issue, and formed a view that the information qualified for exemption and that a decision to disclose was therefore, not justified. Accordingly, I did not require the Third Party to provide further submissions in discharge of the onus upon them.
8. External review by the Information Commissioner is merits review.<sup>17</sup> This process involves an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision maker to determine the correct and preferable decision<sup>18</sup> based on the information that is available, at the time, to the Information Commissioner.<sup>19</sup> In conducting merits review, the Information Commissioner has the power to review any decision that has been made by an agency in relation to the access application concerned, and can decide any matter that could have been decided by the agency.<sup>20</sup>
9. In reaching a decision in this review, I have taken into account the evidence, submissions, legislation and other material as disclosed in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>21</sup> I consider a decision-maker will be '*respecting and acting*

---

<sup>8</sup> As per correspondence to the Third Party and Department dated 30 January 2025.

<sup>9</sup> Email to OIC dated 3 April 2025.

<sup>10</sup> On 15 April 2025.

<sup>11</sup> Correspondence to OIC dated 27 April 2025.

<sup>12</sup> Under section 102(2) of the IP Act, a person affected by the decision may apply to participate in the review.

<sup>13</sup> By email dated 28 April 2025 in accordance with section 102(3) of the IP Act.

<sup>14</sup> Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

<sup>15</sup> Section 100(2) of the IP Act.

<sup>16</sup> In their external review application and as provided to the Department during the consultation process.

<sup>17</sup> *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2].

<sup>18</sup> *M39 and Queensland Police Service* [2023] QICmr 66 (8 December 2023) at [12].

<sup>19</sup> *Palmer and Townsville City Council* [2019] QICmr 43 at [21].

<sup>20</sup> Section 118(1) of the IP Act.

<sup>21</sup> Section 21 of the HR Act.

*compatibly with* that right, and others prescribed in the HR Act, when applying the RTI Act<sup>22</sup> and in doing so, I have acted in accordance with section 58(1) of the HR Act.<sup>23</sup>

10. In summary, for the reasons set out below, I set aside<sup>24</sup> the Disclosure Decision and find that access to the Information in Issue may be refused on the basis it comprises exempt information under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

## Relevant law

11. Under the IP Act, an individual has the right to access their personal information<sup>25</sup> subject to certain limitations, including grounds for refusing access, which are set out in the IP Act and RTI Act.<sup>26</sup> It is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias<sup>27</sup> and that those grounds for refusing access to information are to be interpreted narrowly.<sup>28</sup>
12. Access may be refused to exempt information.<sup>29</sup> Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is contrary to the public interest.<sup>30</sup> Where it is established that a document contains exempt information, the Information Commissioner does not have power to direct that access be given.<sup>31</sup>
13. One category of exempt information is set out in schedule 3, section 10(4) of the RTI Act (**Prescribed Crime Body Exemption**). Information will be subject to this exemption if:
  - it was *obtained, used or prepared* for an *investigation*
  - the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
  - the exception in schedule 3, section 10(6) of the RTI Act does not apply.
14. The terms 'obtained, used or prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.<sup>32</sup> The term 'investigation' as used in the Prescribed Crime Body Exemption has been defined expansively.<sup>33</sup>
15. The ambit of the Prescribed Crime Body Exemption is well-settled.<sup>34</sup> The Information Commissioner has held that the CCC misconduct function is triggered by its receipt and consideration of a complaint, notification and/or relevant material, and not determined

<sup>22</sup> 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].

<sup>23</sup> XYZ at [573]. OIC's approach to the HR Act set out in this paragraph has been 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).

<sup>24</sup> Section 123(1)(c) of the RTI Act.

<sup>25</sup> Section 43 of the IP Act.

<sup>26</sup> Section 67(1) of the IP Act and section 47 of the RTI Act.

<sup>27</sup> Section 44 of the RTI Act.

<sup>28</sup> Section 47(2)(a) of the RTI Act.

<sup>29</sup> Section 47(3)(a) and section 48.

<sup>30</sup> Section 48(2) of the RTI Act.

<sup>31</sup> Section 105(2) of the RTI Act.

<sup>32</sup> In *Springborg MP and Crime and Misconduct Commission; RZ (Access Applicant), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) at [27] the Information Commissioner noted the term 'prepared' was defined as 'compose and write out, draw up (a text or document) ... produce or form ... manufacture, make'.

<sup>33</sup> *Springborg* analysed the concept of an 'investigation' as used in the repealed *Freedom of Information Act 1992* (Qld); the Information Commissioner found the term can encompass the process of examining, considering, 'dealing with' and 'assessing' a complaint. Also, schedule 2 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) defines 'investigate' as including 'examine and consider' – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

<sup>34</sup> *Springborg* analysed provisions equivalent to those contained in the CC Act and this reasoning has been applied consistently by the Information Commissioner. See *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (**Cronin**) at [12]-[26], *P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2024] QICmr 59 (12 November 2024) at [25]-[33] and *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [32]-[39].

retrospectively by the outcome of an assessment or investigation<sup>35</sup> either by the CCC or other agency;<sup>36</sup> and ‘dealing with’ or ‘assessing’ a complaint, notification or other material falls within the broad meaning of ‘investigation’ by the CCC or other agency.<sup>37</sup>

16. The exception to the Prescribed Crime Body Exemption has consistently been found to apply to information ‘*about*’ the subject officer in the investigation, as distinguished from information pertaining to a complainant.<sup>38</sup> The Information Commissioner has previously recognised that the purpose of the exception is to allow individuals who are the subject of a prescribed crime body investigation to obtain access to information regarding a finalised investigation, to the extent that information is ‘*about*’ them.<sup>39</sup> That is, the exception allows the subject of an investigation access to information such as ‘*allegations made against them ... and conclusions made about them in a report*’.<sup>40</sup>
17. The exemptions in schedule 3 to the RTI Act – including the Prescribed Crime Body Exemption – do not require or allow consideration of public interest factors. This is because Parliament has determined that disclosure of these categories of information would be contrary to the public interest.<sup>41</sup> Accordingly, if information falls within one of the categories of exempt information in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration is permitted.<sup>42</sup>

## Findings

18. I have independently reviewed the Report. While the IP Act prevents me from disclosing the particular content of the Report, I am satisfied that the Department’s Ethical Standards Unit (**ESU**) referred the Access Applicant’s complaint to the Crime and Corruption Commission (**CCC**) for assessment and the CCC then referred the matter back to the Department’s ESU to deal with. On the information before OIC, I am satisfied that the first requirement of the Prescribed Crime Body Exemption is met as the Information in Issue was obtained, used or prepared by the CCC for an investigation by the Department.<sup>43</sup>
19. The CCC is a ‘prescribed crime body’ for the purposes of the RTI Act.<sup>44</sup> I am satisfied that the allegations raised (which are the subject of the investigation) could, if proven, amount to corrupt conduct under the CC Act. On the information before OIC, I am satisfied that the second requirement of the Prescribed Crime Body Exemption is met as the investigation was devolved to the Department by the CCC in the performance of its corruption function, and the investigation is subject to the CCC’s monitoring role, in accordance with the requirements of the CC Act.<sup>45</sup>
20. As noted at paragraph 16 above, the exception to the Prescribed Crime Body Exemption only applies where the investigation is finalised, and the information is *about* a person seeking to access the information, an applicant. Whether information is ‘*about*’ a given applicant is a question of fact, to be resolved by reference to the information itself.<sup>46</sup> The

<sup>35</sup> *Springborg* at [44].

<sup>36</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>37</sup> *Springborg* at [55]-[59].

<sup>38</sup> *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) (**Darlington**) at [18]-[22] and *W52 and Crime and Corruption Commission* [2021] QICmr 57 (28 October 2021) at [44]-[48].

<sup>39</sup> *G8KPL2* at [28]-[30].

<sup>40</sup> *Ibid.* at [28]-[33].

<sup>41</sup> Section 48(2) of the RTI Act.

<sup>42</sup> *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

<sup>43</sup> Although the CCC has primary responsibility for dealing with corrupt conduct complaints, the CCC may refer such a complaint to a public official (which includes the chief executive officer of a unit of public administration) to be dealt with by the public official or in cooperation with the CCC, subject to the CCC’s monitoring role: sections 45 and 46(2) of the CC Act.

<sup>44</sup> Schedule 3, section 10(9) of the RTI Act.

<sup>45</sup> Section 48(1) of the CC Act.

<sup>46</sup> *Cronin* at [21].

word ‘about’ in this provision has previously been referred to as ‘a non-technical term defined according to its natural and ordinary meaning.’<sup>47</sup>

21. The Access Applicant submits<sup>48</sup> they have a right to access their own personal information and ‘as the complainant in the matter, the documents may contain [their] statements, representations, or references to [their] involvement that go beyond mere witness references’ and OIC should ‘assess whether any part of the information can be reasonably considered to be “about [them]” and thus qualify for the exception to the exemption’. The Access Applicant also acknowledged that while public interest factors ‘are not generally weighed when dealing with exempt information’, they note that a core objective of the RTI Act is to ‘promote transparency and accountability in government, particularly where alleged misconduct ... are involved’ and their complaint ‘involves serious issues of public sector conduct and potential systemic risk.’
22. I acknowledge the Access Applicant’s submissions and interest in obtaining access to their personal information. However, in the circumstances of this case, I am satisfied that the exception to the exemption does not apply because the investigation and consequently, the Report resulting from the complaint made by the Access Applicant, is substantially about another individual, ie. the subject of the complaint. Inevitably, the Report contains information about the investigative actions and processes, and incidental references to the Access Applicant (as the complainant). However, in accordance with the well-settled interpretation of the exception<sup>49</sup>, I find that the information in the Report is not ‘about’ the Access Applicant and therefore, the exception does not apply in this case. As such, I am satisfied that the third requirement of the Prescribed Crime Body Exemption is met.
23. As the requirements of the Prescribed Crime Body Exemption are met and the exception does not apply, I find that access to the Information in Issue may be refused as it comprises exempt information.<sup>50</sup>

## DECISION

24. For the reasons explained above, I set aside<sup>51</sup> the Disclosure Decision and find that access to the Information in Issue may be refused<sup>52</sup> as it comprises exempt information<sup>53</sup> under schedule 3, section 10(4) of the RTI Act, to which the exception in schedule 3, section 10(6) of the RTI Act does not apply.
25. 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: 29 May 2025**

---

<sup>47</sup> *Darlington* at [52]. The Macquarie Dictionary defines ‘about’ as ‘of; concerning; in regard to ... connected with’.

<sup>48</sup> In correspondence to OIC dated 27 April 2025.

<sup>49</sup> As set out in paragraphs 16 and 20 of these reasons.

<sup>50</sup> Due to the operation of section 48(2) of the RTI Act as outlined in paragraph 17 above, I am unable to take into account public interest considerations. Therefore, I have not considered the applicant’s submissions in this regard.

<sup>51</sup> Section 123(1)(c) of the IP Act.

<sup>52</sup> Pursuant to section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

<sup>53</sup> Section 48 of the RTI Act.