



Decision and Reasons for Decision

Application Number: 310733

Applicant: Cameron

Respondent: Queensland Police Service

Decision Date: 7 August 2012

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – ACCESS TO INFORMATION – REFUSAL OF ACCESS – applicant sought information about complaints he made to the Queensland Police Service – whether disclosure of the information is, on balance, contrary to public interest – section 67(1) of the *Information Privacy Act 2009 (Qld)* and section 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)* – whether the information is exempt from disclosure – section 67(1) of the *Information Privacy Act 2009 (Qld)* and section 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009 (Qld)* – whether the information is unlocatable – section 67(1) of the *Information Privacy Act 2009 (Qld)* and section 47(3)(e) and 52(1)(b) of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) for access to all records in relation to complaints made by him between May 2005 and May 2011 (**Access Application**).²
2. QPS located 445 documents, including 1 CD containing CCTV footage,³ and decided⁴ to release 115 documents in full and 222 documents in part. Access to the remaining 108 documents, including the CCTV footage, was refused on the basis that it was exempt from disclosure or that the information was a duplicate copy, irrelevant to, or outside the scope of the Access Application.
3. The applicant sought external review of QPS's decision to refuse access and submitted that further CCTV footage and tape recordings of conversations responsive to the Access Application should have been located.

¹ By application dated 29 April 2011.

² QPS sought clarification from the applicant who advised that the complaints relate to incidents which occurred on 3 May 2005, 12/13 November 2007, 9/10 December 2007 and between 26 January and 10 March 2009.

³ A review of the CCTV footage by OIC staff on 22 September 2011 revealed that it relates to 12/13 November 2007.

⁴ Dated 29 July 2011.

4. During the course of the external review, QPS located and released further information sought by the applicant.
5. In accordance with section 67(1) of the *Information Privacy Act 2009 (Qld)* (**IP Act**), QPS's decision is varied and access is refused to:
 - 10 full pages, 223 part pages and tape recordings on the ground that the information was 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 under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009 (Qld)* (**RTI Act**)
 - 10 part pages on the ground that disclosure of the information is, on balance, contrary to public interest under sections 47(3)(b) and 49 of the RTI Act; and
 - CCTV footage on the ground that the document has been or should be in the agency's possession and all reasonable steps have been taken to find the document but the document cannot be found under sections 47(3)(e) and 52(1)(b) of the RTI Act.

Background

6. Significant procedural steps relating to the application are set out in Appendix A to this decision.

Reviewable decision

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

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendices).

Information in issue

9. The relevant information remaining in issue in this external review comprises:
 - **Category A Information**—10 full pages,⁵ 223 part pages⁶ and the Tape Recordings⁷ which relate to the investigations of three complaints made by the applicant
 - **Category B Information**—10 part pages⁸ which relate to the investigation of a fourth complaint made by the applicant; and
 - **Category C Information**—the CCTV Footage⁹ which relates to the investigation of the first complaint made by the applicant.

⁵ Comprising documents 273-278, 311-313, and 315.

⁶ Comprising documents 1, 3 6-12, 16-17, 28, 33-35, 37, 47-48, 52-55, 70, 77-78, 81-82, 86-89, 91-96, 99-108, 114-124, 127-150, 153, 155, 158, 160, 162-163, 165-166, 175, 181-182, 188-189, 191-192, 194-196, 202-204, 206, 210, 212, 216-217, 224, 226, 228, 230-242, 258-262, 264, 271, 279-290, 294, 296-309, 314, 316, 322-349, 351-352, 355-356, 358, 361-363, 365-367, 376-377, 379-389, 391-397, 404, 406, and 409-410.

⁷ Comprising electronic records of interviews of three third parties by Inspector Ziebarth.

⁸ Comprising documents 416, 418-419, 423, 432-433, 437, 439, 441 and 445.

⁹ Comprising CCTV footage for 3 May 2005 at the Beenleigh Watchhouse.

Category A Information

10. QPS refused access to the Category A Information on the following basis:¹⁰
- disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law¹¹
 - the information was given in the course of an investigation of a contravention or possible contravention of the law and the information was given under compulsion under an Act that abrogated the privilege against self-incrimination;¹² and
 - disclosure would, on balance, be contrary to public interest.¹³
11. After carefully considering all relevant information before me, I am satisfied that schedule 3, section 10 of the RTI Act (**CMC Exemption**)¹⁴ applies to the Category A Information.

Relevant law

12. The RTI Act¹⁵ allows an agency to refuse access to information which was obtained, used or prepared for an investigation by the Crime and Misconduct Commission (**CMC**), or another agency (such as QPS), in the performance of the prescribed functions of the CMC.
13. The prescribed functions of the CMC are the crime function, the intelligence function and the misconduct function.¹⁶
14. Relevantly, the CMC's misconduct function includes ensuring that a complaint about misconduct is dealt with in an appropriate way.¹⁷ The CMC must perform its misconduct function having regard to the principles of cooperation, capacity building, devolution and the public interest.¹⁸ Specifically, the principle of devolution provides that '*action to prevent and deal with misconduct in a unit of public administration should generally happen with the unit*'.¹⁹
15. The CMC can perform its misconduct function in several ways, including by doing one or more of the following:
- assessing information about misconduct
 - referring complaints to a public official to be dealt with by the public official; and/or
 - performing its monitoring role for police misconduct or official misconduct.²⁰
16. The *Crime and Misconduct Act 2001 (Qld)* (**CM Act**) defines 'misconduct' to include 'official misconduct or police misconduct'.²¹

¹⁰ With the exception of the Tape Recordings which were located as a result of further searches conducted during the course of the external review.

¹¹ Sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the RTI Act.

¹² Sections 47(3)(a) and 48 and schedule 3, section 10(3) of the RTI Act.

¹³ Sections 47(3)(b) and 49 of the RTI Act.

¹⁴ Sections 47(3)(a) and 48 and schedule 3, section 10 of the RTI Act. The relevant parts of schedule 3, section 10 are set out in Appendix B.

¹⁵ Section 67(1) of the IP Act provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the RTI Act.

¹⁶ Schedule 3, section 10(9) of the RTI Act.

¹⁷ Section 46(2)(b) of *Crime and Misconduct Act 2001 (Qld)* (**CM Act**).

¹⁸ Section 33(b) and section 34 of CM Act.

¹⁹ Section 34(c) of CM Act.

²⁰ Section 35 of CM Act.

²¹ See the Dictionary in Schedule 2 of the CM Act.

17. The term ‘official misconduct’ is defined in the CM Act²² as follows:

... conduct that could, if proved, be—

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or was the holder of an appointment.

18. The term ‘police misconduct’ is defined in the CM Act²³ as follows:

... conduct, other than official misconduct, of a police officer that—

- (a) is disgraceful, improper or unbecoming a police officer; or
- (b) shows unfitness to be or continue as a police officer; or
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.

19. If it is suspected that a complaint involves or may involve police misconduct or official misconduct under the CM Act, the CMC must be notified.²⁴ QPS must deal with a complaint about police misconduct or official misconduct (if the CMC refers the complaint back to it), in the way it considers most appropriate, subject to the CMC’s monitoring role.²⁵

Does the CMC Exemption apply in the circumstances?

20. The following requirements must be satisfied in order to establish that the CMC Exemption applies:

- the Category A Information was obtained, used or prepared for an investigation
- the investigation was conducted by a prescribed crime body or other agency; and
- the investigation was in the performance of the prescribed functions of the prescribed crime body.

21. In summary, having reviewed the Category A Information located by QPS in relation to this external review, including the transcripts of the Tape Recordings,²⁶ I find that:

- pages 1 to 193 relate to a complaint received by the CMC from the applicant on 5 May 2005
- pages 194 to 364 and the Tape Recordings relate to a complaint made by the applicant and referred to the CMC by QPS under section 40 of the CM Act on 16 January 2008
- pages 365 to 414 relate to a complaint received by the CMC from the applicant on 8 April 2008
- the complaints were assessed by the CMC as possibly involving an allegation of official misconduct or police misconduct which was suitable for QPS to deal with
- the investigations were conducted by the Ethical Standards Command unit of QPS (QPS ESC); and
- outcome advice only was to be provided to the CMC upon completion of the investigations.

22. On the basis of the matters set out above, I am satisfied that the requirements of the CMC Exemption are met in this case.

²² Section 15 of CM Act.

²³ See the Dictionary in Schedule 2 of the CM Act.

²⁴ Sections 37 and 38 of CM Act.

²⁵ Sections 42(2) and 44(2) of the CM Act.

²⁶ Located at pages 279 to 290, 296 to 309 and 325 to 346 of the documents located by QPS.

Does the exception in schedule 3, section 10(6) of the RTI Act apply?

23. The Category A Information will not be exempt under the CMC Exemption where:
- the information is about the applicant; and
 - the investigation has been finalised.²⁷
24. Correspondence provided to the applicant by QPS regarding the outcome of the relevant investigations confirms that they have been finalised.
25. Therefore, for the exception to the CMC Exemption to apply in this case, the Category A Information must be *about* the applicant.
26. The word ‘about’ is neither defined in the RTI Act nor the *Acts Interpretation Act 1954* (Qld).
27. The Macquarie Dictionary²⁸ defines ‘about’ as ‘*of; concerning; in regard to ... connected with*’.
28. The CMC Exemption²⁹ and its exception identified above³⁰ are equivalent to provisions in the repealed *Freedom of Information Act 1992 (Qld)* (**FOI Act**).³¹ In the Explanatory Memorandum to the Bill³² which inserted the CMC Exemption and its exception³³ into the FOI Act, the purpose of these sections was described as follows:

... a new exemption which exempts information obtained, used or prepared for investigations by the Crime and Misconduct Commission (CMC) or another agency. The exemption is only to apply where the investigation is in performance of the CMC’s crime function and misconduct functions ...

This exemption is to apply to the information obtained, used or prepared in the course of the investigation and the consideration of, and reporting of the investigation.

*This exemption does not apply if a person seeks information about themselves, including personal, professional, business and work-related information. However, a person can only receive such information once the investigation has been finalised. **For example, and subject to the other exemptions in the FOI Act, a person could receive information about allegations made against them, information given about them in the course of an interview and conclusions made about them in a report.***

[emphasis added]

29. The debate following the Second Reading speech³⁴ in respect of the Bill which introduced the CMC exemption and its exception makes it clear that Parliament intended that access to the investigation reports would be available only to the person being investigated. That is, mainly public officials (investigated under the CMC’s misconduct function) and criminals (investigated under the CMC’s crime function), i.e., people who are the subject of the investigation.

²⁷ Schedule 3 section 10(6) of the RTI Act.

²⁸ Macquarie Dictionary Online www.macquariedictionary.com.au.

²⁹ Schedule 3 section 10(4) of the RTI Act

³⁰ Schedule 3 section 10(6) of the RTI Act.

³¹ Sections 42(3A) and 42(3B) of the FOI Act. Inserted by the *Freedom of Information and Other Legislation Amendment Act 2005* (Qld) which commenced on 31 May 2005.

³² *Freedom of Information and Other Legislation Amendment Bill 2005* (Qld).

³³ Schedule 3 sections 10(4) and 10(6) of the RTI Act. Sections 42(3A) and 42(3B) of the FOI Act.

³⁴ Which occurred on 11 and 25 May 2005. See in particular page 1634 of Hansard for this period.

30. The CMC's misconduct functions include ensuring that a complaint about misconduct is dealt with in an appropriate way.³⁵ As discussed above, the CMC can perform this misconduct function by referring a complaint about misconduct to a public official³⁶ who has a responsibility to deal with the complaint.
31. Investigations such as that carried out by QPS ESC in relation to the applicant's complaints are concerned with establishing whether official misconduct or police misconduct have occurred under the CM Act. While it can be said that the Category A Information came into existence as the result of the applicant's actions (that is, the making of the complaints), that does not in and of itself render the Category A Information *about* the applicant.³⁷ Rather, the Category A Information is about the individuals whom the applicant's allegations concern.
32. Accordingly, I find that while the investigations have been finalised, the Category A Information is not information *about* the applicant and therefore, the exception to the CMC Exemption in schedule 3, section 10(6) of the RTI Act does not apply in this case.

Conclusion

33. On the basis of the matters set out above, I am satisfied that:
 - In relation to the Category A Information there is sufficient evidence to establish that the CMC performed its misconduct function in relation to the investigations, by referring the matters to QPS to be dealt with subject to the CMC's monitoring role.
 - The Category A Information was obtained, used or prepared by QPS ESC, in the performance of the CMC's misconduct function subject to the CMC's monitoring role with the requirement that the CMC be advised of the outcome.
 - The Category A Information comprises exempt information under schedule 3, section 10(4) of the RTI Act and is not subject to the exception in schedule 3, section 10(6) of the RTI Act.
34. As I have found that the Category A Information is exempt, it is not necessary for me to consider the other claims QPS have made.

Category B Information

35. QPS refused access to the Category B Information on the basis that disclosure would, on balance, be contrary to public interest.³⁸

Relevant law

36. Sections 47(3)(b) and 49 of the RTI Act allows an agency to refuse access to documents where disclosure of information would, on balance, be contrary to public interest.
37. In determining whether disclosure of the Category B Information would, on balance, be contrary to public interest I must:³⁹
 - identify and disregard irrelevant factors
 - identify factors favouring disclosure of the information in the public interest

³⁵ Section 33 of the *CM Act*.

³⁶ Section 35(1)(b) of the *CM Act*.

³⁷ See *McKay* at paragraphs 80 and 81.

³⁸ Sections 47(3)(b) and 49 of the RTI Act.

³⁹ Section 49(3) of the RTI Act.

- identify factors favouring nondisclosure of the information in the public interest
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to public interest.

Where does the balance of the public interest lie in this matter?

38. I am satisfied that release of the Category B Information would, on balance, be contrary to public interest for the reasons that follow.
39. I have examined the irrelevant factors in schedule 4, part 1, of the RTI Act and do not consider that any irrelevant factors arise here.

Factors favouring disclosure and nondisclosure of information in the public interest

40. After carefully considering all of the information before me, I am satisfied that the public interest factors favouring nondisclosure include that disclosure of the Category B Information could reasonably be expected to:
- cause a public interest harm by disclosing the personal information of a person, whether living or dead;⁴⁰ and
 - prejudice the protection of an individual's right to privacy.⁴¹
41. I have not identified any factors favouring the disclosure of the Category B Information.

Balancing the factors favouring disclosure and nondisclosure in the public interest

42. The Category B Information comprises details such as a date of birth, employment details (payroll and registration numbers) and personal opinions of third parties relevant to the investigation of a complaint made by the applicant.
43. The applicant does not seek names and addresses. However, he argues that, '*... the evidence, statements and opinions expressed are of great concern to the public interest.*'⁴²
44. Some of the Category B Information relates to employees of QPS. There is generally minimal or no harm in disclosing routine workplace information of public servants. However, information which is not wholly related to the routine day to day work activities of a public service officer is considered non routine personal work information, including information relating to complaints made by or about a public service officer.⁴³
45. After carefully considering the Category B Information, I am satisfied that:
- the information about QPS employees does not comprise their routine personal work information
 - the information to which the applicant has been refused access contains personal information which, if disclosed, could reasonably be expected to cause a public interest harm by revealing the personal information of the relevant person and prejudicing that person's privacy; and

⁴⁰ Schedule 4, part 4, item 6 of the RTI Act.

⁴¹ Schedule 4, part 3, item 3 of the RTI Act.

⁴² Submission dated 3 July 2012.

⁴³ Office of the Information Commissioner Guideline—Routine personal work information of public servants.

- I consider that significant weight should be given to these factors favouring nondisclosure.

46. Given the above, I am satisfied that the release of the Category B Information would not advance the public interest in any significant way and disclosure of the Category B Information would, on balance, be contrary to the public interest.

Category C Information

47. During the course of the external review, the applicant submitted that additional information should have been located by QPS. In particular, the applicant submits that CCTV footage for 3 May 2005 at the Beenleigh Watchhouse (**CCTV Footage**) should exist.

Relevant law

48. The RTI Act allows an agency to refuse access to documents where the agency is satisfied that those documents are nonexistent or cannot be located following all reasonable steps having being taken to locate them.⁴⁴

49. The Information Commissioner considered the grounds for refusal of access set out in section 52 of the RTI Act in *PDE and the University of Queensland (PDE)*.⁴⁵

50. In *PDE*, the Information Commissioner said that:⁴⁶

... [T]he FOI Act [equivalent of section 52] address[es] two different scenarios faced by agencies and Ministers from time to time in dealing with FOI applications: circumstances where the document sought does not exist and circumstances where a document sought exists (to the extent it has been or should be in the agency's possession) but cannot be located. In the former circumstance, an agency or Minister is required to satisfy itself that the document does not exist. If so satisfied, the agency or Minister is not required by the FOI Act to carry out all reasonable steps to find the document. In the latter circumstance an agency or Minister is required to satisfy itself that the document sought exists (to the extent that it has been or should be in the agency's possession) **and** carry out all reasonable steps to find the document before refusing access.

51. The Information Commissioner also found⁴⁷ that to be satisfied that a document does not exist, it is necessary for the agency to rely upon its particular knowledge and experience with respect to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive of its information management approach); and
- other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s
 - the nature of the government activity the request relates to.

⁴⁴ Under section 52(1) of the RTI Act.

⁴⁵ Unreported, Queensland Information Commissioner, 9 February 2009. Note—Although *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

⁴⁶ At paragraph 34.

⁴⁷ See *PDE* at paragraph 37.

52. If an agency relies on searches to justify a decision that the document sought does not exist, the Information Commissioner indicated in *PDE* that all reasonable steps must be taken to locate documents. Enquiries and searches of all relevant locations having regard to the key factors listed above should take place.⁴⁸
53. As for unlocatable documents, for an agency to be entitled to refuse access it is necessary to consider whether:
- the document/s sought has been or should be in the agency's possession?
and
 - the agency has taken all reasonable steps to find the document/s sought ?

Were searches conducted by QPS?

54. The applicant has submitted⁴⁹ that the documents released to him by QPS confirm that the CCTV Footage exists.⁵⁰ In addition, the applicant has stated that “...*QPS appear to be doing all they can to protect the discovery of its unethical & unprofessional behaviour, by way of destroying, losing or denying any incriminating evidence*”.
55. As noted above, when assessing claims by an agency that documents are unlocatable or that documents are nonexistent, it is always necessary to consider the adequacy of searches undertaken by an agency in an effort to locate relevant documents.
56. QPS have submitted that:⁵¹
- enquiries with the Beenleigh Watchhouse established that the retention period for CCTV recordings is 60 days unless otherwise required (e.g., for investigations or court proceedings)
 - the CCTV Footage was not held at the Beenleigh Watchhouse
 - the investigating officer advised that the initial complaint was received on 5 May 2005 but that the investigations ceased due to the complaint being interwoven with court proceedings. The investigation was re-opened on 30 July 2007 and finalised in September 2007. At the finalisation of the investigation, all documentation was provided to ESC. The investigating officer could not confirm if this included the CCTV footage
 - enquiries with ESC identified that all evidence in relation to completed investigations are lodged to the Central Exhibits Facility according to administrative and legislative requirements
 - searches of COMPASS (complaint/investigation) documents revealed that no CCTV footage had been received and that there was no note or record on file to indicate the location or existence of the footage
 - if the investigating officer held the CCTV footage, it would be attached to their property list in QPRIME. Checks on QPRIME located over 800 entries but failed to locate the CCTV footage relevant to the complaint; and
 - following searches conducted for a previous application under the now repealed FOI Act, access was refused to the CCTV Footage on the basis that it was considered to not exist or could not be located.

57. In relation to these searches, QPS stated:⁵²

⁴⁸ At paragraph 49.

⁴⁹ Submission dated 22 February 2012.

⁵⁰ In particular, page 26 comprises a Compass Summary Report which contains details of an email dated 4 May 2005 which confirms that the CCTV Footage was secured by Acting Senior Sergeant King.

⁵¹ Submission dated 19 October 2011.

⁵² Submission dated 19 October 2011.

The above searches proved negative in locating the CCTV footage. [QPS] consider in the circumstances that reasonable searches have been undertaken for the requested document and have determined that the requested document does not exist.

58. Following a request for further information about searching the QPS ESC hard copy file and whether enquiries had been made with the relevant prosecution authority for the CCTV Footage, QPS submitted that:⁵³
- an examination of archive box BNE 0095 1787, which is listed on the records system as containing the complaint file, failed to locate the complaint file. It is unknown where the file is now located as there is no other reference on the recordkeeping system to an alternative location
 - an examination of the QPS ESC tape index for the complaint file only identifies an audio tape of an interview between the applicant and Detective Inspector Hutchinson
 - it is reasonable to surmise that if the CCTV Footage was supplied to QPS ESC by the Detective Inspector, it would have been recorded on the tape index; and
 - an examination of located documents relating to the prosecution record, including a returned exhibits form dated 26 March 2007 and the QP9 Brief of Evidence, do not identify the CCTV Footage being used as an exhibit for prosecution purposes.
59. On the basis of the above additional searches, QPS have submitted that the CCTV Footage cannot be located despite reasonable searches having been conducted.⁵⁴

Are there reasonable grounds to be satisfied that the CCTV Footage is unlocatable?

60. Yes.
61. Where documents requested in an application cannot be located, an agency may refuse access provided the requirements (as discussed in this decision) are satisfied.
62. While I accept that the CCTV Footage did exist, I am satisfied that QPS's searches have been carried out in a systematic way taking into account the factors identified in the *PDE* decision.
63. Accordingly, having carefully reviewed QPS's submissions, together with the submissions lodged by the applicant, I am satisfied that:
- QPS has taken all reasonable steps to locate the CCTV Footage; and
 - access to the CCTV Footage can be refused on the basis that it is unlocatable.⁵⁵

DECISION

64. I vary the Decision of the Queensland Police Service dated 29 July 2011 by finding that, in accordance with section 67(1) of the IP Act, access is refused to:
- 10 full pages, 223 part pages and the Tape Recordings on the ground that the information was 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 under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the RTI Act

⁵³ Submissions dated 24 and 25 July 2012.

⁵⁴ Submission dated 20 July 2012. This submission was made subject to the search of the QPS ESC hardcopy file, details of which were provided in the submission dated 24 July 2012.

⁵⁵ In accordance with sections 47(3)(e) and 52(1)(b) of the RTI Act.

- 10 part pages on the ground that disclosure of the information is, on balance, contrary to public interest under sections 47(3)(b) and 49 of the RTI Act; and
- the CCTV Footage on the ground that the document has been or should be in the agency's possession and all reasonable steps have been taken to find the document but the document cannot be found under sections 47(3)(e) and 52(1)(b) of the RTI Act.

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

Assistant Information Commissioner Corby

Date: 7 August 2012

APPENDIX A

Significant procedural steps

Date	Event
3 May 2011	The Queensland Police Service (QPS) receives the applicant's request for access dated 29 April 2011 (Access Application).
29 July 2011	QPS locates 445 documents, including 1 CD containing CCTV footage, and decides to release some information. Access to the remaining information was refused as: <ul style="list-style-type: none"> • disclosure of the information would, on balance, be contrary to public interest • the information is exempt from disclosure • the information is outside the scope of the Access Application; and • the information comprises a duplicate copy of information already considered.
15 August 2011	OIC receives the applicant's application for external review dated 12 August 2011.
25 August 2011	OIC advises the applicant and QPS that the application has been accepted for review.
13 September 2011	OIC receives a copy of the relevant documents from QPS.
16 September 2011	OIC contacts QPS in relation to the CCTV footage which should have been provided with the relevant documents.
16 September 2011	The applicant advises OIC staff that the most important aspect of the external review is the CCTV footage, in particular CCTV footage for 3 May 2005.
22 September 2011	OIC receives the CCTV footage from QPS. A review of the CCTV footage by OIC staff reveals that it is in relation to 12/13 November 2007 only.
28 September 2011	OIC conveys a written preliminary view to QPS in relation to the CCTV footage for 12/13 November 2007 and requests QPS to conduct further searches for CCTV footage relating to the applicant's time at Beenleigh Watchhouse on 3 May 2005. QPS is asked to respond to the preliminary view and request for further searches by 12 October 2011.
28 September 2011	OIC provides the applicant with a written update about the external review process.
30 September 2011	OIC provides the applicant with a verbal update about the external review process. The applicant advises that he is also seeking CCTV footage in relation to December 2007.
13 October 2011	QPS verbally advises OIC that it agrees to release the CCTV footage for 12/13 November 2007 and that the CCTV footage for 3 May 2005 cannot be located. QPS requests an extension of time to provide a written submission.
14 October 2011	OIC grants QPS an extension until 28 October 2011 to provide a written submission.
19 October 2011	OIC receives QPS's written submission in response to the preliminary view about CCTV footage for 12/13 November 2007 and the request for further searches about CCTV footage for 3 May 2005.
2 November 2011	OIC requests QPS to release the CCTV footage for 12/13 November 2007 to the applicant.
3 November 2011	OIC advises the applicant in writing that following a review of the records of the applicant's telephone conversations with OIC staff, OIC will not engage in any further telephone contact with the applicant for the remainder of the review process. Any further contact with OIC must

	be made in writing.
10 November 2011	QPS advises OIC that the CCTV footage for 12/13 November 2007 has been forwarded to the applicant by correspondence dated 10 November 2011.
11 November 2011	OIC writes to the applicant confirming that as QPS have released the CCTV footage for 12/13 November 2007 in full, OIC will not consider it further in this review. OIC also provides the applicant with an update about the remaining issues in this review.
24 November 2011	OIC receives the applicant's submission dated 22 November 2011 in which he confirms that he has received the CCTV footage for 12/13 November 2007 and advises that he is still seeking access to: <ul style="list-style-type: none"> • CCTV footage for 3 May 2005 at Beenleigh Watchhouse and 9/10 October 2007* at Southport Watchhouse; and • all correspondence between QPS and OIC concerning his requests. <p>* A review of the Access Application shows that the applicant is seeking access to documents regarding an incident at Southport watch house on or about 9/10 December 2007.</p>
29 November 2011	OIC writes to QPS requesting QPS to conduct further searches for CCTV footage for 9/10 December 2007 at Southport Watchhouse and provide a submission to OIC by 13 December 2011.
9 December 2011	QPS verbally advises OIC that CCTV footage has been located for Southport Watchhouse and that a written submission has been forwarded.
14 December 2011	OIC receives QPS's written submission dated 9 December 2011. QPS advises that the CCTV footage has been submitted to QPS's Electronic Recording Studio for enhancement and editing. QPS advises that it has no concerns about the edited footage being released.
19 December 2011	QPS verbally advises OIC that the editing of the CCTV footage for 9/10 December 2007 is to remove personal information of third parties present in the footage prior to releasing the footage to the applicant.
21 December 2011	OIC provides the applicant with a written update about the external review process, advising that additional CCTV footage for 9/10 December 2007 has been located and that QPS has agreed to release it following editing to remove and/or obscure images which would identify other people.
13 January 2012	QPS advises OIC that the CCTV footage for 9/10 December 2007 is ready for release and that it expects that it will be posted to the applicant by correspondence dated 16 January 2012.
30 January 2012	OIC receives written confirmation from QPS that the CCTV footage for 9/10 December 2007 was forwarded to the applicant by correspondence dated 16 January 2012.
8 February 2012	The applicant leaves a message on OIC's answering machine: <ul style="list-style-type: none"> • requesting access to all correspondence between OIC and QPS regarding the handling of this external review • indicating that he has not received the CCTV footage for 9/10 December 2007 from QPS; and • raising concerns about the handling of the external review.
8 February 2012	OIC sought and received verbal confirmation from QPS that the CCTV footage for 9/10 December 2007 was posted to the applicant's Post Office box on 16 January 2012.
8 February 2012	OIC writes to the applicant: <ul style="list-style-type: none"> • advising that as an access application may not be made to the Information Commissioner, his request for all correspondence between OIC and QPS cannot be processed • advising that the CCTV footage for 9/10 December 2007 was posted to the applicant by QPS on 16 January 2012. The applicant was

	<p>requested to provide written confirmation that he had now received this CCTV footage; and</p> <ul style="list-style-type: none"> • providing a written update about the external review process.
10 February 2012	<p>The applicant leaves a message on OIC's answering machine advising he has:</p> <ul style="list-style-type: none"> • received documents and CCTV footage from QPS; and • not received CCTV footage for 3 May 2005 and this is the footage that he wants.
10 February 2012	<p>OIC conveys a written preliminary view to the applicant that QPS is entitled to refuse access to CCTV footage for 3 May 2005 at Beenleigh watch house on the basis that QPS have taken all reasonable steps to locate the CCTV footage for 3 May 2005 and there are reasonable grounds to be satisfied that it does not exist or cannot be found. The applicant is invited to provide a submission by 24 February 2012 if he does not accept the preliminary view.</p>
22 February 2012	<p>OIC receives the applicant's submission advising that he does not accept the preliminary view about the sufficiency of the searches conducted by QPS to locate CCTV footage for 3 May 2005. The applicant also requests an update about the processing of the remaining issues in this review and requests all correspondence between OIC and QPS concerning him.</p>
23 February 2012	<p>The applicant leaves a message on OIC's answering machine confirming that he sent his submission by fax and post on 21 February 2012. The applicant advises that he is concerned about the timeframe of this review.</p>
27 February 2012	<p>OIC writes to the applicant:</p> <ul style="list-style-type: none"> • responding to his concerns about timeframes • providing copies of submissions made by QPS regarding the further searches undertaken to locate CCTV footage responsive to the Access Application • confirming that as the applicant does not agree with the preliminary view about the sufficiency of searches conducted by QPS to locate CCTV footage for 3 May 2005, that his submissions will be considered in a formal decision • confirming that an access application may not be made to the Information Commissioner • providing copies of OIC guidelines on <i>Process and requirements and Informal resolution</i>; and • providing an update about the external review process.
16 March 2012	<p>QPS provides OIC with a schedule of documents responsive to the Access Application.</p>
26 March 2012	<p>OIC writes to the applicant in response to a message left on OIC's answering machine on 19 March 2012:</p> <ul style="list-style-type: none"> • about OIC's decision to cease telephone contact with the applicant • confirming that an access application may not be made to the Information Commissioner • about not being able to respond to an enquiry as OIC's file does not contain correspondence to the applicant dated 19 October 2011; and • providing the applicant with an update about the external review process.
11 May 2012	<p>OIC provides the applicant with a written update about the external review process.</p>
17 May 2012	<p>OIC conveys a written preliminary view to QPS about refusal of access. OIC invites QPS to provide a submission by 31 May 2012 if the</p>

	preliminary view is not accepted.
5 June 2012	OIC receives QPS's submission dated 31 May 2012. QPS submits that, in the alternative to exemptions relied upon in its decision, that some of the information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009 (CMC Exemption)</i> .
18 June 2012	The applicant contacts OIC asking if OIC has received correspondence from a Member of Parliament on his behalf.
18 June 2012	OIC writes to the applicant advising that no correspondence has been received from a Member of Parliament on his behalf and reminding him of the direction made that OIC will not engage in phone contact with him for the remainder of the review.
21 June 2012	OIC receives correspondence dated 19 June 2012 from Mr Jon Krause, MP, Member of Parliament attaching correspondence from the applicant dated 18 June 2012. In the applicant's correspondence he raises specific concerns about: <ul style="list-style-type: none"> • the timeframe of this review • the disappearance of CCTV footage for 3 May 2005 at Beenleigh watch house • the Access Application requested all recorded conversations (specifically all calls recorded by QPS to Inspector Hutchinson etc) and these have not been provided; and • OIC refusing to provide him with any documentation about him and the OIC process.
21 June 2012	OIC writes to Mr Krause, MP confirming receipt of his correspondence.
21 June 2012	OIC writes to the applicant confirming receipt of correspondence from Mr Krause, MP and advising that the concerns raised in his correspondence to OIC dated 18 June 2012 will be addressed in correspondence to be posted to him on or before 29 June 2012.
22 June 2012	OIC requests QPS to provide: <ul style="list-style-type: none"> • further information in support of the CMC exemption claimed • a submission about searches undertaken to locate tape recordings of conversations responsive to the Access Application; and • an edited copy, removing information claimed to be exempt, of its submission dated 31 May 2012 which can be provided to the applicant.
26 June 2012	QPS confirms that the applicant's complaint of 11 May 2009 was not subject to the jurisdiction of the CMC and advises that enquiries are being made about relevant tape recordings.
27 June 2012	OIC writes to QPS confirming the request for further information in relation to the CMC exemption claim and requesting a submission about sufficiency of search about the tape recordings and CCTV footage for 3 May 2005. In addition, QPS is requested to provide the applicant with the additional information agreed to be release.
28 June 2012	QPS provides further information in support of the CMC exemption claim.
29 June 2012	OIC writes to the applicant: <ul style="list-style-type: none"> • providing an overview of the steps taken to date in relation to this external review • responding to concerns raised in the applicant's correspondence to OIC dated 18 June 2012; and • providing a written preliminary view on some of the remaining issues in this external review. <p>OIC invites the applicant to provide a submission by 13 July 2012 if the preliminary view is not accepted.</p>

6 July 2012	<p>QPS advises OIC that:</p> <ul style="list-style-type: none"> the additional information has been forwarded to the applicant by correspondence dated 3 July 2012 the applicant has submitted a further access application to QPS requesting "All QPS recordings, CCTV footage and correspondence between the QPS and Jason Adrian CAMERON" which is currently being processed; and QPS had located tape recordings of conversations as requested by the applicant.
9 July 2012	OIC receives correspondence dated 5 July 2012 from Mr Jon Krause, MP, Member of Parliament attaching correspondence from the applicant dated 3 July 2012. In the applicant's correspondence, he advises that he does not accept the preliminary view.
10 July 2012	OIC writes to Mr Krause, MP confirming receipt of his correspondence.
11 July 2012	OIC verbally confirms with QPS that the sufficiency of search issues in relation to tape recordings and CCTV footage for 3 May 2005 will need to be addressed in this external review despite the applicant's subsequent access application for this information. QPS agreed to provide a submission as requested
17 July 2012	OIC writes to QPS seeking a response by 20 July 2012 to the requests contained in correspondence dated 27 June 2012 in relation to sufficiency of search.
20 July 2012	QPS provides a submission in relation to sufficiency of search about the CCTV footage for 3 May 2005.
24 July 2012	QPS provide a further submission in relation to sufficiency of search about the CCTV footage for 3 May 2005.
24 July 2012	<p>OIC conveys a verbal preliminary view to QPS that information comprising the last sentence of document 439 does not comprise deliberative process information and that disclosure would not, on balance, be contrary to public interest. QPS is invited to provide a submission if the view is not accepted.</p> <p>OIC also request that, in relation to the issue of tape recordings, QPS provide a submission:</p> <ul style="list-style-type: none"> detailing the searches undertaken for tape recordings responsive to the Access Application and any tape recordings located and/or why tape recordings cannot be located; and in relation to located tape recording/s, advising whether QPS propose to release the tape recording/s to the applicant or setting out reasons why QPS consider that access should not be given.
30 July 2012	<p>OIC receives a further submission from QPS dated 25 July 2012. QPS:</p> <ul style="list-style-type: none"> accept the preliminary view that the last sentence of document 439 does not comprise deliberative process information and that disclosure would not, on balance, be contrary to public interest provide details of tape recordings located and indicate whether QPS is prepared to release the information to the applicant; and provide further details about the searches undertaken for the CCTV footage for 3 May 2005.
1 August 2012	OIC requests QPS to release to the applicant the last sentence of document 439 and the tape recordings QPS indicted could be released.

APPENDIX B

Schedule 3, section 10 of the *Right to Information Act 2009 (Qld)* relevantly provides:

10 Law enforcement or public safety information

...

(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.*

...

(6) *However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—*

- (a) it consists of information about the applicant; and*
- (b) the investigation has been finalised.*

...

(9) *In this section—*

...

misconduct functions *see the Crime and Misconduct Act 2001, section 33.*

prescribed crime body *means—*

- (a) the Crime and Misconduct Commission; or*
- (b) the former Criminal Justice Commission; or*
- (c) the former Queensland Crime Commission.*

prescribed functions *means—*

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

...