



Decision and Reasons for Decision

Citation:	<i>Darlington and Queensland Police Service</i> [2014] QICmr 14 (11 April 2014)
Application Number:	311669
Applicants:	G and J Darlington
Respondent:	Queensland Police Service
Decision Date:	11 April 2014
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY - REFUSAL OF ACCESS - EXEMPT INFORMATION - documents relating to investigation of complaints about police officers - whether documents 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 - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld) - whether the exception in schedule 3, section 10(6) of the <i>Right to Information Act 2009</i> (Qld) applies - whether access to documents may 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

Summary

1. The applicants¹ applied to Queensland Police Service (**QPS**), under the *Information Privacy Act 2009* (Qld) (**IP Act**), for access to information relating to investigation of complaints they made to QPS about the conduct of QPS officers.
2. QPS granted the applicants access to some information but decided to refuse access to the remaining information on the basis that it was exempt information.²
3. The applicants applied to QPS for internal review of the refusal of access decision. On internal review, QPS varied its original decision and released some further information

¹ The applicants lodged a single application for documents containing the personal information of both individuals. The definition of 'applicant' in schedule 5 of the *Information Privacy Act 2009* (Qld) (**IP Act**) provides that if the application is made for a person, the applicant is the person. In this case, one application was accepted and processed for the two applicants by QPS and accordingly, one external review application was accepted and processed by the Office of the Information Commissioner (**OIC**).

² Relying on sections 47(3)(a) and 48, and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides: 'An agency may refuse access to a document of the agency ... in the same way and to the same extent the agency ... could refuse access to the document under the *Right to Information Act*, section 47 ...'

to the applicants. QPS affirmed the original decision to refuse access to the remaining information on the same grounds.

4. The applicants applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision. The applicants submit that they are entitled to the information as they were the complainants and the investigations concerned their personal information.
5. I affirm QPS's decision to refuse access to information under section 67(1) of the IP Act and section 47(3)(a) of the *Right to Information Act 2009 (Qld)* (**RTI Act**), on the basis that it comprises exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.

Background

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

Reviewable decision

7. The decision under review is QPS's internal review decision dated 28 June 2013 refusing access to the Information in Issue.

Evidence considered

8. The evidence, submissions, legislation and other material considered in reaching this decision is disclosed in these reasons (including footnotes and appendix).

Information in issue

9. The applicants were refused access to 177 pages and four audio files (**Information in Issue**). I am limited in the extent to which I can discuss the Information in Issue in these reasons for decision.³ Generally speaking, the Information in Issue comprises documents relating to the investigation of the applicants' complaints, including correspondence, statements and reports.

Issue for determination

10. The issues for determination in this review are:
 - whether the Information in Issue constitutes exempt information under schedule 3, section 10(4) of the RTI Act; and
 - whether the exception to the above exemption, set out in schedule 3, section 10(6) of the RTI Act, applies to the Information in Issue.
11. During the external review, the applicants raised concerns about the existence of QPS notebook entries detailing interviews they had with QPS officers. At the request of OIC, QPS contacted the relevant officers who located the relevant notebook entries and agreed to release them to the applicant. The notebook entries were provided to the applicants, subject to the removal of other entries concerning unrelated QPS matters.⁴ Accordingly, there is no outstanding issue for determination in this review in relation to the notebook entries.

³ Section 121(3) of the IP Act provides that the Information Commissioner must not, in a decision or reasons for decision, on an external review, include information that is claimed to be exempt information.

⁴ Under section 88 of the IP Act, information that is irrelevant to the terms of an application may be removed prior to disclosure.

Relevant law

12. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information unless giving access would, on balance, be contrary to the public interest.⁵ The right of access is, however, subject to a number of exclusions and limitations, including grounds for refusal of access set out in section 47 of the RTI Act. An agency may refuse access to information which comprises exempt information.⁶
13. Schedule 3, section 10 of the RTI Act operates to exempt certain law enforcement and public safety information from disclosure. In this review, the following parts of that section are relevant:

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*

...

14. The Crime and Misconduct Commission's (**CMC**) misconduct function includes ensuring that a complaint about misconduct⁷ is dealt with in an appropriate way.⁸ 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.⁹

Findings

15. The applicants lodged complaints with QPS in relation to the conduct of various QPS officers. These complaints were assessed by QPS as involving allegations of potential

⁵ Sections 40 and 64 of the IP Act.

⁶ Sections 47(3)(a), 48 and schedule 3 of the RTI Act.

⁷ The term 'misconduct' includes 'official misconduct or police misconduct' – see the Dictionary in schedule 2 of the *Crime and Misconduct Act 2001* (Qld) (**CM Act**) and section 15 of the CM Act.

⁸ Section 46(2)(b) of the CM Act.

⁹ Section 35 of CM Act.

misconduct and were subsequently investigated by the QPS Ethical Standards Command (**ESC**), subject to the CMC's monitoring role.

16. I have carefully considered the Information in Issue and I am satisfied that:
 - the Information in Issue was obtained, used or prepared¹⁰ for the ESC's investigation of the applicants' complaints; and
 - in conducting the investigation, the ESC was performing the CMC's misconduct function.
17. I therefore find that the Information in Issue is exempt under schedule 3, section 10(4) of the RTI Act.
18. Information will not be exempt if it is about the applicant and the investigation has been finalised.¹¹
19. The applicants have been advised by QPS that the ESC investigation has been finalised.¹² Accordingly, I find that requirement (b) of the exception is satisfied. To satisfy requirement (a), the Information in Issue must be *about* the applicant.
20. In *G8KPL2 and Department of Health*,¹³ the Right to Information Commissioner considered the meaning of '*about*' in schedule 3, section 10(6) of the RTI Act and found that an investigation report, while created as a result of the applicant's complaint, was not *about* the applicant but was *about* the persons who were the subject of the allegations and related investigation.¹⁴ On this basis, the Right to Information Commissioner concluded that the exception in schedule 3, section 10(6) of the RTI Act did not apply.
21. As set out in paragraph 9 above, the Information in Issue relates to the ESC investigation of the applicants' complaints about the conduct of QPS officers. I acknowledge that the applicants were aggrieved by actions of QPS officers and therefore, initiated the complaints process. However, the applicants were not the subject of the investigation; the ESC investigated the conduct of various QPS officers. Therefore, and in accordance with the reasoning in *G8KPL2*, I find that the Information in Issue is not *about* the applicants.
22. On the basis of the above, I find that the exception in schedule 3, section 10(6) of the RTI Act does not apply to the Information in Issue.
23. The applicants have made submissions about their entitlement to access information relating to complaints they made.¹⁵ However, where information is found to be exempt, there is no scope under the RTI Act to consider public interest factors in favour of disclosure.

¹⁰ These terms are not defined in the RTI Act and therefore, are given their ordinary meaning. See *Springborg and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney General (Fifth Party)* (2006) 7 QAR 77 at [27]-[28] which considered the equivalent exemption under the repealed *Freedom of Information Act 1992* (Qld). See also *McKay and Department of Justice and Attorney General* (Unreported, Queensland Information Commissioner, 25 May 2010), at [63]-[64].

¹¹ Schedule 3 section 10(6) of the RTI Act. See paragraph 13 above.

¹² Letter from QPS to the applicants dated 4 February 2013 which also advised that all disciplinary matters had been dealt with. The internal review decision also confirms the investigation has been finalised.

¹³ *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**).

¹⁴ *G8KPL2* at [28]-[33]. In considering the appeal of *G8KPL2*, the Queensland Civil and Administrative Tribunal did not disagree with the Information Commissioner's interpretation of *about* in schedule 3, section 10(6) of the RTI Act. See *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. This interpretation of '*about*' was subsequently applied in *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012), at [31]-[32].

¹⁵ Submissions provided by the applicants to OIC dated 12 August 2013, 8 November 2013 and 17 March 2014.

Conclusion

24. Based on the information available to OIC in this review, I am satisfied that:
- the Information in Issue was obtained, used or prepared for an investigation by the ESC in the performance of the CMC's misconduct function
 - the Information in Issue comprises exempt information under schedule 3, section 10(4) of the RTI Act; and
 - the exception in schedule 3, section 10(6) of the RTI Act does not apply to the Information in Issue.

DECISION

25. I affirm QPS's decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

K Shepherd
Assistant Information Commissioner

Date: 11 April 2014

APPENDIX**Significant procedural steps**

Date	Event
4 April 2013	QPS received the access application.
22 May 2013	QPS decided to release 108 full pages and refuse access to 183 pages and four audio files on the basis that the information was exempt under schedule 3, section 10(4) of the RTI Act.
3 June 2013	The applicants applied to QPS for internal review.
28 June 2013	QPS made its internal review decision to grant access to an additional six pages and refuse access to 177 pages and four audio files on the basis that information was exempt under schedule 3, section 10(4) of the RTI Act.
18 July 2013	The applicants applied to OIC for external review.
6 August 2013	OIC informed QPS and the applicants that the application for external review had been accepted. OIC conveyed to the applicants the preliminary view that QPS was entitled to refuse access to the information on the basis that it was exempt under schedule 3, section 10(4) of the RTI Act.
16 August 2013	OIC received submissions from the applicants in response to the preliminary view.
26 September 2013	OIC received documents from the applicants in support of their submissions.
4 and 29 October 2013	OIC received a copy of the Information in Issue from QPS.
30 October 2013	OIC advised the applicants that it had examined the Information in Issue and confirmed the preliminary view that the Information in Issue was exempt from disclosure under schedule 3, section 10(4) of the RTI Act.
12 November 2013	OIC received further submissions from the applicants. The applicants queried the existence of police notebook entries relevant to their application.
20 November 2013	OIC made inquiries with QPS about police notebook entries.
21 November and 20 December 2013	OIC provided the applicants with an update on the status of the external review.
29 January 2014	QPS notified OIC that it had located relevant police notebook entries, as requested by the applicants.
21 February 2014	OIC provided the applicants with an update on the status of the external review.
29 January and 5 March 2014	QPS provided OIC with a copy of the relevant police notebook entries.
6 March 2014	OIC asked QPS to release the relevant police notebook entries to the applicants.
13 March 2014	OIC confirmed the preliminary view to the applicants and advised that QPS had located and agreed to release relevant police notebook entries to the applicants.
17 March 2014	OIC received further submissions from the applicants.
18 March 2014	OIC responded to the applicants' concerns about the external review process.
19 and 26 March	The applicants made further submissions about the police notebook entries.