



Decision and Reasons for Decision

Citation:	<i>Verska and Queensland Police Service</i> [2018] QICmr 14 (26 March 2018)
Application Number:	313423
Applicant:	Verska
Respondent:	Queensland Police Service
Decision Date:	26 March 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - complaint information about the applicant - personal information and privacy - accountability - administration of justice - procedural fairness - whether disclosure would on balance be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents relating to complaints made against her between 2010 and 14 June 2017.¹
2. QPS decided to neither confirm nor deny the existence of the requested documents.²
3. I vary QPS's decision and find that access to the information in issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

4. Significant procedural steps taken by this Office (**OIC**) in conducting the external review are set out in the Appendix.
5. Complaints were made to QPS about the applicant and the applicant is greatly concerned that the complaints are '*fraudulent*'. She seeks to know of what she has been '*accused*'. I acknowledge the applicant's distress and have taken the applicant's concerns about the veracity of the complaints into account for the purpose of determining public interest factors that may favour disclosure of the information in issue as explained later in these reasons. However, OIC has no jurisdiction under the IP Act or *Right to*

¹ Being the date QPS received the access application.

² Pursuant to section 69 of the IP Act.

Information Act 2009 (Qld) (**RTI Act**) to investigate whether or not the complaints are in fact truthful.³ OIC's jurisdiction in this matter is limited to considering whether the applicant can access relevant information held by QPS.

Reviewable decision

6. The decision under review is QPS's decision dated 17 July 2017.

Evidence considered

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

Information in issue

8. The information in issue comprises the 19 pages of information located by QPS in response to the access application.

Issue for determination

9. On external review, QPS accepted⁴ OIC's view that it is not entitled to neither confirm nor deny the existence of the documents requested by the applicant.
10. Therefore, the issue to be determined in this review is whether disclosure of the information in issue would, on balance, be contrary to the public interest.⁵

Relevant law

11. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this is subject to limitations, including grounds for refusal of access.⁶ Access may be refused to documents where disclosure would, on balance, be contrary to the public interest.⁷
12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and also explains the steps that a decision-maker must take in deciding the public interest⁸ as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

³ This was explained to the applicant in OIC's letter dated 2 February 2018.

⁴ On 20 October 2017.

⁵ Under sections 49 and 47(3)(b) of the RTI Act.

⁶ Section 47 of the RTI Act sets out the grounds on which access may be refused to documents. Section 67(1) of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

⁷ Sections 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁸ Section 49(3) of the RTI Act.

Findings

Irrelevant factors

13. I do not consider that any irrelevant factors arise in the circumstances of this case and I have taken none into account.

Factors favouring disclosure

14. The applicant contends that several factors favour release of the information in issue to her⁹ namely, that it is the applicant's personal information¹⁰ and its disclosure could reasonably be expected to:
- enhance the Government's accountability¹¹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community¹²
 - allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official¹³
 - reveal the reason for a government decision and any background or contextual information that informed the decision¹⁴
 - reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant¹⁵
 - contribute to the maintenance of peace and order¹⁶
 - contribute to the administration of justice generally, including procedural fairness;¹⁷ and
 - contribute to the administration of justice for a person.¹⁸

I will deal with each in turn.

Applicant's personal information

15. There is a public interest in individuals being able to obtain access to their own personal information¹⁹ held by government. I have reviewed the information in issue and some, but not all of it identifies the applicant and I am therefore satisfied it is the applicant's personal information.
16. Accordingly, a factor favouring disclosure²⁰ arises regarding that information comprising the applicant's personal information and I afford significant weight to this factor.

⁹ Submissions dated 13 February 2018.

¹⁰ Schedule 4, part 2, item 7 of the RTI Act.

¹¹ Schedule 4, part 2, item 1 of the RTI Act.

¹² Schedule 4, part 2, item 3 of the RTI Act.

¹³ Schedule 4, part 2, item 5 of the RTI Act.

¹⁴ Schedule 4, part 2, item 11 of the RTI Act.

¹⁵ Schedule 4, part 2, item 12 of the RTI Act.

¹⁶ Schedule 4, part 2, item 15 of the RTI Act.

¹⁷ Schedule 4, part 2, item 16 of the RTI Act.

¹⁸ Schedule 4, part 2, item 17 of the RTI Act.

¹⁹ Schedule 4, part 2, item 7 of the RTI Act. 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

²⁰ Schedule 4, part 2, item 7 of the RTI Act.

Accountability, transparency and informing the community

17. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- enhance the Government's accountability²¹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by Government in its dealings with members of the community;²² and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²³
18. Disclosing the information in issue would inform the applicant about complaints made against her to QPS and reveal how QPS dealt with them. I am therefore satisfied that the factors identified in paragraph 17 above apply. However, I consider that the weight attaching to these factors must be discounted because after considering the information it received, QPS took no action against the applicant. In the circumstances, I attach moderate weight to these factors.

Deficiencies in the conduct or administration of an agency or official

19. Public interest factors favouring disclosure also arise where disclosure of information could reasonably be expected to:
- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official;²⁴ and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.²⁵
20. The applicant submits that disclosure of the information in issue would substantiate her concerns that '*a police officer attendance on 26 November 2015*' was based on a fraudulent complaint. The applicant also submits that:
- QPS have failed to assist me in the harassment I have suffered at the hands of [a person] over the years.*²⁶
21. The IP Act does not permit me to reveal the content of the information in issue in these reasons. I am therefore unable to confirm whether the information in issue contains detail about the referenced police officer attendance on 26 November 2015, the '*fraudulent complaint*' which the applicant contends formed the basis of such attendance or the subject matter of the Magistrates Court orders she provided in support of her submissions. Further, as noted in paragraph 5 above, the Information Commissioner's jurisdiction on external review does not extend to making any findings about veracity of the complaints.
22. For these public interest factors to apply, I must be satisfied that there is a reasonably based expectation that disclosing the information in issue could reveal or substantiate that an agency or official has engaged in official misconduct or negligent, improper or

²¹ Schedule 4, part 2, item 1 of the RTI Act.

²² Schedule 4, part 2, item 3 of the RTI Act.

²³ Schedule 4, part 2, item 11 of the RTI Act.

²⁴ Schedule 4, part 2, item 5 of the RTI Act.

²⁵ Schedule 4, part 2, item 6 of the RTI Act.

²⁶ Submissions dated 13 February 2018. In support of this submission, the applicant provided OIC with copies of certain Magistrates Court orders, which she submitted were in her favour and illustrate a history of '*bad blood*' between herself and a named individual.

unlawful conduct. On careful consideration of the material before me, there is nothing which evidences that QPS has failed to assist the applicant in harassment that she considers she has suffered. Further, as mentioned in paragraph 18, on the material before me, no action was taken against the applicant in respect of information provided to QPS. In these circumstances, I am not satisfied that disclosing the information in issue could reasonably be expected to allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of QPS or its officers. Accordingly, I find that these factors do not apply in the circumstances of this review.

23. I note that other avenues are available to the applicant if she seeks to pursue concerns about the basis of the police officer attendance on a specific date²⁷ which do not require disclosure of the information in issue. This has been communicated to the applicant by OIC.²⁸

Disclosure would reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant.

24. A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.²⁹
25. The applicant asserts³⁰ that this factor applies as she considers complaints made against her are ‘*fraudulent*’. However, the applicant does not explain how disclosure of the information in issue could reasonably be expected to reveal that the information in issue itself is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
26. The information in issue primarily comprises complaint information received by QPS. Such information is, by its very nature, the opinions and versions of events expressed by relevant individual/s, which are shaped by factors such as the individuals’ memories of relevant events and subjective impressions. This inherent subjectivity does not itself mean that the information in issue is necessarily incorrect or unfairly subjective.³¹
27. I have carefully reviewed the information in issue. There is nothing within it, nor in any other information before me, to suggest that the information provided to QPS other than by the applicant is not correct. In these circumstances, I do not consider that disclosure could reasonably be expected to reveal that the information in issue is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
28. On this basis, I do not consider that this factor applies in the circumstances of this review.

Contribute to peace and order

29. The RTI Act recognises that a public interest factor in favour of disclosure arises where disclosure of information could reasonably be expected to contribute to the maintenance of peace and order.³²

²⁷ Such as raising her concerns with relevant integrity bodies such as the Crime and Corruption Commission.

²⁸ See footnote 3.

²⁹ Schedule 4, part 2, item 12 of the RTI Act.

³⁰ Submissions dated 13 February 2018.

³¹ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) (*Marshall*) at [15]-[20].

³² Schedule 4, part 2, item 15 of the RTI Act.

30. The applicant submits³³ this factor applies, however, submissions do not address how or on what basis disclosure of the information in issue could reasonably be expected to contribute to the maintenance of peace and order.
31. Given the nature of the information in issue and that QPS took no action against the applicant in respect of information it received, I am not satisfied there is a reasonable expectation that disclosure could contribute to the maintenance of peace and order. Accordingly, I do not consider that this factor favouring disclosure applies.

Administration of justice for the applicant

32. A public interest factor favouring disclosure³⁴ will arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person—for example, by allowing a person to access information that may assist them in legal proceedings. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.³⁵
33. The applicant submits³⁶ this factor applies but has not identified what loss, damage or wrong the applicant contends she has suffered or what remedy she considers may be available to her. Nor I am able to deduce this from the information before me. QPS took no action against the applicant in respect of the complaints it received. In these circumstances, I am not satisfied that disclosure of the information in issue is required to enable the applicant to:
- evaluate whether a legal remedy against any particular individual or entity is available or worth pursuing; or
 - pursue legal action against any particular individual or entity.

34. For these reasons, I do not consider that this factor favouring disclosure applies.

Advance fair treatment and procedural fairness

35. The RTI Act also gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;³⁷ and
 - contribute to the administration of justice generally, including procedural fairness.³⁸

³³ Submissions dated 13 February 2018.

³⁴ Schedule 4, part 2, item 17 of the RTI Act.

³⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

³⁶ Submissions dated 13 February 2018.

³⁷ Schedule 4, part 2, item 10 of the RTI Act.

³⁸ Schedule 4, part 2, item 16 of the RTI Act.

36. The applicant submits³⁹ that disclosing the information in issue ‘*will enhance the accountability of the QPS in relation to their fair treatment of me and the orders and applications (copies enclosed) in my favour*’.⁴⁰
37. The public interest factor relating to advancing the fair treatment of individuals does not require a decision-maker to ensure that an applicant is provided with sufficient information to enable the applicant to be subjectively satisfied that he or she received fair treatment. Rather, it is about providing information to ensure fair treatment in an applicant’s future dealings with agencies.⁴¹
38. In circumstances where QPS took no action against the applicant in respect of the complaints that it received, I am not satisfied that disclosure of the information in issue would advance the applicant’s fair treatment in her dealings with QPS and other government agencies and bodies, whether those dealings relate to subject matter of the Magistrates Court orders she has referenced or other matters. I therefore consider that this factor does not apply in the circumstances of this review.
39. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person’s rights, interests or legitimate expectations. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.⁴² Accordingly, the person who is the subject of a decision must be provided with adequate information about material that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.⁴³
40. In this case, however, QPS made no adverse finding against the applicant which could be construed as requiring QPS to inform the applicant of its intended finding and provide relevant material to that finding. In these circumstances, I am not satisfied that disclosure of the information in issue would contribute to procedural fairness for the applicant or any other individual. For these reasons, I consider that this factor does not apply in the circumstances of this review.

Other factors

41. To the extent the applicant’s submissions allege that complaints about her were fraudulent, I do not consider that disclosure of the information in issue is required to enable the applicant to refer such an allegation to appropriate government agencies. I am therefore satisfied that the public interest factor relating to contributing to the enforcement of the criminal law⁴⁴ does not apply.
42. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the information in issue. Taking into consideration the nature of that information, I cannot see how its disclosure could, for example, ensure the effective oversight of expenditure of public funds,⁴⁵ contribute to the protection of the environment⁴⁶ or reveal environmental or health risks or measures relating to public health and safety.⁴⁷

³⁹ Submissions dated 13 February 2018.

⁴⁰ Being the documents referred to in footnote 32 above.

⁴¹ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [89]-[90].

⁴² *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

⁴³ *Kioa* at 629 per Brennan J.

⁴⁴ Schedule 4, part 2, item 18 of the RTI Act.

⁴⁵ Schedule 4, part 2, item 4 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 13 of the RTI Act.

⁴⁷ Schedule 4, part 2, item 14 of the RTI Act.

Factors favouring nondisclosure

Personal information and privacy of other individuals

43. Public interest factors favouring nondisclosure will arise under the RTI Act where disclosure of information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;⁴⁸ and
 - cause a public interest harm because it would disclose personal information of a person, whether living or dead.⁴⁹
44. Comprising as it does, complaint information provided to QPS by individual/s other than the applicant, the identity of other individuals is apparent or can reasonably be ascertained from the information in issue. On this basis, I am satisfied the information in issue is the personal information of these individuals. This personal information is sensitive in nature, being information provided to QPS by or about these individuals (including their names and contact details, their personal circumstances, their observations and recollections of events).
45. As noted in paragraph 15 above, some of the information in issue is also the personal information of the applicant. I am able to confirm that where the personal information of the applicant appears in the information in issue, it is intertwined with the personal information of other individuals. On careful consideration of it, I am satisfied that it is not possible to separate the applicant's personal information from the personal information of those other individuals. That is, disclosing the personal information of the applicant would necessarily also disclose the personal information of individuals other than the applicant.
46. Therefore, I am satisfied that disclosing the information in issue could reasonably be expected to prejudice the protection of the other individuals' right to privacy and cause a public interest harm.
47. It is relevant then to consider the extent of the prejudice and harm that could result from disclosing the personal information of these other individuals under the IP Act.
48. Given the sensitive and personal nature of the other individuals' personal information and the context in which it appears, I consider that its disclosure would be a significant intrusion into the privacy of these individuals. For this reason, I afford significant weight to the privacy factor favouring nondisclosure.⁵⁰
49. I also consider that the extent of the harm that could be anticipated from disclosing information which includes the names, contact details, personal circumstances, observations and opinions of (or about) these individuals under the IP Act would be significant. Accordingly, I afford the harm factor favouring nondisclosure⁵¹ significant weight.

⁴⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁹ Schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁰ Schedule 4, part 3, item 3 of the RTI Act.

⁵¹ Schedule 4, part 4, section 6(1) of the RTI Act.

Flow of information

50. If disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies, a public interest factor favouring nondisclosure arises.⁵²
51. The applicant submits:⁵³

I do not agree that disclosure of the information would prejudice the flow of information to law enforcement. I am of the view that the information provided to QPS is not relevant in that it is fraudulent in nature. I would argue that information provided to QPS which is fraudulent does not detrimentally effect their ability to effectively discharge their functions. I would further argue that disclosure of the information would not prejudice the ability of QPS to obtain confidential information.
52. As previously noted, the Information Commissioner's jurisdiction on external review does not extend to making any findings about the applicant's concerns that the complaints made against her were fraudulent. I also note that, in discharging its functions, QPS did not take any action against the applicant in respect of the complaints it received.
53. It is generally recognised that there is strong public interest in protecting the free flow of information to law enforcement agencies.⁵⁴ This is because agencies such as QPS often rely on information from the public to be alerted to and to pursue potential breaches of the law. Further, the efficient and effective use of public resources is facilitated by police being able to seek and obtain information from members of the community, whether they are complainants, witnesses, informers or the subjects of complaint.⁵⁵
54. I have carefully considered the applicant's submissions and the information in issue. I consider that routinely disclosing complaint information which QPS receives from the community would tend to discourage individuals from coming forward with relevant information. It is reasonable to expect that this would, in turn, detrimentally effect QPS's ability to effectively discharge its functions.⁵⁶ I afford significant weight to the factor favouring nondisclosure related to protecting the flow of information to QPS.⁵⁷
55. Given the applicant's submissions, I have also considered whether disclosing the information in issue could reasonably be expected to:
 - prejudice QPS's ability to obtain confidential information;⁵⁸ and
 - cause a public interest harm as it consists of information of a confidential nature that was communicated in confidence and its disclosure could reasonably be expected to prejudice the future supply of information of this type.⁵⁹
56. There is nothing on the face of the information before me which indicates that the information was provided to QPS by individual/s other than the applicant on the specific condition that it was confidential in nature. Accordingly, I do not consider that this public

⁵² Schedule 4, part 3, item 13 of the RTI Act.

⁵³ Submissions dated 13 February 2018.

⁵⁴ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016) and *Marshall*.

⁵⁵ See *Marshall* at [29].

⁵⁶ See *Marshall* at [29]. Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [16].

⁵⁷ Schedule 4, part 3, item 13 of the RTI Act.

⁵⁸ Schedule 4, part 3, item 16 of the RTI Act.

⁵⁹ Schedule 4, part 4, section 8(1) of the RTI Act.

interest factor in favour of nondisclosure⁶⁰ or the relevant harm factor⁶¹ apply in the circumstances of this review.

Balancing the public interest

57. For the reasons set out above, I am satisfied that the significant weight afforded to the nondisclosure factors relating to protection of personal information, privacy and the flow of information to QPS⁶² outweighs the relevant factors favouring disclosure⁶³ of the information in issue. Accordingly, I consider that disclosing the information in issue would, on balance, be contrary to the public interest and access to the information in issue may be refused.⁶⁴

DECISION

58. For the reasons set out above, I vary QPS's decision and find that access to the information in issue may be refused⁶⁵ on the ground that its disclosure would, on balance, be contrary to the public interest.
59. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

L Lynch
A/Right to Information Commissioner

Date: 26 March 2018

⁶⁰ Schedule 4, part 3, item 16 of the RTI Act.

⁶¹ Schedule 4, part 4, section 8(1) of the RTI Act.

⁶² Schedule 4, part 3, items 3 and 13 and schedule 4, part 4, section 6(1) of the RTI Act.

⁶³ Schedule 4, part 2, item 1, 3, 7 and 11 of the RTI Act.

⁶⁴ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁶⁵ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
24 July 2017	OIC received the external review application.
7 August 2017	OIC notified the applicant and QPS that it had accepted the external review application and asked QPS to provide information.
24 August 2017	OIC received the requested information from QPS.
20 October 2017	OIC conveyed a preliminary view to QPS that QPS was not entitled to neither confirm nor deny the existence of the requested documents, however, disclosure of those documents would, on balance, be contrary to the public interest. QPS accepted the preliminary view.
15 December 2017	OIC conveyed a preliminary view to the applicant that QPS was not entitled to neither confirm nor deny the existence of the requested documents, however, disclosure of those documents would, on balance, be contrary to the public interest. The applicant indicated she did not accept the preliminary view.
2 February 2018	OIC confirmed the preliminary view to the applicant and invited her to provide submissions if she did not accept the preliminary view.
6 February 2018	The applicant confirmed to OIC she did not accept the preliminary view.
14 February 2018	OIC received submissions from the applicant.