



## Decision and Reasons for Decision

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| Citation:           | <b>7CMR4B and Queensland Police Service [2019] QICmr 13 (15 April 2019)</b>   |
| Application Number: | <b>314370</b>   |
| Applicant:          | <b>7CMR4B</b>   |
| Respondent:         | <b>Queensland Police Service</b>  |
| Decision Date:      | <b>15 April 2019</b>  |
| Catchwords:         | <b>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – EXEMPT INFORMATION – INVESTIGATION BY PRESCRIBED CRIME BODY – police body-worn camera footage – information obtained, used or prepared for an investigation by a prescribed crime body or another agency in performing the prescribed functions of the prescribed crime body – section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</b> |

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to Queensland Police Service (**QPS**) on behalf of his child (a minor) for access under the *Information Privacy Act 2009* (Qld) (**IP Act**) to police body-worn camera footage showing an incident involving the child.
2. QPS refused to deal with the applicant's application under section 59 of the IP Act<sup>2</sup> on the basis that the information to which access was sought comprised exempt information under schedule 3, section 10(1)(e) of the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>3</sup>
3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.
4. For the following reasons, I decide to vary QPS's decision by finding that the body-worn camera footage in issue is exempt information under schedule 3, section 10(4) of the RTI Act, and access under the IP Act may be refused on that basis.

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<sup>1</sup> Application dated 21 November 2018.

<sup>2</sup> Decision dated 27 December 2018.

<sup>3</sup> 'Exempt information' is defined in schedule 5 to the IP Act as information which is exempt information under the RTI Act.

<sup>4</sup> Application dated 28 December 2018.

## Background

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

## Reviewable decision

6. The decision under review is QPS's decision dated 27 December 2018.

## Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Information in issue

8. The information in issue (**Information in Issue**) comprises police body-worn camera footage taken on 1 November 2018 showing an incident involving the applicant's child.

## Issue for determination

9. The issue for determination is whether access to the Information in Issue may be refused on the ground that it is exempt as information that 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.

## Relevant law

10. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent that the documents contain the individual's personal information.<sup>5</sup> The IP Act is to be administered with a pro-disclosure bias.<sup>6</sup> However, this right of access is subject to certain limitations, including grounds on which an agency may refuse access to documents.<sup>7</sup> One ground for refusing access is where information comprises exempt information.<sup>8</sup> Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed to be contrary to the public interest.
11. Under schedule 3, section 10(4) of the RTI Act, information will be exempt information if it is 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 (**Prescribed Crime Body Exemption**).
12. An exception to the Prescribed Crime Body Exemption applies where the information in issue consists of information that is about the applicant **and** the investigation has been finalised.<sup>9</sup>

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<sup>5</sup> Section 40 of the IP Act.

<sup>6</sup> Section 64 of the IP Act.

<sup>7</sup> Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency 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 the RTI Act.

<sup>8</sup> Section 47(3)(a) of the RTI Act.

<sup>9</sup> Schedule 3, section 10(6) of the RTI Act.

## Submissions

13. The QPS based its decision upon the application of schedule 3, section 10(1)(e) of the RTI Act. However, shortly after the commencement of the external review, QPS advised OIC<sup>10</sup> that a complaint had been made about possible police misconduct arising from the incident involving the applicant's child. QPS stated that, while the Commissioner of Police has primary responsibility for investigating or otherwise dealing with police misconduct complaints, the *Crime and Corruption Act 2001* (Qld) (**CC Act**) provides that dealing with or investigating such complaints is subject to the Crime and Corruption Commission's (**CCC**) monitoring role.<sup>11</sup> QPS advised that the Information in Issue had been provided to the CCC as part of that monitoring role. QPS therefore raised the application to the Information in Issue of schedule 3, section 10(4) of the RTI Act.
14. By letter dated 7 March 2019, I asked QPS whether the investigation into the complaint had been finalised. QPS confirmed on 18 March 2019 that the investigation was ongoing.
15. I then wrote to the applicant to explain that, on the basis of the information provided by QPS, I had formed the preliminary view that the Information in Issue was exempt information under schedule 3, section 10(4) of the RTI Act, and that the exception in schedule 3, section 10(6) did not apply because the investigation had not been finalised.<sup>12</sup> If the applicant did not accept my preliminary view, I invited him to provide a submission supporting his case for disclosure.
16. In response, the applicant did not address the issue for determination, but accused OIC of corruption and of working 'hand in hand' with QPS to 'deny justice to claimants'.<sup>13</sup>
17. I wrote to the applicant again on 21 March 2019 to provide him with an Information Sheet that explained the operation of the Prescribed Crime Body Exemption and to again invite him to provide a submission that addressed the issue for determination.
18. In his response dated 21 March 2019, the applicant did not address the requirements of schedule 3, section 10(4) but raised what might be regarded as public interest considerations and stated:

*... basically you want more reasons why we should have information .... What more information is there? Its [sic] all in the video ....*

*You also say, we cannot have it because police and the useless ccc are investigating it. That is rubbish. Why can we not have access to this because the police are investigating it? We're investigating it also.*

*You are protecting this corrupt system, and it looks to us, you are all part of this. Your excuses don't hold water, as to reasons provided for blocking access to our right to information, that directly involves our family ...*

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<sup>10</sup> Letter dated 4 February 2019.

<sup>11</sup> See sections 41, 42(2) and 47 of the CC Act.

<sup>12</sup> Letter dated 20 March 2019.

<sup>13</sup> Email dated 20 March 2019.

## Findings

19. The CCC is expressly recognised as a prescribed crime body under schedule 3, section 10(9) of the RTI Act. Furthermore, one of the CCC's prescribed functions is its corruption function. The CCC's corruption function includes conducting investigations, or monitoring investigations conducted by the Commissioner of Police, into allegations of police misconduct.<sup>14</sup>
20. QPS advised that, upon the complaint about alleged police misconduct being received, a copy of the Information in Issue was provided to the CCC as part of the CCC's prescribed function of monitoring the investigation by the Commissioner of Police.
21. On the information before me, I am therefore satisfied that the Information in Issue was 'obtained, used or prepared' for an investigation by the CCC, or by another agency (i.e., the QPS, subject to the CCC's monitoring role) in the performance of the CCC's prescribed function of conducting or monitoring an investigation into an allegation of police misconduct.
22. The Information in Issue therefore meets the requirements for exemption under schedule 3, section 10(4) of the RTI Act, subject to the application of the exception contained in schedule 3, section 10(6). QPS confirmed on 15 April 2019 that the relevant investigation has not been finalised. Accordingly, I am satisfied that schedule 3, section 10(6) has no application in the present circumstances.
23. I acknowledge the applicant's evident frustration and anger at being refused access to the Information in Issue and his concern about the incident involving his child. While an agency such as QPS *may* exercise its discretion to release information found to be exempt, it is not under any obligation to do so.<sup>15</sup> However, the Information Commissioner has no discretion to release information that satisfies the requirements for exemption. Relevantly, in *BL v Office of the Information Commissioner, Department of Communities*,<sup>16</sup> the Honourable Member Cullinane stated:

*It is to be noted that the discretions to allow access found in s 48(3) and s 49(6) of the (RTI) Act are not, where access has been refused, available to the Commissioner on external review: see s 105(2) of the (RTI) Act.*
24. The exemptions set out in schedule 3 to the RTI Act – including the Prescribed Crime Body Exemption – do not require or allow consideration of public interest issues. Parliament has determined that disclosure of these categories of information would be contrary to the public interest. Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a presumption exists that its disclosure would be contrary to the public interest, and no further consideration is permitted on external review. To the extent that the considerations that the applicant raised in his email of 21 March 2019 (set out above) can be regarded as public interest considerations, they cannot be taken into account.

<sup>14</sup> See sections 33, 35(1)(c) and 47 of the CC Act.

<sup>15</sup> Under section 48(3) of the RTI Act.

<sup>16</sup> [2012] QCATA 149 at [13].

## **DECISION**

25. I vary QPS's decision by finding that the Information in Issue is exempt information under schedule 3, section 10(4) of the RTI Act, and access may be refused on that basis.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**L Lynch**  
**Right to Information Commissioner**

**Date: 15 April 2019**

## APPENDIX

### Significant procedural steps

| Date             | Event   |
|------------------|---|
| 28 December 2018 | OIC received the external review application.   |
| 3 January 2019   | OIC notified QPS that it had received the external review application and requested relevant procedural documents.  |
| 4 January 2019   | OIC received the requested information from QPS.  |
| 15 January 2019  | OIC notified the applicant and QPS that the external review had been accepted and asked QPS to provide the information in issue.  |
| 31 January 2019  | QPS advised that it was preparing a submission and requested a short extension of time.   |
| 4 February 2019  | QPS provided a copy of the information in issue and a submission.   |
| 15 February 2019 | OIC requested that QPS provide another copy of the information in issue as the electronic transfer file was unable to be opened.  |
| 19 February 2019 | QPS provided another copy of the information in issue.  |
| 7 March 2019     | OIC requested that QPS advise whether or not the investigation into the complaint of police misconduct had been finalised.  |
| 18 March 2019    | QPS advised that the investigation had not been finalised.  |
| 20 March 2019    | OIC conveyed a preliminary view to the applicant that the information in issue was exempt information.<br>The applicant provided a response.  |
| 21 March 2019    | OIC wrote to the applicant to reiterate the issue for determination and to provide a copy of an Information Sheet about the operation of the Prescribed Crime Body Exemption.<br>The applicant provided a response. |
| 10 April 2019    | OIC requested that QPS advise whether or not the investigation into the complaint of police misconduct had been finalised.  |
| 15 April 2019    | QPS advised that the investigation had not been finalised.  |