



Decision and Reasons for Decision

Citation:	<i>R65 and Queensland Police Service [2024] QICmr 2 (24 January 2024)</i>
Application Number:	317605
Applicant:	R65
Respondent:	Queensland Police Service
Decision Date:	24 January 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - police occurrence reports - personal information and privacy - prejudice to flow of information - 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 Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to various police occurrence reports concerning him.¹
2. QPS located six responsive pages and decided to give the applicant full access to one page, and partial access to five pages.² QPS refused access to some information on the grounds that its disclosure under the IP Act would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of QPS's decision to refuse him access to some segments of information.³
4. For the reasons explained below, I decide to affirm QPS's decision.

Reviewable decision

5. The decision under review is QPS's decision dated 4 October 2023.

¹ Application dated 1 September 2023.

² Decision dated 4 October 2023.

³ Application dated 13 October 2023.

Evidence considered

6. Significant procedural steps relating to the external review are set out in the Appendix.
7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.⁴
8. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁵ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the *Right to Information Act 2009* (Qld) (**RTI Act**) and the IP Act.⁶ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁷ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'⁸

Information in issue

9. The information in issue comprises segments of information contained on four of the pages that were partially released to the applicant by QPS (**Information in Issue**).⁹

Issue for determination

10. The issue for determination is whether access to the Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.

Relevant law

11. Under the IP Act, a person has a right to be given access to documents of an agency.¹⁰ However, this right is subject to provisions of the IP Act and RTI Act including the grounds on which an agency may refuse access to documents.¹¹ One of the grounds upon which access may be refused is where disclosure would, on balance, be contrary to the public interest.¹²
12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹³
 - identify factors irrelevant to the public interest and disregard them

⁴ As contained in the external review application and in an email on 14 December 2023.

⁵ Section 21(2) of the HR Act.

⁶ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁷ *Freedom of Information Act 1982* (Vic) and *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁸ *XYZ* at [573].

⁹ As identified by the applicant in his external review application and confirmed in OIC's letter to the applicant dated 4 December 2023.

¹⁰ Section 40 of the IP Act.

¹¹ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

¹² Section 67(1) of the IP Act and 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, 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.

¹³ Section 49(3) of the RTI Act.

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

13. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these lists,¹⁴ together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias¹⁵ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.¹⁶

Discussion

Factors favouring disclosure

14. The applicant has submitted that he requires access to the Information in issue so that he can better understand the information that QPS holds about him and review its veracity. He considers that access will also assist him to understand some of the information he has accessed from other government agencies. He contends that information to which he has received access, as well as various actions that have been taken against him, indicate that QPS may hold false information about him. He seeks access to information including involved addresses of incidents, other named persons, modus operandi information, and narrative and general report information.¹⁷

15. These submissions by the applicant give rise to the following public interest factors favouring disclosure:

- a) disclosure could reasonably be expected to enhance QPS's accountability and transparency¹⁸
- b) the information is the applicant's personal information¹⁹
- c) disclosure could reasonably be expected to reveal the reasons for government decisions and any background or contextual information that informed those decisions²⁰
- d) disclosure could reasonably be expected to reveal that the information is incorrect;²¹ and
- e) disclosure could reasonably be expected to contribute to the administration of justice generally (including procedural fairness), or for a person.²²

16. The phrase '*could reasonably be expected to*', as contained in each of the factors, means that the relevant expectation must be reasonably based: that is, there must be real and substantial grounds for expecting the relevant occurrence, which can be supported by evidence or reasoning. There cannot be merely an assumption or allegation that the occurrence will take place, nor an expectation of an occurrence that

¹⁴ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below (in relation to each category of documents).

¹⁵ Section 64 of the IP Act.

¹⁶ Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

¹⁷ See the applicant's external review application and his email 14 December 2023.

¹⁸ Schedule 4, part 2, item 1 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: *Personal information is information or an opinion ...whether true 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 11 of the RTI Act.

²¹ Schedule 4, part 2, item 12(a) of the RTI Act.

²² Schedule 4, part 2, items 16 and 17 of the RTI Act.

is merely a possibility or that is speculative, conjectural, hypothetical or remote.²³ Importantly, the expectation must arise as a result of disclosure of the specific information in issue, rather than from other circumstances.²⁴

17. I afford moderate weight to factors a) and c). I acknowledge that disclosure of some Information in Issue could reasonably be expected to enhance the transparency of QPS to a certain extent, by better informing the applicant of the nature of the information that QPS holds and the decisions that QPS made regarding that information. However, the bulk of the Information in Issue was provided to QPS by third parties and I am not satisfied that its disclosure would significantly enhance QPS's accountability in terms of its dealings vis-a-vis the applicant.
18. In respect of factor b), I accept that some of the Information in Issue comprises the applicant's personal information. This gives rise to a public interest factor favouring disclosure to which I would afford significant weight. However, to the extent that information comprises the applicant's personal information, I consider it is inextricably intertwined with the personal information of other individuals. Disclosing the personal information of other individuals gives rise to strong public interest factors favouring nondisclosure, which I will discuss below.
19. I am not satisfied that factors d) and e) apply to the Information in Issue. The applicant believes that some information held by other government agencies, including a local council, may be incorrect. He considers that information held by QPS may shed light on this issue, as well as assisting him to understand a criminal history check that he obtained, and a search warrant that was executed against him.²⁵ However, I am unable to readily discern a connection between the Information in Issue and the matters of concern raised by the applicant. I am not satisfied that disclosure of the Information in Issue could reasonably be expected to reveal that it is incorrect, or to otherwise enlighten the applicant about the other matters of concern to him. In addition, I am not aware from the material before me that QPS has taken any adverse action against the applicant as a result of the Information in Issue. As such, I do not consider that the administration of justice generally, or the requirements of procedural fairness more specifically, require disclosure of the Information in Issue to the applicant.

Factors favouring nondisclosure

20. As noted, the Information in Issue contains the personal information of a number of individuals other than the applicant. This gives rise to the following nondisclosure/harm factors:
 - a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁶ and
 - b) disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.²⁷

²³ *Murphy and Treasury Department* (1995) 2 QAR 744 at [44] (**Murphy**), citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. See also *Attorney-General's Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180.

²⁴ *Murphy* at [54].

²⁵ The applicant provided a copy of a 'Nationally Coordinated Criminal History Check Certificate' from 2020, as well as a search warrant issued under the *Crimes Act 1914* (Cth) in 2014.

²⁶ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their personal sphere free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56).

²⁷ Schedule 4, part 4, section 6 of the RTI Act.

21. I afford both of these factors significant weight in the public interest balancing test in recognition of the context in which the Information in Issue was provided and recorded, as well as its sensitive nature. The Information in Issue includes information about the personal circumstances of other individuals, including their interactions and relationships with others. In affording these factors significant weight, I have taken into account the fact that there are no restrictions under the IP Act upon what a person may do with information that is released to them, including the possibility of further disclosure.²⁸
22. I also recognise the public interest in protecting the flow of information to QPS. This gives rise to the following nondisclosure factor:
- c) disclosure could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.²⁹
23. I afford significant weight to this nondisclosure factor. QPS relies on information provided to it by members of the community in order to discharge its important law enforcement and public safety functions.³⁰ Efficient and effective use of policing resources is facilitated by police receiving information from various members of the community, including complainants, bystanders and informers, even in circumstances where the information provided may ultimately not prove to be correct. Routine disclosure of such information under the IP Act could reasonably be expected to discourage individuals and entities from making complaints or raising issues of concern, thereby impeding the free flow of information to QPS and prejudicing QPS's ability to discharge its law enforcement functions effectively and efficiently.

Balancing the public interest

24. For the reasons discussed, I afford moderate weight to factors a) and c) that favour disclosure of the Information in Issue. I afford significant weight to the public interest in the applicant obtaining access to his own personal information (factor b)), however, as I have noted, the applicant's personal information is inextricably intertwined with sensitive personal information of other individuals. I am not satisfied that factors d) and e) apply to the Information in Issue to favour disclosure.
25. I give significant weight to the three public interest factors favouring nondisclosure, including the significant harm that I consider disclosure could reasonably be expected to cause to the protection of the relevant individuals' right to privacy.
26. After balancing the various factors that weigh both for and against disclosure of the Information in Issue, I find that, on balance, the factors favouring nondisclosure outweigh those favouring disclosure.

DECISION

27. I affirm the decision under review by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access under the IP Act may therefore be refused.

²⁸ As Judicial Member McGill SC of the Queensland Civil and Administrative Tribunal (QCAT) observed '*... the effect of the... [Information Privacy Act 2009 (Qld)] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

²⁹ Schedule 4, part 3, item 13 of the RTI Act.

³⁰ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [29].

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

R Moss
Principal Review Officer

Date: 24 January 2024

APPENDIX**Significant procedural steps**

Date	Event
13 October 2023	OIC received the application for external review OIC requested that QPS provide preliminary documents
19 October 2023	OIC received the preliminary documents
16 November 2023	OIC advised the parties that the application for external review had been accepted OIC requested that QPS provide a copy of the Information in Issue OIC received a copy of the Information in Issue
4 December 2023	OIC expressed a preliminary view to the applicant
14 December 2023	OIC received a submission from the applicant