



Decision and Reasons for Decision

Application Number: 311014

Applicant: Conde

Respondent: Queensland Police Service

Decision Date: 18 October 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for access to information about allegations of stalking concerning the applicant - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - section 47(3)(a) of the *Right to Information Act 2009 (Qld)* - section 48 of the *Right to Information Act 2009 (Qld)* - schedule 3, section 10(1)(d) of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) seeking access to information relating to allegations of stalking.
2. The applicant has been involved in numerous court matters involving the third party since 2008.²
3. QPS identified 12 pages responsive to the access application and decided³ to:
 - grant full access to 2 pages⁴
 - refuse access to certain information on 9 pages⁵ on the basis that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act; and
 - delete certain information from 1 page⁶ on the basis that the information was irrelevant to the access application under section 73 of the RTI Act.
4. The applicant sought internal review⁷ of QPS's decision.

¹ By application dated 10 January 2012, received by QPS on 12 January 2012.

² According to publicly available information, including the applicant's website.

³ By decision dated 15 February 2012.

⁴ Pages 8 and 9.

⁵ Pages 1-6 and 10-12.

⁶ Page 7.

⁷ On 7 March 2012, by correspondence dated 5 March 2012.

5. On internal review, QPS affirmed⁸ its original decision.
6. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review.⁹
7. In the circumstances, QPS is entitled to refuse access to the information which remains relevant in this review on the basis that it is exempt under sections 47(3)(a) and 48 of the RTI Act, because its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation under schedule 3, section 10(1)(d) of the RTI Act.

Background

8. Significant procedural steps relating to the external review are set out in the appendix to this decision.

Reviewable decision

9. QPS purported to make an internal review decision,¹⁰ affirming the original decision. However the purported internal review decision was made by a person less senior than the person who made the original decision. Therefore, under section 80(3) of the RTI Act, the purported internal review decision is not valid and QPS is taken to have made a decision affirming the original decision under section 83 of the RTI Act (**Reviewable Decision**).

Evidence considered

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

Information in Issue

11. During the course of the external review, the applicant:
 - accepted that 3 pages¹¹ fall outside the scope of the access application; and
 - confirmed he does not seek access to certain information on one relevant page.¹²
12. Accordingly, the information remaining in issue (**Information in Issue**) is located across 6 pages.¹³

Issues in this review

13. In its Reviewable Decision, QPS claimed that the Information in Issue should not be released on the grounds that disclosure would, on balance, be contrary to the public interest.
14. After careful consideration of the Information in Issue, the relevant law, QPS's Reviewable Decision and the applicant's submissions,¹⁴ I am satisfied that it is more

⁸ See paragraph 9.

⁹ On 12 April 2012 by correspondence dated 10 April 2012.

¹⁰ Dated 22 March 2011

¹¹ Pages 10-12.

¹² Information which QPS decided was irrelevant under section 73 of the RTI Act on page 7.

¹³ Pages 1-6.

appropriate to consider the application of schedule 3, section 10(1)(d) of the RTI Act. My reasoning is set out below.

Relevant law

15. Under section 23 of the RTI Act a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.¹⁵
16. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.¹⁶ Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, information is exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.¹⁷

Could disclosure of the Information in Issue reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation?

17. Yes, for the reasons set out below.
18. For the Information in Issue to be exempt under schedule 3, section 10(1)(d) of the RTI Act, the expected harassment and/or intimidation must be serious in nature. The Information Commissioner has noted that some degree of harassment or intimidation is permissible before this exemption will apply.¹⁸
19. The RTI Act does not define '*a serious act of harassment or intimidation*' therefore the terms should be given their ordinary meanings. The Information Commissioner has previously accepted the following dictionary definitions:¹⁹
 - '*harass*' includes '*to trouble by repeated attacks, ... to disturb persistently; torment*'; and
 - '*intimidate*' includes '*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear.*'
20. Relevant dictionary definitions of '*serious*' include:
 - '*weighty or important*'²⁰
 - '*giving cause for apprehension; critical*'²¹
 - '*having (potentially) important, esp. undesired, consequences; giving cause for concern*'.²²

¹⁴ The applicant made submissions dated 30 July 2012 raising public interest factors, alleged corruption and the application of the '*Whistleblowers Protection Act 1994 Qld*'. There is nothing before me to suggest the applicant is protected by the '*Public Interest Disclosure Act 2010* (Qld) (this Act superseded the '*Whistleblowers Protection Act 1994* (Qld)). I have taken into account the applicant's submissions in so far as they are relevant to the issues under consideration in this external review.

¹⁵ As set out in section 47(3) of the RTI Act.

¹⁶ Section 47(3)(a) of the RTI Act.

¹⁷ Schedule 3, section 10(1)(d) of the RTI Act. This provision is subject to the exception contained in schedule 3, section 10(2). I am satisfied that none of the exceptions apply in this matter.

¹⁸ *Sheridan* at paragraph 187.

¹⁹ *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) applying *Sheridan and South Burnett Regional Council (and others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at paragraphs 194-197 referring to the *Macquarie Dictionary Online* (Fourth Edition). The decision in *Sheridan* concerned section 42(1)(ca) of the now repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as the provision considered in *Sheridan*. Therefore, the Information Commissioner's findings in that matter are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

²⁰ *Macquarie Dictionary Online* (Fifth Edition).

²¹ *Macquarie Dictionary Online* (Fifth Edition).

21. The applicant refers to the *Criminal Code Act 1899* (Qld) and submits that this exemption does not apply in the current circumstance because:

*QPS has investigated numerous and frequent complaints for 'Stalking, 'Harassment', 'Assaults', etc., made by [various parties], after the investigations Police always found such complaints totally unsubstantiated and unfounded, meaning that they are malicious, deliberate[ly] false, frivolous and vexatious.*²³

22. As set out above, the Information Commissioner has found that the ordinary meaning of the words '*serious act of harassment or intimidation*' should be adopted in applying the RTI Act.
23. Therefore the type of behaviour anticipated by schedule 3, section 10(1)(d) of the RTI Act need not involve behaviour that would be considered 'assault' or 'unlawful stalking' in the criminal sense. It is on this basis that I do not accept the applicant's submission on this point.

What is the basis of the expectation of harassment or intimidation in this case?

24. The applicant hosts a website in which he targets persons against whom he holds grievances, including an individual mentioned in the Information in Issue. On this site, the applicant:

- identifies individuals by name
- sets out information about an individual's family and employment history
- provides information about court matters involving the applicant and relevant individuals; and
- makes unsubstantiated criminal allegations against a relevant individual stating that '*Full details of [that person's] corruption, criminal mind, acts, behaviour and actions... will be given later.*'

25. I have also had regard to a record of court proceedings involving the applicant in which the applicant's claims against relevant individuals were stayed under the *Vexatious Proceedings Act 2005* (Qld).

26. Further details of the Information in Issue cannot be set out in these reasons because to do so would reveal information which is claimed to be exempt.²⁴ I am also constrained in the extent to which I can describe the balance of the information before me, as to do so may reveal the identity of relevant individuals.

27. On the basis of the matters set out above, I am satisfied that the past behaviour of the applicant constitutes harassment, as the applicant's actions consist of repeated attacks that trouble, torment and disturb a relevant individual. I am also satisfied that the applicant's past actions are acts of intimidation, as the information before me outlines specific incidents which demonstrate that his behaviour has:

- forced a relevant person into action by inducing fear; or
- deterred a relevant individual from action by inducing fear.

28. In my view, the applicant's website, in addition to demonstrating past acts of harassment, constitutes an **ongoing** act of harassment.

²² New Shorter Oxford Dictionary (4Pth Edition), as quoted by the Information Commissioner in *Sheridan*.

²³ At page 2 of the applicant's submission dated 30 July 2012.

²⁴ Section 108(3) of the RTI Act.

Is the expected harassment and/or intimidation serious in nature?

29. I am also satisfied on the information before me that the applicant's conduct constitutes **serious** acts of harassment and intimidation because his actions give cause for concern or apprehension and have resulted in distressing and undesired consequences for a relevant individual.

Is the expectation reasonably based and does it arise from disclosing the Information in Issue?

30. Yes, for the reasons that follow.
31. In *Sheridan* the Information Commissioner considered the phrase '*could reasonably be expected to*' and found that depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an expectation is reasonably based. These factors may include, but are not limited to:²⁵
- past conduct or a pattern of previous conduct
 - the nature of the relevant matter in issue
 - the nature of the relationship between the parties and/or relevant third parties; and
 - relevant contextual and/or cultural factors.
32. The applicant submits that he has been the subject of '*malicious, deliberate(ly) false, frivolous and vexatious*'²⁶ complaints. I note that the evidence about the applicant's conduct (which I rely upon in the reasons for this decision) includes information authored by QPS and the applicant.
33. There is nothing before me to suggest that the information I have relied upon is '*malicious, deliberate(ly) false, frivolous and vexatious*' as claimed by the applicant.
34. I consider that the past occurrences of serious acts of harassment and intimidation detailed in this decision provide a reasonable basis for the individual/s named in the Information in Issue to expect to be subjected to further serious acts of harassment or intimidation should the Information in Issue be disclosed.
35. In order for this exemption to apply, the expectation of harassment or intimidation must arise as a result of disclosure of the Information in Issue, rather than independently or from any other circumstance.²⁷
36. The information before me demonstrates a propensity for the kind of behaviour this exemption guards against and reveals the existence of previous and ongoing acts of serious harassment.
37. Given the nature and content of the Information in Issue, I am satisfied that it is reasonable to expect that disclosure of the Information in Issue could result in a person or persons being subjected to **further** acts of serious harassment or intimidation.
38. For the reasons set out above, I find that there is a reasonably based expectation that disclosing the Information in Issue to the applicant could result in a person being

²⁵ *Sheridan* at paragraph 193.

²⁶ At page 2 of the applicant's submission dated 30 July 2012.

²⁷ *Sheridan* at paragraph 307.

subjected to a serious act of harassment or intimidation²⁸ and that the Information in Issue is exempt on this basis.

DECISION

39. I vary QPS's decision by finding that QPS is entitled to refuse access to the Information in Issue under sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the RTI Act.
40. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Henry

Date: 18 October 2012

²⁸ Sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
12 January 2012	By access application to QPS dated 10 January 2012, the applicant sought access to information about numerous offences allegedly committed by the applicant and information about ' <i>alleged threatening, abusive and offensive phone calls and letters</i> ' allegedly made or sent by the applicant.
15 February 2012	<p>QPS advised the applicant that it had located 12 relevant pages and decided to:</p> <ul style="list-style-type: none"> • grant full access to 2 pages • refuse access in part to 9 pages on the basis that they comprised information that would, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act; and • delete certain information from 1 page on the basis that the information was irrelevant to the access application under section 73 of the RTI Act.
7 March 2012	By correspondence dated 5 March 2012, the applicant applied to QPS for internal review of its decision.
22 March 2012	QPS affirmed its original decision on internal review.
12 April 2012	By correspondence dated 10 April 2012, the applicant applied to OIC for external review of QPS's internal review decision.
20 April 2012	During telephone conversations between OIC and QPS officers, it was established that the internal review decision maker was a person who was less senior than the person who made the reviewable decision. Therefore, the internal review decision was invalid under section 80(3) of the RTI Act and OIC processed the external review application as if the internal review decision was a deemed decision.
15 June 2012	By correspondence to the applicant, OIC confirmed the scope of the external review and advised that 3 pages were outside the scope of the access application. OIC also informed the applicant that the information which QPS decided to delete on the basis that it was irrelevant to the access application, was information provided to QPS by the applicant and, unless the applicant advised otherwise, OIC would proceed on the basis that the applicant did not seek access to that information.
17 July 2012	By correspondence, OIC conveyed its preliminary view to the applicant that QPS was entitled to refuse access to the Information in Issue on the basis that it comprised exempt information, the disclosure of which could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
30 July 2012	By correspondence, the applicant provided a submission to OIC in which he advised that he did not accept OIC's preliminary view.