



## Decision and Reasons for Decision

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**Application Number:** 311491

**Applicant:** O'Connor

**Respondent:** Queensland Police Service

**Decision Date:** 25 June 2013

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – applicant seeks access to information held by QPS about himself, his child and his partner – whether disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case – sections 47(3)(a) and 48 and schedule 3, section 10(1)(a) of the *Right to Information Act 2009 (Qld)*

### REASONS FOR DECISION

#### Summary

1. The applicant sought<sup>1</sup> access from the Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) to information about himself, his child and his partner.
2. The QPS decided<sup>2</sup> to refuse access to information on the basis that its disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case. This decision was affirmed on internal review.<sup>3</sup>
3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for external review of the QPS's internal review decision.
4. The QPS's internal review decision is affirmed because disclosure of the information in issue could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law.

#### Background

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

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<sup>1</sup> By access application dated 21 February 2013.

<sup>2</sup> By decision dated 9 April 2013.

<sup>3</sup> By internal review decision dated 24 April 2013.

<sup>4</sup> By application dated 2 May 2013.

## Reviewable decision

6. The decision under review is the QPS's internal review decision dated 24 April 2013.

## Evidence considered

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

## Information in issue

8. The information under consideration in this external review comprises information contained within a QPrime report (**Report**) regarding an ongoing investigation into an incident (**the relevant matter**) that is the subject of the applicant's application.

## Relevant law

### *Right to access information*

9. 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. These grounds are contained in section 47 of the RTI Act.
10. The issue for determination in this external review is whether access to the Report should be refused on the basis that it is exempt information under sections 47(3)(a) and 48 and schedule 3 section 10(1)(a) of the RTI Act.
11. Schedule 3 section 10(1)(a) of the RTI Act states:

#### **10 Law enforcement or public safety information**

*(1) Information is exempt information if its disclosure could reasonably be expected to—*

*(a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case;*

## Findings

### **Does the Information in Issue comprise exempt information?**

12. Yes, for the reasons that follow.
13. An agency may refuse access to information where it comprises exempt information.<sup>5</sup>
14. Information is exempt from disclosure where its disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case.<sup>6</sup>
15. In its decision, the QPS stated:

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<sup>5</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>6</sup> Sections 47(3)(a) and 48 and schedule 3, section 10(1)(a) of the RTI Act.

*Where the QPS has not yet finalised an investigation into an incident that is the subject of your access application, it is not unreasonable to expect that prejudice could be caused to the investigation, and the fair trial of any present and future defendants, if the evidence detailed in the requested documents were to be released to the public prior to the investigation's [sic], and any subsequent police-initiated court proceedings, finalisation.*

*Police investigators must be able to explore theories, discuss the strengths and weaknesses of the investigation, gather and review evidence, and discuss the direction and progress of the investigation without the spectre that such information could be released prior to its finalisation.*

16. I have considered the Report and I am satisfied that it documents an investigation of a contravention or possible contravention of the law. The QPS has confirmed that the investigation about the relevant matter is still ongoing.<sup>7</sup>
17. In the circumstances of this particular case, including the nature of the investigation which I am unable to detail in these reasons,<sup>8</sup> I am satisfied that if the Report were to be released prior to the finalisation of the investigation process, the investigation of the relevant matter could reasonably be expected to be prejudiced.
18. Accordingly, the Report is exempt from disclosure under schedule 3, section 10(1)(a) of the RTI Act.

## **DECISION**

19. I affirm the QPS's internal review decision dated 24 April 2013 by finding that the Report is exempt from disclosure under sections 47(3)(a) and 48 and schedule 3, section 10(1)(a) of the RTI Act.
20. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the RTI Act.

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**Assistant Information Commissioner Corby**

**Date: 25 June 2013**

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<sup>7</sup> In a conversation with an OIC staff member on 24 June 2013.

<sup>8</sup> Section 108(3) of the RTI Act prohibits the Information Commissioner from including information that is claimed to be exempt in reasons for a decision on external review. This prevents me from describing the nature of the investigation in these reasons as it would be tantamount to disclosing the information claimed to be exempt.

## APPENDIX

### Significant procedural steps

Date	Event
21 February 2013	The QPS receives the applicant's application for access.
1 March 2013	The QPS writes to the applicant seeking further specific information to enable the QPS to identify the documents sought by the applicant. The applicant is advised that if no response is received, a decision may be made to refuse to further deal with the application.
19 March 2013	The QPS receives a certified copy of the applicant's driver's licence.
27 March 2013	The application becomes valid. The QPS writes to the applicant seeking identification and/or authority from the third parties mentioned in the application.
9 April 2013	The QPS identifies a matter relevant to the application and decides to refuse access to the information sought.
12 April 2013	The applicant seeks an internal review of the QPS's decision to refuse access.
24 April 2013	The QPS decides to affirm the initial decision.
9 May 2013	OIC receives the applicant's request for external review dated 2 May 2013.
20 May 2013	OIC informs the applicant and the QPS that the external review application has been accepted.
21 May 2013	OIC requests a copy of the relevant documents located by QPS.
22 May 2013	The QPS advises OIC that no documents had been located. Rather, a matter was identified as being relevant to the request and, as the investigation relating to the relevant matter was ongoing, a decision was made to refuse access. The QPS confirmed that at the time of the application the only relevant document in existence was the QPrime report ( <b>Report</b> ) which evolves as the investigation progresses.  OIC requests a copy of the Report.
24 May 2013	OIC receives correspondence from QPS dated 22 May 2013 attaching a copy of the Report. The QPS advises that a brief of evidence is still being prepared by the investigating officer about the relevant matter which will eventually be available to any defendant/s.
31 May 2013	OIC conveys a view to the applicant that the QPS is entitled to refuse access to the information sought as disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case.
12 June 2013	OIC receives the applicant's submission dated 5 June 2013 requesting OIC to review the refusal by the QPS.
24 June 2013	The QPS confirms that the investigation of the relevant matter has not yet been finalised.