



Decision and Reasons for Decision

Citation:	<i>Dickinson and Queensland Police Service</i> [2014] QICmr 30 (20 June 2014)
Application Number:	311970
Applicant:	Dickinson
Respondent:	Queensland Police Service
Decision Date:	20 June 2014
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - report of investigation into complaints made by applicant about police officers - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld) - whether information is about the applicant to invoke the exception in schedule 3, section 10(6) of the <i>Right to Information Act 2009</i> (Qld) - whether access to information may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and section 47(3)(a) 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 the final report of QPS's investigation into complaints she made about the conduct of certain QPS officers.
2. QPS decided to refuse access to all information it located in response to the access application on the basis that it was exempt information.¹
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision. On external review, the applicant submitted that she should be entitled to access the information as she made the original complaint.
4. I affirm QPS's decision to refuse access to information under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act, on the basis that the information comprises exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.

¹ Relying on sections 47(3)(a) and 48, and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides: 'An agency may refuse access to a document of the agency ... in the same way and to the same extent the agency ... could refuse access to the document under the *Right to Information Act*, section 47 ...'

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 6 March 2014, referred to at paragraph 2 above, refusing access to information.

Evidence considered

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

Information in issue

8. The applicant was refused access to 56 pages (**Investigation Report**). I am limited in the extent to which I can describe the Investigation Report in these reasons for decision.² The Investigation Report generally comprises a summary of the steps taken in the investigation and a discussion of the relevant evidence, findings and recommendations.

Issues for determination

9. In this review, OIC must decide:
 - whether the Investigation Report falls within the exemption in schedule 3, section 10(4) of the RTI Act; and if so,
 - whether the exception to the above exemption, in schedule 3, section 10(6) of the RTI Act, applies.

Relevant law

10. The IP Act affords a person a right to be given access to documents of an agency to the extent they contain the individual's personal information,³ unless giving access would, on balance, be contrary to the public interest.⁴ This right of access is subject to some limitations, including grounds for refusal of access set out in section 47 of the RTI Act. Relevantly, access to exempt information may be refused.⁵
11. Schedule 3, section 10 of the RTI Act operates to exempt certain law enforcement and public safety information from disclosure. In this review, the following parts of that section are relevant:

10 Law enforcement or public safety information

...

- (4) *Also, information is exempt information if it consists of information 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.*

² Section 121(3) of the IP Act provides that the Information Commissioner must not, in a decision or reasons for decision, on an external review, include information that is claimed to be exempt information.

³ Section 40 of the IP Act.

⁴ Section 64(1) of the IP Act.

⁵ Under sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest: see section 48(2) of the RTI Act. Therefore, where information is found to be exempt, the RTI Act does not provide for further consideration of public interest factors favouring disclosure.

...
(6) However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—

- (a) it consists of information about the applicant; and
- (b) the investigation has been finalised.

...
(9) In this section—

...
misconduct functions see the *Crime and Misconduct Act 2001*, section 33.

prescribed crime body means—

- (a) the *Crime and Misconduct Commission*; or
- (b) the former *Criminal Justice Commission*; or
- (c) the former *Queensland Crime Commission*.

prescribed functions means—

- (a) in relation to the *Crime and Misconduct Commission*—the crime function, the intelligence functions and the misconduct functions...⁷

12. The terms ‘obtained’, ‘used’ and ‘prepared’ are not defined in the RTI Act and therefore are given their ordinary meaning.⁶
13. The Crime and Misconduct Commission’s (**CMC**) misconduct function includes ensuring that a complaint about misconduct⁷ is dealt with in an appropriate way.⁸ The CMC can perform its misconduct function in several ways, including by doing one or more of the following:⁹
 - assessing information about misconduct
 - referring complaints to a public official to be dealt with by the public official; and/or
 - performing its monitoring role for police misconduct or official misconduct.
14. If it is suspected that a complaint involves or may involve police misconduct or official misconduct under the CM Act, the CMC must be notified.¹⁰ QPS must deal with a complaint about police misconduct or official misconduct (if the CMC refers the complaint back to it), in the way it considers most appropriate, subject to the CMC’s monitoring role.¹¹
15. The effect of the above provisions is that an agency, such as QPS, has the authority to conduct an investigation into allegations of misconduct, subject to the CMC’s monitoring role. In such circumstances, the exemption in schedule 3, section 10(4) will apply to any information obtained, used or prepared by the investigating agency for the purpose of their investigation.
16. There is an exception to the above exemption, where the investigation has been finalised and the information in issue is about the applicant.¹²
17. The meaning of the word ‘about’, as it appears in schedule 3, section 10(6) of the RTI Act, has been considered by the Information Commissioner in several previous

⁶ See *Springborg and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney General (Fifth Party)* (2006) 7 QAR 77 at [27]-[28] which considered the equivalent exemption under the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). See also *McKay and Department of Justice and Attorney General* (Unreported, Queensland Information Commissioner, 25 May 2010), at [63]-[64].

⁷ The term ‘misconduct’ includes ‘official misconduct or police misconduct’ – see the Dictionary in schedule 2 of the *Crime and Misconduct Act 2001* (Qld) (**CM Act**) and section 15 of the CM Act.

⁸ Section 46(1)(b) of the CM Act.

⁹ Section 35 of CM Act.

¹⁰ Sections 37 and 38 of the CM Act.

¹¹ Sections 42(2) and 44(2) of the CM Act.

¹² Schedule 3, section 10(6) of the RTI Act.

decisions.¹³ These decisions have all found that information will be 'about' the applicant if the applicant has been the subject of the allegations and the subsequent investigation.

18. In *Cameron*, the Information Commissioner considered the legislative history of the exemption and the exception to the exemption.¹⁴ In that decision, the Information Commissioner referred to the Explanatory Memorandum to the Bill¹⁵ which introduced these provisions. The Explanatory Memorandum described the purpose of the exemption and the exception to the exemption as follows:

... a new exemption which exempts information obtained, used or prepared for investigations by the Crime and Misconduct Commission (CMC) or another agency. The exemption is only to apply where the investigation is in performance of the CMC's crime function and misconduct functions ...

This exemption is to apply to the information obtained, used or prepared in the course of the investigation and the consideration of, and reporting of the investigation.

*The exemption does not apply if a person seeks information about themselves, including personal, professional, business and work-related information. However, a person can only receive such information once the investigation has been finalised. **For example, and subject to the other exemptions in the FOI Act, a person could receive information about allegations made against them, information given about them in the course of an interview and conclusions made about them in a report.** [emphasis added]*

19. In *Cameron*, the Information Commissioner was satisfied¹⁶ that the debate following the Second Reading Speech¹⁷ made it clear that Parliament intended that access to investigation reports would be available only to the person being investigated, under the exception.

Findings

20. Having carefully considered the Investigation Report, I find that:
- the applicant made complaints to QPS about the conduct of certain QPS officers
 - QPS's Ethical Standards Command (**ESC**) assessed these complaints as involving allegations of potential misconduct
 - the ESC referred these allegations to the relevant Police Region for investigation, subject to the CMC's monitoring role
 - the Investigation Report was prepared in the course of QPS's investigation of the applicant's complaints; and
 - in preparing the Investigation Report, QPS was performing the CMC's misconduct function.
21. On the basis of the above, I am satisfied that the Investigation Report satisfies the requirements of the exemption in schedule 3, section 10(4) of the RTI Act.
22. I have considered below whether the exception in schedule 3, section 10(6) of the RTI Act applies to the Investigation Report.

¹³ See, for example *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014); *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012) (**Cameron**); *G8KLP2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KLP2**). The decision in *G8KLP2* was appealed to the Queensland Civil and Administrative Tribunal (**QCAT**). On appeal, QCAT did not disagree with the Information Commissioner's interpretation of 'about' in schedule 3, section 10(6) of the RTI Act. See *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191.

¹⁴ At [28] – [29]. Sections 42(3A) and 42(3B) of the FOI Act are the equivalent provisions to schedule 3, sections 10(4) and 10(6) of the RTI Act. These provisions were inserted by the *Freedom of Information and Other Legislation Amendment Act 2005* (Qld) which commenced on 31 May 2005.

¹⁵ *Freedom of Information and Other Legislation Amendment Bill 2005* (Qld).

¹⁶ At [29].

¹⁷ Which occurred on 11 and 25 May 2005. See in particular page 1634 of Hansard for this period.

23. QPS has confirmed that the investigation is finalised, and the applicant has been notified of this by QPS.¹⁸ Therefore, for the exception to the exemption to apply, the Investigation Report must be 'about' the applicant.
24. The applicant submits that the Investigation Report is about her, as she was the complainant and the conduct she complained about was directed at her.
25. I accept that the investigation commenced following the applicant's complaint. I also recognise that as the complainant, the applicant has a strong desire to find out the full details of the investigation process and its findings. The applicant was not however, the subject of any of the allegations, nor was her conduct investigated by QPS. Therefore, in accordance with the well-accepted meaning of the term 'about' in schedule 3, section 10(6) of the RTI Act, I find that the Investigation Report is not 'about' the applicant. Rather, it is 'about' the QPS officers against whom the applicant made complaints.
26. On the basis of the above, I find that the exception in schedule 3, section 10(6) of the RTI Act does not apply to the Investigation Report.

Conclusion

27. Based on the information available to OIC in this review, I am satisfied that the Investigation Report:
 - was prepared for an investigation by the QPS in the performance of the CMC's misconduct function
 - is exempt information under schedule 3, section 10(4) of the RTI Act; and
 - is not subject to the exception in schedule 3, section 10(6) of the RTI Act.
28. Access to the Investigation Report may therefore be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

DECISION

29. I affirm QPS's decision to refuse access to the Investigation Report under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.
30. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

K Shepherd
Assistant Information Commissioner

Date: 20 June 2014

¹⁸ Applicant's submission to OIC dated 29 May 2014.

APPENDIX

Significant procedural steps

Date	Event
12 February 2014	QPS received the access application.
6 March 2014	QPS decided to refuse access to all 56 pages it located in response to the access application, on the basis that the information was exempt under schedule 3, section 10(4) of the RTI Act.
21 March 2014	The applicant applied to OIC for external review.
2 April 2014	OIC informed the applicant and QPS that it had accepted the application for external review.
16 April 2014	QPS provided OIC with a copy of the information in issue.
16 May 2014	OIC conveyed to the applicant, by telephone, the preliminary view that QPS was entitled to refuse access to the information on the basis that it is exempt under schedule 3, section 10(4) of the RTI Act. The applicant did not accept the preliminary view.
23 May 2014	OIC confirmed the preliminary view to the applicant in writing.
29 May 2014	The applicant provided OIC with submissions in response to the preliminary view.
11 June 2014	<p>OIC provided the applicant with further correspondence to clarify issues, and confirm the preliminary view.</p> <p>The applicant advised OIC that she maintained her objection to the preliminary view and requested a formal decision to finalise the external review.</p>