



Decision and Reasons for Decision

Citation: 3FG6LI and Queensland Police Service [2014] QICmr 32 (29 July 2014)

Application Number: 311774

Applicant: 3FG6LI

Respondent: Queensland Police Service

Decision Date: 29 July 2014

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – NEITHER CONFIRM NOR DENY – weapons licence information relating to third parties – whether agency may neither confirm nor deny the existence of documents – whether documents, if they exist, would be documents to which access would be refused to the extent they comprise prescribed information – sections 47(3)(b) and 55 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – INVESTIGATION BY PRESCRIBED CRIME BODY – report about conduct of police officers – whether 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 – whether exempt – sections 47(3)(a), 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – weapons registration information, witness statements and police reports – personal information – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b), 49 and schedule 4 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – UNLOCATABLE AND NONEXISTENT DOCUMENTS – applicant contends further documents exist - whether all reasonable steps have been taken to locate documents but the documents do not exist or cannot be found – sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**), under the *Right to Information Act 2009* (Qld) (**RTI Act**), for access to various documents relating to weapons licensing and a domestic dispute involving the applicant.
2. QPS decided to:
 - neither confirm nor deny the existence of some documents
 - refuse access to one document on the basis that it was exempt from disclosure; and
 - refuse access to some information on the basis that disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the QPS decision and questioned the adequacy of the steps taken by QPS to identify responsive documents.
4. For the reasons set out below, the QPS decision is affirmed and access to any additional documents can be refused on the basis that they do not exist or are unlocatable.

Background

5. The applicant is engaged in a domestic dispute with a third party, who is identified as a former police officer. QPS has been involved in the dispute as domestic violence allegations were made and concerns were raised about alleged breaches of weapons licences.
6. The applicant had concerns with the QPS investigation and management of the dispute and consequently complained to the former Crime and Misconduct Commission (**CMC**). A substantial part of the submissions provided by the applicant to OIC on external review relate to the applicant's concerns with the QPS investigations and related CMC inquiries.
7. Significant procedural steps are set out in the appendix.

Reviewable decision

8. The decision under review is the QPS decision dated 23 September 2013.

Evidence considered

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

Issues for consideration

10. There are four issues to be considered in this external review. These are whether QPS:
 - was entitled to neither confirm nor deny the existence of some of the documents sought by the applicant under sections 47(3)(b) and 55 of the RTI Act

- was entitled to refuse access to one of the documents sought by the applicant under section 47(3)(a) of the RTI Act on the basis that it comprised exempt information under section 48 and schedule 3, section 10(4) of the RTI Act
- was entitled to refuse access to certain information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest under 49 and schedule 4 of the RTI Act; and
- has taken all reasonable steps to locate responsive documents and access can be refused to additional documents under section 47(3)(e) of the RTI Act on the basis that they cannot be found or do not exist under section 52 of the RTI Act.

Is QPS entitled to neither confirm nor deny the existence of some information?

11. Yes, for the reasons that follow noting that I have not confirmed or denied the existence of the information sought by the applicant. My findings are based on the applicant's description of the documents as requested in the access application.
12. QPS relied on section 55 of the RTI Act to neither confirm nor deny the existence of documents relating to the following parts (**Requested Information**) of the access application:
 - c) *all documentation from the year 2000 evidencing breaches of (Third Party A's) weapons licence, including failure to have secure storage for weapons, possessing unregistered weapons and discharging a firearm at persons while residing at...*
 - d) *documentation including Notices of Disposal of all non-police issue weapons registered by (Third Party B)...prior to Tuesday 21 November 2006*
 - e) *documentation including Notices of Disposal of non- police issue weapons registered by Third Party B after Tuesday 21 November 2006...*¹

Relevant law

13. Under section 55 of the RTI Act an agency may decide to neither confirm nor deny the existence of a requested document if, assuming its existence, the document would contain prescribed information.²
14. As explained in previous decisions of the Information Commissioner, this provision is only intended for exceptional situations where: ³
 - *revealing that the agency has or does not have documents in response to an application, due to the specific nature of the wording of the application, would reveal information to which an agency would normally refuse access on the grounds that it would be exempt or contrary to the public interest; or*
 - *there are legitimate grounds for refusing access to a document but explaining those grounds would reveal the information the agency is trying to protect or cause the harm the agency is trying to prevent.*
15. A review of a decision in which the agency has relied on section 55 of the RTI Act presents procedural challenges as the decision maker is unable to confirm the existence of documents. As the Information Commissioner explained in *EST*:⁴

¹ As requested in the access application dated 24 June 2013.

² Section 55(4) of the RTI Act states that a decision refusing access to information under section 55(2) of the RTI Act is a decision refusing access to a document under section 47 of the RTI Act.

³ *Australian Broadcasting Corporation and Psychologists Board of Australia* (Unreported, Queensland Information Commissioner, 3 January 2012) at paragraph 14. See also *EST and Department of Family Services and Aboriginal and Islander Affairs* (1995) 2 QAR 645 at paragraph 11 (*EST*).

⁴ At paragraph 20.

In a review of an ordinary refusal of access decision, the applicant for access is necessarily disadvantaged, in the extent to which meaningful submissions can be made about the exempt status of matter in issue, by a lack of precise knowledge as to the nature of the matter in issue. That disadvantage is exacerbated in a review of a decision to invoke a s.35 "neither confirm or deny" response. The review must largely proceed in private between the Information Commissioner and the respondent ...

16. When relying on section 55 an agency must demonstrate that the documents requested by the applicant would, if they exist, contain 'prescribed information'. 'Prescribed information' is relevantly defined in schedule 6 of the RTI Act to include personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
17. Accordingly, I must be satisfied on the face of the access application that the Requested Information would, if it exists, contain personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

Findings

Does the Requested Information comprise personal information?

18. Yes, for the reasons that follow.
19. 'Personal information' is defined as *information or an opinion... whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*⁵
20. The Requested Information identifies individuals other than the applicant and information about breaches of, or conditions affecting, their weapons licences is sought. On this basis, I am satisfied the Requested Information, if it exists, would comprise the personal information of third parties.

Would disclosure of the Requested Information if it exists be, on balance, contrary to the public interest?

21. Yes, for the reasons that follow.
22. The RTI Act explains that the following steps must be taken by a decision-maker in deciding the public interest:⁶
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information, if it exists, on balance, would be contrary to the public interest.
23. In making these findings, I have carefully considered the applicant's extensive submissions about why disclosure of the Requested Information would not, on balance, be contrary to the public interest.⁷ To the extent the submissions are relevant to the

⁵ See schedule 6 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

⁶ Section 49(3) 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 of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, some public interest considerations may apply for the benefit of an individual.

⁷ Specifically those submissions made by the applicant's solicitors in their correspondence to OIC dated 28 April 2014 and 3 July 2014. In the submissions dated 3 July 2014, the applicant's solicitors specifically raise the application of the public interest factors listed in schedule 4, part 2, items 5, 6, 10, 12, 15, 16, 17 and 18 of the RTI Act.

issue for determination, I have addressed them below.

24. As explained in *EST*, as I am making findings in relation to a 'neither confirm nor deny' issue, I am limited in the level of detail I can provide in my assessment of the applicant's submissions. I have not directly addressed the extensive submissions made by the applicant⁸ in balancing the public interest when to do so would require me to either confirm or deny the existence of the Requested Information.

Irrelevant factors

25. I have examined the irrelevant factors in schedule 4 of the RTI Act and do not consider that they or any other irrelevant factors arise in this case.

Factors favouring disclosure

26. In summary, the applicant submits that disclosure of the Requested Information would:
- assist inquiries into police misconduct and/or serious misconduct within QPS
 - promote the applicant's access to justice in relation to multiple complaints and requests for assistance made by the applicant to QPS
 - contribute to peace and good order and assist the operation of the criminal law where the information reveals that a third party was in possession of, or sought to possess, weapons when a relevant court order prohibited it; and
 - contribute to the administration of justice for the applicant in relation to ongoing legal proceedings.⁹
27. The applicant also contends with respect to parts D and E of the access application relating to Third Party B that it is in the public interest to disclose details about the weapons privately registered to a police officer to ensure police officers are 'unimpeachable' in their dealings with weapons, whether in the course of their duties or otherwise.¹⁰
28. The majority of the applicant's submissions go to the issue of QPS' accountability and transparency in the handling of relevant complaints and its investigation into allegations of weapons licence breaches. I accept that if the Requested Information exists, there would be a significant public interest in its disclosure to promote the accountability and transparency of QPS.¹¹ I allocate significant weight to this factor favouring disclosure.
29. I do not accept that disclosure of the Requested Information under the RTI Act, if it exists, would however contribute to factors favouring disclosure that relate to the maintenance of peace and good order, or assist in the operation of the criminal law as the applicant contends.¹² The Requested Information, if it exists, would already be available to relevant law enforcement agencies. Also, on the information before me I am unable to identify how disclosure of the Requested Information, if it exists, to the applicant would further contribute to peace and good order, or assist in the operation of the criminal law. Accordingly, I do not consider these two factors favouring disclosure apply.
30. There is also no evidence before me to suggest that disclosure of the Requested Information, if it exists, would promote access to justice or contribute to the administration of justice for the applicant.¹³ In any event, the RTI Act is not designed to

⁸ Applicant submissions dated 28 April 2014 and 3 July 2014.

⁹ Applicant submissions dated 28 April 2014 and 3 July 2014.

¹⁰ Applicant submissions dated 28 April 2014.

¹¹ Schedule 4 part 2, item 1 of the RTI Act.

¹² Schedule 4, part 2, items 15 and 18 of the RTI Act.

¹³ Schedule 4 part 2, items 16 and 17 of the RTI Act.

serve as an adjunct to court processes. Rather it comprises a stand-alone mechanism for enabling public access to government-held information. While the applicant is entitled to pursue access under the RTI Act, it must also be accepted that qualifications upon and limitations to that right are imposed by the Act itself, including the grounds for refusing access to information as provided in section 47 of the RTI Act. In the circumstances of this external review, I do not accept that these two factors favouring disclosure relating to access to justice generally and contribution to the administration of justice for a person apply.

31. Further I do not accept the applicant's submission that because one of the relevant third parties is a police officer, there is a strong public interest in disclosing details of their private access to weapons,¹⁴ if such information exists. The Requested Information cannot be described as routine work information about the relevant third party's duties. In the absence of evidence about how this information, if it exists, would impact upon the relevant third party's role as a police officer, I do not consider that a public interest factor is raised.

Factors favouring nondisclosure

32. I have identified two factors favouring nondisclosure of the Requested Information, if it exists:
- disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy;¹⁵ and
 - disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person.¹⁶
33. I am satisfied that disclosing the Requested Information, if it exists, would disclose the personal information of third parties. I am also satisfied that such disclosure could reasonably be expected to prejudice¹⁷ the third parties' right to privacy.¹⁸
34. Because of the way in which the applicant has sought the Requested Information, that is, with reference to two specific individuals, I consider that confirming or denying the existence of the Requested Information would reveal whether these individuals hold weapons licences and whether there have or have not been breaches of, or conditions imposed on, these licences. Revealing this information would have an impact on the privacy of Third Party A and Third Party B.
35. I understand the responsibility that attaches to an individual who holds a weapons licence. However, I note that details of an individual's weapons licence are not publicly available and QPS does not publish its weapons licence register. For this reason I do not consider that the strong privacy interest in the Requested Information, if it exists, is in any way reduced and that a public interest harm would result from disclosure. I accordingly attribute these factors significant weight.

¹⁴ Applicant submissions dated 3 July 2014.

¹⁵ Schedule 4, part 3, item 3 of the RTI Act.

¹⁶ Schedule 4, part 4, item 6 of the RTI Act.

¹⁷ Adopting the ordinary meaning of the term '*prejudice*': see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at paragraph 16 for a succinct exposition of the meaning of '*prejudice*' as used throughout the RTI Act.

¹⁸ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in either the RTI or IP Acts; it can, however, 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).

Balancing the relevant factors

36. Taking into account the way in which the applicant has sought the Requested Information, I consider that if the Requested Information exists:
- the public interest in ensuring the accountability of QPS should be afforded significant weight; and
 - the public interest factors relating to the safeguarding of personal information and avoiding public interest harm and protecting an individual's right to privacy should each be afforded significant weight.
37. In assessing the balance of the public interest, I consider that the privacy interests identified above outweigh the factor in favour of disclosure. This is because simply revealing whether the Requested Information exists or does not exist would disclose the personal information of Third Party A and Third Party B, and have a significant impact on their privacy.

Conclusion

38. I am satisfied that the requirements of section 55 of the RTI Act are met and that QPS is entitled to neither confirm nor deny the existence of the Requested Information.

Is one of the documents sought by the applicant exempt from disclosure?

39. Yes, for the reasons that follow.
40. QPS refused the applicant access to a 16 page report (**Report**) prepared by a QPS officer in response to a complaint made by the applicant to the former Crime and Misconduct Commission (**CMC**)¹⁹ on the basis that it was exempt from disclosure under sections 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act.

Relevant law

41. The RTI Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.²⁰ Sections 23 of the RTI Act confers a general right to access documents of an agency. This right of access is subject to other provisions of the Act, including the grounds for refusal of access to information set out in section 47 of the RTI Act.
42. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.²¹ Schedule 3 of the RTI Act specifies the type of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest.
43. Relevantly, information is exempt if it consists of 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.²²
44. An exception to this exemption will apply where the information:
- (a) consists of information about the applicant; and

¹⁹ The *Crime and Misconduct Act 2001* which established the CMC was amended by the *Crime and Misconduct and Other Legislation Amendment Act 2014* and is now referred to as the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

²⁰ Section 44 of the RTI Act.

²¹ Section 47(3)(a) and section 48 of the RTI Act.

²² Schedule 3, section 10(4) of the RTI Act.

(b) the investigation has been finalised.²³

Findings

Has QPS 'obtained, used or prepared' the Report for investigation?

45. Yes, for the reasons that follow.
46. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.
47. Having considered the Report carefully and on the basis of its description in the access application and in the QPS decision dated 23 September 2013, I am satisfied that the Report was prepared for the purposes of an investigation.

Is the relevant investigation being conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?

48. Yes, for the reasons that follow.
49. The Crime and Corruption Commission (**CCC**) formerly known as the CMC is a prescribed crime body²⁴ under the RTI Act and its prescribed functions include its corruption function as defined in section 33 of the CC Act.²⁵ The CC Act provides that 'corruption' includes police misconduct and that the CCC's corruption functions include oversight of investigations into police misconduct.²⁶
50. The applicant provided OIC with 31 pages of correspondence between them and the former CMC.²⁷ These documents show that the applicant made a complaint to the former CMC regarding the alleged misconduct of specific QPS officers. The former CMC has acknowledged in its correspondence with the applicant that if proven, the allegations made by the applicant could comprise police misconduct or official misconduct.²⁸
51. Having carefully considered the correspondence exchanged between the applicant and the former CMC as well as the Report itself, I am satisfied that the relevant investigation was conducted by the Ethical Standards Command (**ESC**) of QPS into possible police misconduct.
52. In conducting these investigations, I am also satisfied that QPS was performing the CCC's corruption function by conducting an investigation into police misconduct under the oversight of the former CMC.

Does the exception apply?

53. No, for the reasons that follow.

²³ Schedule 3, section 10(6) of the RTI Act.

²⁴ Schedule 3, section 10(9) of the RTI Act.

²⁵ Schedule 3, section 10(9) of the RTI Act.

²⁶ Definition of *corruption* in schedule 2 of the CC Act and section 47 of the CC Act.

²⁷ Applicant submissions dated 3 July 2014.

²⁸ I note that while official misconduct is no longer a prescribed function of the CCC, oversight of police misconduct remains a corruption function under sections 33 and 35 of the CC Act which together provide that the CCC's corruption function includes oversight of police misconduct investigations.

54. The QPS decision confirmed that the relevant investigations are complete.²⁹ Accordingly, I find that requirement (b) of the exception is satisfied.
55. To satisfy requirement (a), the CTPI Information must be *about* the applicant.
56. Where the information in issue is an investigation report, the report is considered to be *about* the persons who were the subject of the allegations and related investigation and not the individual who may have brought about the investigation.³⁰
57. The Report relates to a complaint made by the applicant. The applicant was not the subject of the investigation; the ESC investigated the conduct of relevant QPS officers. Therefore, I find that the CTPI Information is not *about* the applicant and the exception in schedule 3, section 10(6) of the RTI Act does not apply to the Report.
58. The applicant has made submissions about why disclosure of the Report is in the public interest.³¹ However, where information is found to be exempt, there is no scope under the RTI Act to consider public interest factors in favour of disclosure. I have therefore not taken the applicant's submissions relating to disclosure of the Report into account in making this finding.

Conclusion

59. As the requirements of schedule 3, section 10(4) of the RTI Act are met and the exception does not apply, I find that access to the Report can be refused as it comprises exempt information under sections 47(3)(a) and 48 of the RTI Act.

Is QPS entitled to refuse access to some information on the basis that disclosure would, on balance, be contrary to the public interest?

60. Yes for the reasons that follow.
61. The information considered by QPS to be contrary to the public interest (**CTPI Information**) comprises:
- weapons registration information of Third Party A
 - witness statements and parts of police records in relation to searches warrants; and
 - witness statements and parts of police reports in relation domestic disputes involving the applicant.

Relevant law

62. The relevant law in relation to deciding whether disclosure of the relevant information would, on balance be contrary to the public interest under the RTI Act is set out above at paragraph 22.

²⁹ The applicant's submissions dated 3 July 2014 also confirm this.

³⁰ In *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**), the Right to Information Commissioner considered the meaning of '*about*' in schedule 3, section 10(6) of the RTI Act and found that an investigation report, while created as a result of the applicant's complaint, was not *about* the applicant but was about the subject of the investigation. On this basis, the Right to Information Commissioner concluded that the exception in schedule 3, section 10(6) of the RTI Act did not apply. In considering the appeal of *G8KPL2*, the Queensland Civil and Administrative Tribunal 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. See also *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012); *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) and *Dickinson and Queensland Police Service* [2014] QICmr 30 (20 June 2014).

³¹ Applicant's submissions dated 3 July 2014 and 28 April 2014.

Findings

63. As noted in paragraph 23, the applicant's submissions raise numerous public interest factors that they consider favour disclosure of the CTPI Information. Where those submissions are *relevant* to disclosure of the CTPI Information they are considered below. On 3 July 2014 the applicant provided OIC with a 27 page submission³² in support of their contention that disclosure of the CTPI information would not on balance be contrary to the public interest. I have carefully assessed the submission and note that it provides substantial detail about the domestic dispute and interactions with QPS and the former CMC. Throughout this detail the applicant contends that disclosure of the CTPI information would advance a range of public interest 'considerations' *some* of which I consider include factors favouring disclosure under Schedule 4 of the RTI Act.³³ I have not repeated the applicant's detailed information about the domestic dispute and interactions with relevant agencies in my assessment of the relevant factors but the information provided has been taken into account and informs my analysis.

Irrelevant factors

64. No irrelevant factors arise in the circumstances of this case.

Factors favouring disclosure

Applicant's personal information

65. If disclosing information could reasonably be expected to disclose the personal information of the individual applying for that information, a public interest factor favouring disclosure arises.³⁴ As some of the CTPI Information (namely the witness statements) identify the applicant and discuss incidents involving the applicant, this factor is relevant.³⁵
66. Given the nature and context of the CTPI Information,³⁶ this factor warrants significant weight. However, the way in which the information is presented means that it is not possible to separate the applicant's personal information from the personal information of others within the documents. In other words, the relevant information cannot be disclosed to the applicant without disclosing personal information of other individuals. Therefore, the relevant privacy interests of other people (which I explain below in the discussion about factors favouring nondisclosure) must be balanced against the public interest in disclosing to the applicant their personal information.

QPS accountability and transparency

67. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing the CTPI Information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability³⁷
 - contribute to positive and informed debate on important issues or matters of serious interest;³⁸ and

³² The submission also included a 31 page attachment of correspondence between the applicant the former CMC.

³³ That is, items 5, 6, 10, 12, 15, 16, 17 and 18 of Schedule 4, part 2 of the RTI Act.

³⁴ Schedule 4, part 2, item 7 of the RTI Act.

³⁵ Section 12 of the IP Act defines 'personal information' as *information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

³⁶ Particularly as it includes witness statements about incidents involving the applicant.

³⁷ Schedule 4, part 2, item 1 of the RTI Act

³⁸ Schedule 4, part 2, item 2 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision.³⁹
68. Many of the submissions made by the applicant relate to QPS accountability and transparency in its investigation of disputes involving the applicant and Third Party A. The applicant argues that Third Party A was a former police officer and that the QPS investigations in relation to the domestic dispute were not conducted appropriately. The applicant also considers that disclosure of the refused information would reveal deficiencies in the conduct of QPS officers.⁴⁰
69. Given the background to the access application, and having carefully assessed the CTPI Information, I accept that this information appears in the context of QPS investigation records and discloses the information that was available to QPS while it investigated and responded to the relevant domestic dispute between the applicant and Third Party A. For this reason, I consider that some weight can be attributed to the above factors favouring disclosure that go towards enhancing QPS accountability.
70. However, the applicant has been provided with information about the QPS investigation, where it does not comprise the personal information of third parties. While I am restricted from describing the precise content,⁴¹ I note that the CTPI Information is limited to the personal information of third parties and the witness statements of those parties.
71. As the CTPI Information is largely limited to the personal information of third parties and because the applicant has been provided with some information about the relevant QPS investigations, I have attributed this factor moderate weight.

Possible deficiencies, misconduct or negligent, improper or unlawful conduct

72. The RTI Act gives rise to factors favouring disclosure where disclosing information could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁴² and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴³
73. It is not my role to determine whether there has been any maladministration or wrongdoing on the part of QPS in investigating the matters involving the applicant. On this point, I note that the applicant has raised these concerns with the former CMC which has since closed its file. On the evidence before me, it is my understanding that the CMC did not make findings supporting the applicant's claims that QPS officers engaged in misconduct or that there were deficiencies in the QPS investigation process.
74. I have carefully reviewed the CTPI Information in the light of the applicant's submissions. However, I am not satisfied that disclosure of this information could reasonably be expected to further any of the public interest factors set out above. Therefore, I consider that these factors do not apply.

³⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁴⁰ The applicant makes extensive submissions relating to this public interest factor in the submissions dated 28 April 2014 and 3 July 2014.

⁴¹ Section 108(3) of the RTI Act provides that the Information Commissioner must not, in a decision or in reasons for a decision on external review, include information that is claimed to be exempt information or contrary to the public interest information.

⁴² Schedule 4, part 2, item 5 of the RTI Act.

⁴³ Schedule 4, part 2, item 6 of the RTI Act.

Incorrect, misleading or unfairly subjective information

75. The RTI Act gives rise to a factor favouring disclosure where the information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁴⁴
76. This factor operates in relation to the specific information to which an applicant seeks access. In this case, that information comprises information provided to QPS by third parties in the course of QPS investigations. The majority of it is in the form of interview records and witness statements. Aside from the applicant's contentions, there is no evidence before me to demonstrate that the CTPI Information is inaccurate.
77. In *Marshall and Department of Police*⁴⁵ the Right to Information Commissioner considered this public interest factor in the context of witness statements and made the following observation:

As to the witness statements, information of this kind is by its very nature an individual's particular version of events, and will obviously be shaped by factors such as the individual's memory of relevant events and subjective impressions. This inherent subjectivity does not, however, mean that the resulting account or statement is necessarily incorrect or 'false and misleading'. It simply comprises a personal interpretation of relevant events, which an investigator must then balance against other (often competing) statements and other evidence in reaching a conclusion in a particular case.

While there may be circumstances in which disclosure of information of this kind may advance this particular public interest – such as, for example, where there is a clear discrepancy between evidence given orally and subsequently recorded, or some other objective material suggesting that an individual's account has been incorrectly or inaccurately recorded, or is itself a manifest fabrication – there is nothing in the material before me to suggest this is such a case.

In my view, all disclosure of this specific information would potentially reveal is that there exists a view of events differing from that the applicant holds. In the circumstances, I do not consider that disclosure of this information could reasonably be expected to reveal it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.

78. The applicant contends that disclosure of the CTPI Information could reasonably be expected to disclose information that is incorrect, misleading and unfairly subjective.⁴⁶
79. However, having carefully reviewed the CTPI Information and in applying the observations made by the Right to Information Commissioner in *Marshall and Department of Police*, I do not accept the applicant's submissions. I am not satisfied that disclosure of the refused information could reasonably be expected to further this public interest factor and accordingly, the factor does not apply.

Maintenance of peace and order and the enforcement of the criminal law

80. The applicant contends that disclosure of the CTPI Information would provide information about the weapons licence held by Third Party A. The applicant considers the fact that Third Party A was able to obtain a weapons licence is a matter of public concern and the applicant's personal safety is in issue.⁴⁷ The applicant also relevantly contends there is a public interest in ensuring that the criminal law is enforced.⁴⁸

⁴⁴ Schedule 4, part 2, item 12 of the RTI Act.

⁴⁵ (Unreported, Queensland Information Commissioner, 25 February 2011) at paragraphs 18-20.

⁴⁶ Applicant's submissions dated 3 July 2014.

⁴⁷ Applicant submissions to OIC dated 3 July 2014.

⁴⁸ Schedule 4, part 2, item 18 of the RTI Act.

81. The applicant also submits that disclosure of the CTPI information would contribute to the maintenance of peace and good order by showing what weapons the relevant third party had in their possession.⁴⁹
82. I have carefully assessed the CTPI Information and I am unable to identify how disclosure of these documents to the applicant under the RTI Act would assist in the maintenance of peace and order or the enforcement of the criminal law. For this reason, I do not consider that the two factors apply.
83. In making this finding, I note that QPS has investigated the concerns raised by the applicant. While the accountability of QPS is therefore relevant, I have discussed the weight attributed to this factor above under the heading *QPS accountability and transparency*.

Advance the fair treatment of the applicant and contribute to the administration of justice

84. The RTI Act gives rise to a factor favouring disclosure where disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.⁵⁰ There is also a public interest factor in favour of disclosure where disclosure of the information could reasonably be expected to contribute to the administration of justice generally and for a person, including where this would contribute to procedural fairness.⁵¹
85. The Information Commissioner considered this factor in *Pemberton and The University of Queensland*⁵² and relevantly explained that:

This [public interest factor] was based on the recognition by the courts that: "The public interest necessarily comprehends an element of justice to the individual" ... It is also self-evident from the development by the courts of common law of a set of principles for judicial review of the legality and procedural fairness of administrative action taken by governments, that compliance with the law by those acting under statutory powers is itself a matter of public interest... It is an interest common to all members of the community, and for their benefit. In an appropriate case, it means that a particular applicant's interest in obtaining access to particular documents is capable of being recognised as a facet of the public interest, which may justify giving a particular applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress, including any available legal remedy.

86. The applicant argues that the CTPI Information should be disclosed as there is a public interest in ensuring that they receive fair treatment in accordance with the law and in ensuring that they receive procedural fairness.⁵³
87. The applicant's concerns with QPS' investigation into domestic disputes were reviewed by the ESC with oversight by the former CMC. The applicant was advised of the outcome of that review and the applicant's concerns were found to be unsubstantiated. Having carefully assessed the content and nature of the CTPI information, I do not consider that this factor applies because disclosure will not, on the evidence before me, advance fair treatment of the applicant or the administration of justice for the applicant and generally. There is also no evidence to indicate that disclosure will assist the applicant to pursue any legal redress based on unfair treatment.

⁴⁹ Applicant's submissions to OIC dated 28 April 2014. Schedule 4, part 2, item 15 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 10 of the RTI Act.

⁵¹ Schedule 4, part 2, items 15 and 16 of the RTI Act.

⁵² (1994) 2 QAR 293 at paragraph 190. The Information Commissioner's comments were made in the context of the now repealed *Freedom of Information Act 1992* (Qld) but provide guidance on the interpretation of this factor under the RTI Act.

⁵³ Applicant submissions dated 3 July 2014.

Factors favouring nondisclosure

Personal information and privacy

88. The RTI Act recognises two factors favouring non-disclosure of information where:
- disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy;⁵⁴ and
 - disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person.⁵⁵
89. As noted, the CTPI Information comprises weapons registration information of Third Party A, information identifying third parties in the context of QPS investigations and records of third party statements to QPS officers. I am satisfied that all of the CTPI Information comprises the personal information of someone *other* than the applicant. Accordingly, disclosure of it could reasonably be expected to cause a public interest harm.
90. 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.⁵⁶ I consider the provision of information to law enforcement authorities such as the QPS to be a private action falling within an individual's 'personal sphere'.
91. I also consider that the substance of the information provided to police to assist in investigations, such as a witness statement – consisting as it almost invariably will of an individual's impressions, opinions and even emotional responses to relevant events – comprises information of a private nature.
92. I recognise that in appropriate cases information supplied to QPS will need to be further disseminated or published (so as, for example, to enable further investigation, or for prosecutorial purposes, often in open court) which may reduce the privacy interest attaching to relevant information. This is not such a case. I am satisfied that disclosure of the CTPI Information could reasonably be expected to prejudice an individual's right to privacy. Members of the community assisting police with inquiries have a legitimate expectation that in doing so, their privacy will be maintained and respected as far as is possible. Accordingly, I have afforded these two factors favouring nondisclosure significant weight.

Prejudice flow of information to police

93. The RTI Act recognises a factor favouring nondisclosure where disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.⁵⁷
94. I consider that disclosure of the CTPI Information could reasonably be expected to have a detrimental impact⁵⁸ on the flow of information from the community to police in the future. I acknowledge that police possess certain coercive powers when investigating complaints. Nevertheless, efficient and effective use of policing resources is facilitated by police being able to seek and obtain information from various members of the community – complainants, bystanders, informers and even the subjects of

⁵⁴ Schedule 4 part 3 item 3 of the RTI Act.

⁵⁵ Schedule 4 part 4 item 6 of the RTI Act.

⁵⁶ See footnote 18.

⁵⁷ Schedule 4 part 3 item 13 of the RTI Act.

⁵⁸ Adopting the ordinary meaning of the term 'prejudice' as explained in footnote 17.

complaint – consensually, that is with as much cooperation as possible. Routine disclosure of information provided by individuals assisting QPS investigations would in my view discourage persons from providing information to police or cooperating with future inquiries.

95. In this case, I consider that disclosure of the CTPI Information would have a detrimental impact on the flow of information to the QPS, particularly in relation to matters of domestic violence and weapons registration. Accordingly, I have attributed this factor in favour of nondisclosure significant weight.

Balancing the relevant factors

96. Having identified and examined the public interest factors for and against disclosure, I consider that the public interest factors relating to:

- safeguarding personal information;
- protecting an individual's right to privacy and thus avoiding public interest harm; and
- preserving the free flow of information between the community and the QPS,

should each be afforded significant weight, and outweigh those factors favouring disclosure⁵⁹ of the CTPI Information.

97. Accordingly, I consider that QPS is entitled to refuse access to the CTPI Information on the basis that disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.

Has QPS taken all reasonable steps to locate documents responding to the access application?

98. Yes, for the reasons that follow.

Relevant law

99. Access to a document may be refused if the document is nonexistent or unlocatable.⁶⁰ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.⁶¹ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁶²

100. The RTI Act is silent on how an agency can be satisfied that a document does not exist. However in *PDE and The University of Queensland*,⁶³ the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:

- the administrative arrangements of government
- the agency structure

⁵⁹ Schedule 4, part 2 items 1 and 7 of the RTI Act.

⁶⁰ Sections 47(3)(e) and 52 of the RTI Act.

⁶¹ Section 52(1)(b) of the RTI Act.

⁶² Section 52(1)(a) of the RTI Act.

⁶³ (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*). Although *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach); and
- other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity to which the request relates.

101. When these factors are properly considered and a conclusion reached that the document does not exist, it may be unnecessary for searches to be conducted. Alternatively, an agency may rely on searches to justify a decision that the document sought does not exist. If an agency relies on searches, all reasonable steps must be taken to locate the requested document. In determining whether all reasonable steps have been taken, regard should be had to the factors listed in *PDE* as set out above.

Findings

102. The applicant's external review application and most recent submissions to OIC raise concerns that QPS has not taken all reasonable steps to identify documents in response to the access application and various documents are listed that the applicant considers should have been located. The applicant requests that OIC require QPS to conduct further searches relying on the powers of the Information Commissioner in sections 103 and 104 of the RTI Act.⁶⁴

103. In support of claims that QPS has not taken all reasonable steps to identify documents, the applicant makes reference to examples of what they consider to be QPS' inability to progress the RTI application competently and diligently.⁶⁵

104. I acknowledge that there have been disruptions in the processing of the access application by QPS.⁶⁶ However, these disruptions are not grounds for suggesting that the searches conduct by QPS were inadequate.

105. The QPS decision explains that searches for responsive documents were conducted of the records and databases of the following specific areas:

- Ethical Standards Command
- Southern Region; and
- Operation Support Command.

106. On external review QPS provided search records and certifications from senior officers that confirmed searches were conducted of those areas and that these searches encompassed the Weapons Licensing Special Services Group and the specific police station with which the applicant had contact.

107. The QPS search records also confirmed that searches had been undertaken of all relevant hard copy and electronic records including:

- diary entries
- relevant audio/ video tapes held by the Southern Region
- Commissioner Firearms Register

⁶⁴ Applicant submissions dated 28 April 2014.

⁶⁵ Applicant submissions dated 28 April 2014.

⁶⁶ As referred to in the applicant's submissions dated 28 April 2014.

- the Weapons Licensing Management System
- QPRIME (electronic reporting system where all incidents are recorded); and
- Objective (electronic database for recording all incoming and outgoing correspondence).

108. The majority of the documents to which the applicant continues to seek access in this external review are documents that would have been held by officers of the Southern Region with whom the applicant had direct contact. QPS has provided OIC with a signed certification from an Officer in Charge of that region confirming that a thorough search for all documents relevant to the request has been conducted.⁶⁷
109. The applicant has made no specific submissions about how the searches already conducted by QPS are inadequate or explained what additional searches QPS can reasonably conduct to identify additional documents. I also note that there is no evidence before me to indicate that relevant documents may be located in places other than those already searched by QPS. Accordingly, I am unable to identify any reasonable basis upon which to base a request for further searches.
110. Therefore, with reference to the factors outlined in *PDE*, I consider that QPS has taken all reasonable steps to identify documents in response to the access application. On that basis I am satisfied that access to any additional documents can be refused on the basis that they are either non-existent or unlocatable under section 47(3)(e) and 52 of the RTI Act.

DECISION

111. I affirm the decision under review and find that QPS:

- was entitled to neither confirm nor deny the existence of some of the documents sought by the applicant under sections 47(3)(b) and 55 of the RTI Act
- was entitled to refuse access to one of the documents sought by the applicant under section 47(3)(a) of the RTI Act on the basis that it comprised exempt information under section 48 and schedule 3, section 10(4) of the RTI Act
- was entitled to refuse access to certain information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest under 49 and schedule 4 of the RTI Act; and
- has taken all reasonable steps to locate responsive documents and access can be refused to additional documents under section 47(3)(e) of the RTI Act on the basis that they cannot be found or do not exist under section 52 of the RTI Act.

112. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Assistant Information Commissioner

Date: 29 July 2014

⁶⁷ Search submission from QPS received 25 February 2014.

APPENDIX

Significant procedural steps

Date	Event
16 July 2013	The applicant's access application was received under the RTI Act.
23 September 2013	QPS issued its decision on the access application.
11 October 2013	The applicant applied to OIC for external review of QPS' decision.
18 October 2013	OIC received copies of the requested procedural documents from QPS.
22 October 2013	OIC notified the applicant and QPS that OIC had accepted the application for external review. OIC requested that QPS provide copies of additional procedural documents, search information and copies of documents located in response to the access application.
26 November 2013	OIC received copies of the requested documents located in response to the access application from QPS.
11 December 2013	OIC contacted QPS to request information relating to whether documents in Parts G and I of the access application were obtained, used or prepared for a CMC investigation.
16 December 2013	QPS provided OIC with the requested information relating to whether documents in Parts G and I were obtained, used or prepared for a CMC investigation.
19 February 2014	OIC requested that QPS provide search information relating to the processing of the access application.
25 February 2014	QPS provided OIC with the requested search information.
14 March 2014	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions by 28 March 2014 if they did not agree with the preliminary view.
27 March 2014	The applicant's solicitors requested an extension of time to respond to the preliminary view.
31 March 2014	OIC granted the applicant an extension of time until 28 April 2014 to provide submissions in response to the preliminary view.
28 April 2014	The applicant provided OIC with submissions in response to the preliminary view.
18 June 2014	OIC contacted the applicant's lawyers to explain that the applicant's submissions had not changed the preliminary view.
3 July 2014	The applicant made further submissions in response to the preliminary view.
21 July 2014	OIC contacted QPS to confirm the searches undertaken for responsive documents.