



## Decision and Reasons for Decision

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Citation:	<i>Wyeth and Queensland Police Service</i> [2015] QICmr 26 (18 September 2015)
Application Number:	312287
Applicant:	Wyeth
Respondent:	Queensland Police Service
Decision Date:	18 September 2015
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – applicant sought access to information concerning the police prosecution of an offence at his property from the Queensland Police Service – accountability of law enforcement agencies - personal information of the applicant - personal information and privacy of third parties – prejudice the flow of information - whether disclosure would, on balance, be contrary to the public interest –sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – IRRELEVANT INFORMATION – documents relating to other police matters – whether deleted information was irrelevant to the terms of the access application – section 73 of the <i>Right to Information Act 2009</i> (Qld)</b></p>

## 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 all documents relevant to the prosecution of an offence that occurred on his property as well as any information about the amendment of the relevant criminal charge.
2. QPS located 58 pages and one audio recording<sup>1</sup> in response to the access application and decided to:
  - grant access to 14 pages in full; and

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<sup>1</sup> The audio recording was not specifically referred to in the QPS decision notice dated 28 November 2014.

- refuse access to 20 pages in part, 25 pages in full and the audio recording on the basis that disclosure of this information would, on balance, be contrary to the public interest.
3. QPS also decided to delete information from seven pages<sup>2</sup> on the basis that it was irrelevant to the application.
  4. Following discussions with the Office of the Information Commissioner (**OIC**) on external review, QPS released some additional information to the applicant to which it had refused access in its decision. A QPS officer also contacted the applicant and attempted to answer his questions regarding the police prosecution of the offence.
  5. For the reasons set out below, I affirm QPS's decision to refuse access to the remaining Information in Issue on the basis that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act. I also affirm QPS's decision to delete some information from disclosure on the basis that it is irrelevant to the terms of the access application under section 73 of the RTI Act.

### **Background**

6. Significant procedural steps relating to the external review are set out in the Appendix.

### **Reviewable decision**

7. The decision under review is QPS's decision dated 28 November 2014.

### **Evidence considered**

8. The evidence, submissions, legislation and other materials I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

### **Information in Issue**

9. On external review, following discussions with OIC, QPS agreed to disclose additional information to the applicant.
10. The remaining information to which access is refused (**Information in Issue**) comprises one audio recording,<sup>3</sup> four full pages<sup>4</sup> and 28 part pages<sup>5</sup> and can be generally described as:
  - personal details of the defendant including their name, age, date of birth, place of birth, residential address, phone number and photo
  - information provided by the defendant to QPS and information about the defendant's dealings with QPS
  - QPS's response to the defence submission on the preferred charge
  - the addresses of neighbouring properties QPS attended in the course of its investigation and information provided by a resident; and
  - information about a police officer's leave arrangements and age.

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<sup>2</sup> The QPS decision notice incorrectly identified the number of pages subject to the deletion of irrelevant information as 5 pages.

<sup>3</sup> Document 59.

<sup>4</sup> Pages 46-49.

<sup>5</sup> Pages 1, 4, 8-11, 22-30, 32-42, 44-45 and 50.

11. Also in issue is parts of seven pages which were deleted by QPS on the basis that it comprises irrelevant information. I have also made findings on this issue as the applicant has not expressly excluded this information from the scope of this external review.

### **Irrelevant information**

12. Section 73 of the RTI Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
13. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>6</sup>
14. QPS deleted information from seven pages on the basis that it is irrelevant to the application.<sup>7</sup>
15. I have carefully considered this information and I am satisfied that it is irrelevant to the terms of this application. The deleted information relates to other police matters and does not relate to subject matter of the access application in any way. I am therefore satisfied that QPS was entitled to delete this information under section 73 of the RTI Act.

### **Contrary to the public interest information**

#### ***Relevant law***

16. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>8</sup> However, this right is subject to limitations, including grounds for refusal of access.<sup>9</sup> Access to information may be refused where disclosure would, on balance, be contrary to the public interest.<sup>10</sup>
17. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, 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, there are some recognised public interest considerations that may apply for the benefit of an individual.

#### ***How is the balance of the public interest determined?***

18. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and also explains the steps that a decision-maker must take in deciding the public interest as follows:<sup>11</sup>
  - identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and non-disclosure

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<sup>6</sup> O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at paragraph 52.

<sup>7</sup> Pages 22 – 28.

<sup>8</sup> Section 23(1)(a) of the RTI Act.

<sup>9</sup> Section 47 of the RTI Act sets out the grounds on which access may be refused to documents.

<sup>10</sup> Section 47(3)(b) of the RTI Act.

<sup>11</sup> Section 49(3) of the RTI Act.

- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosing the information would, on balance, be contrary to the public interest.

## Findings

### ***Where does the balance of the public interest lie in this matter?***

19. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.
20. I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied I have not taken into account any irrelevant factors in reaching my decision.
21. I consider that there are a number of factors favouring disclosure and nondisclosure in this case. I discuss these and their relative weight below.

### ***Factors favouring disclosure***

#### **Accountability and transparency**

22. There is a clear public interest in ensuring that agencies such as QPS are accountable for the conduct of their investigations. Factors favouring disclosure will arise if disclosing the Information in Issue could reasonably be expected to enhance QPS's accountability.<sup>12</sup> QPS must be accountable and transparent in how it investigates offences and conducts prosecutions.
23. I acknowledge that the applicant was the victim of an offence and that the applicant would like to know what penalty was given to the defendant and seeks answers to other questions regarding the nature of the charge. I accept that disclosing this information would provide the applicant with a more detailed understanding of how QPS handled the prosecution. However, the requirement for QPS to be accountable and transparent in prosecuting offences does not, in my view, oblige QPS to provide the applicant with access to its entire file nor reveal all of the information it gathered in dealing with the investigation.<sup>13</sup>
24. In this case, it is relevant that the investigating officer has spoken to the applicant on several occasions in an attempt to answer some of the applicant's questions about this matter.<sup>14</sup> I understand that although some of the applicant's questions were answered, the applicant remains dissatisfied with QPS's actions. I also note that the Information in Issue itself does not answer all of the applicant's questions and disclosure of this information is not likely to address the concerns that the applicant has raised regarding QPS's actions and the consequences of the relevant offence.
25. The incident that is the subject of the access application has also been heard before a court of law. This significantly advances the accountability and transparency of the QPS charge and prosecution process. The court process is designed to test the veracity of the evidence against the defendant and the strength of the prosecution's case and furthers QPS's accountability and transparency significantly.

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<sup>12</sup> Schedule 4, part 2, items 1 and 11 of the RTI Act.

<sup>13</sup> 8A3BPQ and Queensland Police Service [2014] QICmr 42 (30 October 2014) at paragraph 24.

<sup>14</sup> The relevant police officer contacted the applicant again during the course of this external review.

26. Having considered the nature of the remaining information, together with the information which QPS has previously provided to the applicant, I attribute a low weight to these factors.

#### **Personal information of the applicant**

27. 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.<sup>15</sup> As some of the Information in Issue comprises personal information<sup>16</sup> about the applicant, this factor is relevant.
28. I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I attribute significant weight to this factor to the extent the Information in Issue comprises the applicant's personal information.

#### **Factors favouring nondisclosure**

##### **Personal information and privacy of third party**

29. The RTI Act recognises that a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy,<sup>17</sup> and that disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>18</sup>
30. The Information in Issue comprises the personal information of other individuals. It comprises their identifying information, contact details, opinions and observations which were reported to QPS about the incident. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of these individuals under the RTI Act.
31. I consider that the personal information recorded in the Information in Issue is of a sensitive and private nature. This information is not otherwise publicly available and its disclosure under the RTI Act would be a significant intrusion into the privacy of individuals other than the applicant. Given the disclosure of personal information in this case is likely to intrude of the privacy of other individuals, I consider that the public interest harm that could be anticipated from disclosure is relatively high.
32. I accept that the applicant knows the identity of the defendant. In my view this reduces, but does not negate, the weight of these public interest factors in relation to the defendant's identifying information. However, the fact that a person is a defendant in a criminal matter is, in my view, relatively sensitive information outside of the court process and this information is not generally known or publicly available. I also note that it is not possible to place restrictions on the use, dissemination or republication of information released under the RTI Act and, in my view, this is a relevant consideration in these circumstances.

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<sup>15</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>16</sup> Section 12 of the *Information Privacy Act 2009* (Qld) 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.*

<sup>17</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>18</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

33. I also note that while the defendant's identity comprises some of the personal Information in Issue, there is also other sensitive personal information of third parties that is unknown to the applicant and remains private.
34. For these reasons, I have attributed moderate weight to these factors favouring nondisclosure of the information.

#### **Prejudice the flow of information**

35. If disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency, a public interest factor favouring nondisclosure arises.<sup>19</sup>
36. It is generally recognised that there is very strong public interest in protecting the free flow of information to law enforcement agencies. In this case, most of the information was provided to QPS by the person who is the subject of the investigation, that is, the defendant.
37. I accept that the defendant would have a reasonable expectation that some of this information would be revealed as part of the prosecution process in court. In my view, this reduces, but does not negate, the weight of this factor. However, routinely disclosing this type of information under the RTI Act, and outside of the court process, would tend to discourage offenders from cooperating with QPS and providing information about their involvement in the offence. This in turn would significantly prejudice QPS's ability to effectively discharge its functions in enforcing the law.
38. For these reasons, I consider that disclosing the information could reasonably be expected to prejudice the flow of information to QPS and I afford this factor significant weight.

#### **Balancing the relevant public interest factors**

39. For the reasons set out above, my view is that there are three relevant factors which favour disclosure of the information. I afford low weight to the factors relating to accountability and transparency also taking into account the information that has been provided to the applicant by the QPS and significant weight to the factor relating to the applicant's personal information – but only to the extent the information comprises the applicant's personal information.
40. I have also identified three relevant factors favouring nondisclosure of the information and I afford moderate weight to two of them and significant weight to the factor relating to prejudicing the flow of information to a law enforcement agency.
41. In this case I consider that the factors favouring nondisclosure, particularly with respect to the prejudice that could reasonably be expected to be caused in relation to the privacy of third parties and the flow of information to QPS, clearly outweigh the factors favouring disclosure of the Information in Issue.
42. I am therefore satisfied that QPS was entitled to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

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<sup>19</sup> Schedule 4, part 3, item 13 of the RTI Act.

## **DECISION**

43. For the reasons set out above, I affirm the decision under review by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act, and that QPS is entitled to refuse access to the Information in Issue.
44. I also affirm the decision by QPS to delete some information on the basis that it was irrelevant under section 73 of the RTI Act.
45. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 18 September 2015**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
7 October 2014	QPS received the access application.
28 November 2014	QPS issued its decision to the applicant.
3 December 2014	OIC received the external review application.
4 December 2014	OIC notified QPS and the applicant that the external review application had been received. OIC asked QPS to provide the relevant procedural documents by 11 December 2014.
10 December 2014	OIC received the requested documents from QPS.
23 December 2014	OIC notified QPS and the applicant that the external review application had been accepted. OIC asked QPS to provide a copy of all documents located in response to the access application, clearly showing the information to which access was refused and the basis for refusing access, by 16 January 2015.
15 January 2015	QPS requested an extension of time until 20 January 2015 to provide OIC with the requested documents.
22 January 2015	OIC received the requested documents from QPS.
26 February 2015	OIC conveyed an oral preliminary view to the applicant on the issues in the review. The applicant did not accept the preliminary view. OIC explained that it had arranged for QPS to contact the applicant and answer his questions regarding the penalty given to the defendant.
3 March 2015	OIC received submissions from the applicant.
10 March 2015	OIC received submissions from the applicant. OIC contacted the applicant who advised that he was not satisfied with the answers given in the telephone conversation with QPS and wished to proceed with the external review.
13 April 2015	OIC received submissions from the applicant.
24 April 2015	OIC conveyed its preliminary view to QPS on the release of additional information to the applicant and invited it to provide submissions by 11 May 2015 if it did not accept the preliminary view.
8 May 2015	QPS agreed to the release of additional information to the applicant.
18 May 2015	OIC asked QPS to release additional information to the applicant by 29 May 2015. OIC received submissions from the applicant.
26 May 2015	QPS sent the additional information to the applicant.
4 June 2015	OIC received submissions from the applicant.
7 July 2015	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 22 July 2015 if he did not accept the preliminary view. The applicant notified OIC that he did not accept OIC's preliminary view and continued to seek access to the information.
28 July 2015	OIC confirmed the preliminary view to the applicant and further reiterated the scope of OIC's jurisdiction.