



Decision and Reasons for Decision

Citation: *Van Veenendaal and Queensland Police Service* [2018] QICmr 12 (20 March 2018)

Application Number: 313247

Applicant: Van Veenendaal

Respondent: Queensland Police Service

Decision Date: 20 March 2018

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - EXEMPT INFORMATION - request for all investigation documents - prescribed crime body - whether all requested documents comprise exempt information under schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) - section 40 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for documents relating to property raid and seizure by police - personal information and privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for sensitive personnel documents relating to a police officer - neither confirm nor deny - whether section 55 of the *Right to Information Act 2009* (Qld) applies

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - NONEXISTENT AND UNLOCATABLE DOCUMENTS - applicant submits that agency has failed to locate all documents responding to his application - whether agency has conducted all reasonable searches - whether there are reasonable grounds to be satisfied that further documents do not exist or cannot be located - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - information pertaining to matters unrelated to the terms of the access application - whether information may be deleted under section 73 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for a range of documents in connection with the execution of search warrants, at a property where the applicant resided.¹
2. In response to the application, QPS located a three page list of items that had been seized. QPS decided to refuse access to some information on the basis that disclosure would, on balance, be contrary to the public interest—primarily because it comprised the personal information of other individuals.² QPS also decided to refuse access to some documents on the basis that they were non-existent or unlocatable, and also neither confirmed nor denied the existence of other requested documents.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review, contesting all aspects of QPS' decision, including the sufficiency of its searches. During the review, QPS located and released additional documents to the applicant.³ QPS also agreed to release some further information in the list of items pertaining to the applicant's sister in law and brother, with their consent.⁴
4. In his submissions to OIC, the applicant has largely focused on documents which he considers are missing. While QPS did locate some further documents on external review, the applicant does not accept that QPS has taken all reasonable steps to locate documents responding to his application.⁵ Of particular concern to the applicant is the absence of signed search warrant applications, which QPS has submitted, are not in their possession.
5. For the reasons set out below, I vary QPS' decision, and in summary, find that:
 - section 40 of the RTI Act applies to part of the application which requested investigation documents as they all comprise exempt information under schedule 3, section 10(4) of the RTI Act
 - access to information about other individuals may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest
 - section 55 of the RTI Act applies to neither confirm nor deny the existence of documents requested in relation to a particular QPS officer's employment situation
 - access to any further documents responding to the application, including the signed search warrant applications, may be refused under section 47(3)(e) of the RTI Act on the basis they are non-existent or unlocatable; and
 - section 73 of the RTI Act applies to information in certain documents that pertains to subject matter unrelated to the terms of the access application.

Background

6. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix.

¹ Access application dated 1 January 2017, received by QPS on 3 January 2017.

² Decision dated 6 March 2017.

³ Sent to applicant on 25 October 2017 and 26 February 2018.

⁴ Those individuals provided signed authorities dated 24 April 2017 for the disclosure of their information to the applicant.

⁵ Submissions to OIC dated 20 November 2017 and 9 March 2018.

7. On two occasions in 2015, the applicant was residing at a property on which a search warrant was executed by QPS, resulting in the seizure of various items.⁶ The applicant has raised grievances about the execution of the search warrants, particularly in respect of the First Search, and the conduct and procedures followed by QPS. The applicant also submits that he and some of his family members have been the subject of continual unfair treatment by QPS in connection with matters broadly relating to the searches.

Reviewable decision

8. The decision under review is the QPS decision dated 6 March 2017.⁷

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
10. The applicant provided extensive written submissions to OIC setting out his arguments in favour of disclosure of the requested information.⁸ I have carefully reviewed all of the applicant's submissions and to the extent they are relevant to the issues in this review, I have taken them into account in reaching my decision. Parts of the applicant's submissions concern issues on which the Information Commissioner has no jurisdiction. e.g. complaints about actions (or omissions) of QPS officers, alleged procedural flaws in relation to the First Search and concerns about QPS' officers compliance with recordkeeping policies. Where the applicant's submissions concern issues beyond the Information Commissioner's jurisdiction, I have not taken them into account in making this decision.

Information in issue

11. Parts of the following documents remain in this review:
- list of items seized by QPS (**Seized Items List**)⁹
 - unsigned/draft application for search warrant dated April 2015 (**First Warrant Application**)¹⁰
 - signed search warrant (**First Search Warrant**)¹¹
 - QPRIME report (**QPRIME Report**)¹²
 - list of items seized by QPS, with handwritten notations (**Notated Items List**)¹³
 - Occurrence Sheet dated 10 November 2015 (**Occurrence Sheet**)¹⁴; and
 - QPS Notebook entries from November 2015 (**Notebook**).¹⁵
12. Documents which have been released to the applicant during the review in their entirety, do not form part of the information remaining in issue in this review.¹⁶

⁶ One search was executed in April 2015 (**First Search**) and another search was executed in November 2015 (**Second Search**).

⁷ The applicant submitted that the decision was deemed, as he disputed the date on which QPS had recorded payment of his application fee. QPS provided OIC with evidence that the fee was receipted on 30 January 2017. As the decision was made 25 business days after that date, I am satisfied that it was a valid decision made within the processing period.

⁸ Including his external review application dated 20 March 2017 and submissions dated 29 May 2017, 20 November 2017 and 9 March 2018.

⁹ Three pages, with information redacted on each page.

¹⁰ Five pages, with information redacted on four pages only.

¹¹ Three pages, with information redacted on the second page only.

¹² The entire QPRIME report comprises 43 pages, with seven part pages having been released to the applicant.

¹³ Three pages, with information redacted on each page.

¹⁴ One page, with information redacted on the basis of irrelevance.

¹⁵ Three pages, with information redacted on two pages on the basis of irrelevance, and on one pages on the basis of section 47(3)(b) of the RTI Act.

¹⁶ Including an Indemnity Receipt, Search Warrant Checklists relating to the First and Second Search, Report No. QP1501648714, other relevant QPS notebook entries and a copy of the Second Search Warrant.

Issues for determination

13. In this review, the issues for determination are whether:

- (i) section 40 of the RTI Act applies to the part of the access application seeking all investigation documents on the basis that they comprise exempt information under schedule 3, section 10(4) of the RTI Act
- (ii) access to the personal information of other individuals¹⁷ may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest
- (iii) section 55 of the RTI Act applies to the parts of the access application seeking sensitive employment information pertaining to a QPS officer
- (iv) QPS has taken all reasonable steps to locate documents responding to the access application, specifically signed applications for search warrants; and
- (v) section 73 of the RTI Act applies to parts of documents¹⁸ that pertain to subject matter unrelated to the terms of the access application.

Findings

(i) Request for all investigation documents – exempt information

Relevant law

14. Section 40 of the RTI Act allows an agency to refuse to deal with an application if:

- (i) the application requests all documents, or all documents of a stated class, that contain information of a stated kind or related to a statement subject matter; and
- (ii) it appears to the agency that all of the document to which the application relates are comprised of exempt information.

15. If an agency relies on section 40 of the RTI Act, it is not required to identify any or all of the document that would be relevant to the access application.¹⁹

16. Schedule 3 of the RTI Act sets out categories of information, the disclosure of which Parliament has deemed contrary to the public interest, and therefore exempt from disclosure.²⁰ Relevantly, schedule 3, section 10(4) of the RTI Act provides that information is exempt information if it was 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. However, schedule 3, section 10(6) of the RTI Act will exclude the operation of the exemption if the investigation has been finalised and the relevant information is 'about' the applicant.

Analysis

17. Part of the access application requested all documents pertaining to any investigations conducted by the Crime and Corruption Commission (**CCC**) in relation to a named QPS officer, in connection with the First Search (**CCC Investigation Documents**).²¹ I am satisfied this constitutes a request for all documents of a stated class that relate to a

¹⁷ Appearing in the Seized Items List, First Warrant Application, First Search Warrant, QPRIME Report (pages 36 and 37), Notated Items List and Notebook (page 2).

¹⁸ The QPRIME Report, Notebook and Occurrence Sheet.

¹⁹ Section 40(2) of the RTI Act.

²⁰ Section 48(2) of the RTI Act defines 'exempt information' as the information described in schedule 3 of the RTI Act.

²¹ Item 5 of the access application dated 1 January 2017.

stated subject matter and that therefore, the first limb of section 40 of the RTI Act is satisfied.

18. For the reasons set out below, I consider that all of the requested CCC Investigation Documents would comprise exempt information under schedule 3, section 10(4) of the RTI Act and that therefore, the second limb of section 40 of the RTI Act is satisfied.
19. Under the RTI Act, the CCC is a prescribed crime body.²² The evidence available to OIC²³ confirms that a complaint was made (by a family member of the applicant) to the CCC in July 2015 concerning the conduct of the particular QPS officer and that the CCC considered the matter. I am therefore, satisfied that the matter was investigated by a prescribed crime body.
20. The application seeks all documents regarding any CCC investigations and I am satisfied that this would encompass documents obtained, used or prepared by the CCC in investigation the allegations made by the applicant's family member, in accordance with the ordinary meaning of those terms.²⁴ I would generally expect this category of documents to involve information obtained by CCC in assessing the allegations and documents the CCC created in the course of performing its functions.²⁵
21. I am further satisfied that the exception to the exemption cannot apply as, while the investigation has been completed, the applicant was not the subject of the investigation and therefore, any CCC Investigation Documents would not be 'about' the applicant, for the purpose of schedule 3, section 10(6) of the RTI Act.
22. The word 'about' in schedule 3, section 10(6) of the RTI Act, as a matter of law, is a '*non-technical term defined according to its natural and ordinary meaning*'.²⁶ Previous decisions of the Information Commissioner have established that while an applicant may have some involvement with, or knowledge of, an investigation – for example, as a witness or a complainant – this does not mean that the investigation information is about the applicant. Instead, these decisions have found that the relevant investigation information clearly concerned – that is, was *about* – the individual/s who were the subject of the complaint, and not the applicant.²⁷
23. Accordingly, while it is not disputed that the applicant is connected with the subject matter of the CCC Investigation Documents in terms of his presence at the First Search, the applicant was not the subject of the CCC complaint and therefore, the CCC Investigation Documents are not 'about' him for the purpose of schedule 3, section 10(6) of the RTI Act.

²² See definition of *prescribed crime body* in schedule 3, section 10(9) of the RTI Act.

²³ QPS letter dated 26 February 2016, as provided to OIC by the applicant.

²⁴ The terms obtained, used and prepared are not defined in the RTI Act or *Acts Interpretation Act 1954* (Qld) so they must be given their ordinary meaning.

²⁵ However, as set out in section 40(2) of the RTI Act, it is unnecessary to identify any or all of the documents, for section 40 of the RTI Act to apply.

²⁶ *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52]. Relevantly – 'of, concerning, in regard to': Macquarie Dictionary Online: <https://www.macquariedictionary.com.au/> (accessed on 15 December 2017).

²⁷ *G8KPL2 and the Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [32]) (an appeal against this decision was dismissed: see *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) (an appeal against this decision was also dismissed: see *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167). See also the decisions in *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012) and *Magin and Department of Environment and Heritage Protection* [2016] QICmr 26 (30 June 2016).

Conclusion

24. I am satisfied that section 40 of the RTI Act applies to the part of the access application which seeks access to all CCC Investigation Documents as they would all comprise exempt information under schedule 3, section 10(4) of the RTI Act.

(ii) Personal information of other individuals

Relevant law

25. The RTI Act is administered with a pro-disclosure bias, meaning that access should be given to requested information, unless giving access would, on balance, be contrary to the public interest.²⁸
26. 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, there are some recognised public interest considerations that may apply for the benefit of an individual.
27. The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of public interest²⁹ and explains the steps that a decision-maker must take³⁰ in deciding the public interest as follows:
- identify and irrelevant factors and disregard them³¹
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.
28. Relevantly, the RTI Act recognises that disclosing the personal information of another individual could lead to a public interest harm.³² Personal information is defined as:

*...information or an opinion, including information or an opinion forming part of a database whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*³³

Analysis

29. The applicant submits that the public interest would be served by full disclosure of the documents located in response to his application as this would demonstrate QPS officer involvement in '*police corruption*' and '*criminal activity*'.³⁴ In further support of this submission, the applicant alleges that a QPS officer has perverted the course of justice; that another QPS officer submitted a '*false medical report*'; that a medical practitioner was '*fraudulently billing Medicare millions of dollars*' and colluded with QPS to falsify documents; that various QPS officers have engaged in dishonest or illegal acts and that the applicant and members of his family have been the subject of acts of violence and

²⁸ Section 44(1) of the RTI Act.

²⁹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

³⁰ Section 49(3) of the RTI Act.

³¹ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

³² Schedule 4, part 4, item 6 of the RTI Act.

³³ See schedule 5 of the RTI Act which adopts the definition in section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

³⁴ Submission to OIC dated 9 March 2018.

threats, by other individuals involved in the matrix of complaints and incidents with which the applicant is connected.³⁵

30. I accept that by obtaining access to unredacted copies of the various documents relating to the search warrant process³⁶, the applicant would be able to view the entirety of the information which was prepared by QPS in relation to the First Search and some further Notebook entries pertaining to the Second Search. However, the redacted information is solely limited to the personal information of other individuals and therefore, I consider the weight of those disclosure factors is minimal.³⁷ I am satisfied that disclosure would not provide the applicant with any further understanding of the procedures followed by QPS, or the reasons for actions taken by QPS in relation to the search warrant process.
31. The applicant has already received access to the majority of information in the documents, to the extent they contain his personal information (and that of his family members who have authorised disclosure) and to the substance of the First Warrant Application. Notably, the information released to the applicant in that document under the heading "Grounds", comprehensively sets out the evidence on which QPS relied to support the application, over three typed pages. I consider this significantly discharges the public interest in enhancing QPS' accountability and transparency in relation to the First Search.
32. As set out above, the RTI Act recognises that disclosure of another individual's personal information gives rise to a factor favouring nondisclosure.³⁸ I am satisfied that the information in issue in the Seized Items List, First Warrant Application, First Search Warrant, QPRIME Report, Notated Items List and Notebook, comprises the personal information of other individuals as it contains the names of various individuals, including a victim, and certain personal details. Accordingly, I am satisfied that this factor applies and I consider that the level of harm which would result from disclosure is relatively high given that the personal information appears in documents regarding a serious QPS matter/investigation.
33. The personal information of other individuals appears in a relatively sensitive context, i.e. it connects those individuals to the seizure of property during the execution of a search warrant by QPS. In some instances, the individuals have no direct involvement with the related offences being investigated by QPS, but their names appears on seized documents, or they are the owners of seized items. I therefore, find that a further factor favouring nondisclosure is raised with respect to the protection of an individual's right to privacy.³⁹
34. 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.⁴⁰ Given the type of documents under consideration, I am satisfied that disclosure would intrude into the other individuals' personal sphere. I am however, conscious that given the applicant's particular connection with this matter and as he was present during the First Search, he is likely to be aware of the identities of at least some of the other individuals. While this reduces the weight of this factor to a certain

³⁵ Submissions to OIC dated 20 November 2017.

³⁶ The Seized Items List, First Warrant Application, First Search Warrant, QPRIME Report (pages 36 and 37 only), Notated Items List and Notebook (page 2).

³⁷ See *CSX and Department of Child Safety* (Unreported, Queensland Information Commissioner, 21 December 2007) at [44] where the Information Commissioner explained that the public interest in disclosure will be reduced where information pertains to a private individual rather than being information held by government about government.

³⁸ Schedule 4, part 4, section 6 of the RTI Act.

³⁹ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁰ 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 12 August 2008, at paragraph 1.56.

extent, it does not negate it entirely. Accordingly, I afford it moderate weight in favour of nondisclosure.

Conclusion

35. I am satisfied that in this case, the public interest in protecting the privacy of the other individuals and safeguarding their personal information carries higher weight than the public interest in promoting access to government-held information and enhancing QPS' accountability and transparency in relation to the First Search. On balance, I find that disclosure would be contrary to public interest and therefore, access to the information remaining in issue in the Seized Items List, First Warrant Application, First Search Warrant, Notated Items List, pages 36 and 37 of the QPRIME Report and page 2 of the Notebook, may be refused under section 47(3)(b) of the RTI Act.

(iii) Neither confirm nor deny

Relevant law

36. Section 55 of the RTI Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it exists, would contain prescribed information.⁴¹ It is intended to apply in situations where revealing that the agency does or does not have documents in response to an application, due to the specific wording of the request, would reveal information which an agency would normally be entitled to refuse access.⁴²

Analysis

37. In items 2, 3, and 4 of the access application, the applicant requested documents which he believes were authored by a particular QPS officer, and also to information pertaining to that officer's employment situation in relation to '*retirement*', '*disability*', '*payouts*' and '*settlements*'.
38. I accept that the applicant is aware that the particular QPS officer has ceased employment with QPS. However, this does not entitle the applicant to any further documents pertaining to that officer or his employment, nor have his beliefs as to authorship of alleged documents confirmed (or denied). An individual's employment records comprise their personal information and generally, this information attracts a very high privacy interest in favour of nondisclosure. I am satisfied that the type of information that the applicant has requested falls at the higher end of the spectrum in terms of sensitivity as it would, if it exists, relate to private aspects of a QPS officer's career, that is unique to that individual.⁴³ For these reasons, I also consider the public interest harm that would flow from disclosure of such records, if they exist, would be very high. In the circumstances of this case, I am unable to identify any public interest factors that would favour disclosure of the requested information, other than the pro-disclosure bias.
39. Therefore, I find that disclosure of the requested information, if it exists, would, on balance, be contrary to the public interest and that therefore, it comprises prescribed information under section 55 of the RTI Act.

⁴¹ '*Prescribed information*' is defined as including personal information the disclosure of which would, on balance, be contrary to the public interest. See the definition of 'personal information' at paragraph 28 above.

⁴² *Australian Broadcasting Corporation and Psychologists Board of Australia* (Unreported, Queensland Information Commissioner, 3 January 2012) at [14].

⁴³ As compared with say, pay rates which are generally publicly available in the public sector.

Conclusion

40. I find that section 55 of the RTI Act applies to neither confirm nor deny the existence of the information requested in items 2, 3 and 4 of the access application.

(iv) Sufficiency of search

41. The applicant firmly believes that many more documents should have been located in response to his application. Of key concern to the applicant is the absence of signed warrant applications pertaining to the First and Second Search. The applicant considers these documents were legally required to be retained by QPS and that they have been deliberately omitted from the RTI Act process.⁴⁴ QPS has however, relied on its Operational Procedures Manual (**Manual**)⁴⁵ to explain the absence of the signed applications. In summary, QPS submits that, in accordance with the Manual, once the warrant application is presented, the signed copy is not retained to the QPS officer, but remains in the possession of the issuing officer, i.e. generally a Magistrate.

Relevant law

42. Access may be refused to documents that are non-existent or unlocatable.⁴⁶ A document is non-existent if there are reasonable grounds to be satisfied it does not exist.⁴⁷ 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 it, but it cannot be found.⁴⁸
43. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:
- the administrative arrangements of government
 - the agency's structure, functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
 - the agency's practices and procedures (including, but not limited to, its information management approaches); and
 - other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.⁴⁹
44. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the non-existent document are adequately explained by the agency.
45. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.⁵⁰ Such steps

⁴⁴ As set out in the Applicant's submissions received by OIC on 9 March 2018.

⁴⁵ <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>. Accessed on 8 March 2018.

⁴⁶ Section 47(3)(e) of the RTI Act.

⁴⁷ Section 52(1)(a) of the RTI Act.

⁴⁸ Section 52(1)(b) of the RTI Act.

⁴⁹ *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

⁵⁰ As set out in *PDE* at [49].

may include inquiries and searches of all relevant locations identified after consideration of the key factors listed at paragraph 43 above.

46. In determining whether a document is unlocatable, it is necessary to consider:
 - whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and
 - whether the agency has taken all reasonable steps to find the document.⁵¹
47. In answering these questions, regard should be had to the circumstances of the case and the key factors set out at paragraph 43 above.⁵²

Analysis

48. QPS submitted⁵³ that initially, it conducted searches of the QPRIME database⁵⁴ using the *applicant's name*, and this resulted in locating the First Search Warrant. QPS also submitted that the investigating officer conducted searches for the warrant application and any relevant notebook/diary entries.⁵⁵ One of the documents located through these searches was the unsigned/draft version of the First Warrant Application, most of which, has been released to the applicant in full.
49. In relation to documents relating to the Second Search, QPS explained⁵⁶ that when it conducted further searches on external review, it used the *property address* as the search term in QPRIME, and this revealed documents relating to the Second Search. Presumably, those documents were not located in the original searches because the applicant's name does not appear in the Second Search QPRIME report. QPS also located non-QPRIME documents after speaking with the investigating officer including the Notebook, Occurrence Sheet, Second Search Warrant and Warrant Checklist.⁵⁷
50. With respect to the existence of a *signed* warrant application for the First Search, QPS submitted to OIC that:

... the common practice, as outlined in the QPS Operational Procedures Manual (2.8.3),⁵⁸ in regard to search warrant applications is that the investigating officer presents the signed copy of the document to issuing Magistrate. This copy is then retained by the Magistrate. This was the practice followed by the investigating officer on this occasion and is the reason why a signed copy was not retained by police.⁵⁹

51. Section 2.8.3 of the Manual provides as follows:

*When a search warrant is issued the **signed application form remains with the issuing officer** and the warrant is retained by the investigating officer.*

...

⁵¹ Section 52(1)(b) of the RTI Act.

⁵² *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Officer of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

⁵³ Submissions to OIC dated 19 February 2018.

⁵⁴ This is the database used by QPS to record complaints, investigations and various dealings with members of the public.

⁵⁵ Those notebook and diary entries have previously been released by QPS in this review and do not fall within the scope of the sufficiency of search issues the subject of this review.

⁵⁶ Submissions to OIC dated 19 February 2018.

⁵⁷ Most of which were released to the applicant in their entirety, save for some minimal redactions on the basis of irrelevance and personal information, which are addressed in these reasons.

⁵⁸ <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>

⁵⁹ Submission to OIC dated 23 January 2018.

*The supervisor reviewing the search warrant and application is to be satisfied of compliance with the contents of this section and are to **retain and appropriately file the QP 0927** when complete.*

[emphasis added]

52. I am satisfied that the above section of the Manual stipulates that the correct recordkeeping procedure is as follows:
- the issuing officer retains the signed copy of the warrant application
 - the warrant itself is retained by the investigating officer; and
 - the search warrant checklist⁶⁰ is filed by the relevant supervisor.
53. In this case, the First and Second Warrants have been located by QPS, but not signed copies of the applications, which preceded the issuance of the warrants. I consider this accords with the process prescribed by the Manual in that the issuing officer, i.e. the Magistrate, retained the signed copies of the applications, those documents were not returned to QPS and therefore, they are no longer in the possession or under the control of QPS. Accordingly, I find that the signed copies of the warrant applications do not exist as documents of QPS⁶¹ under the RTI Act.⁶²
54. As noted above, QPS also conducted inquiries with the investigating officers involved in both the First and Second Search and those officers located documents in non-QPRIME locations. I am satisfied that if signed copies of the warrant applications had been retained, those officers would be the appropriate individuals with whom to make inquiries. I do not however, consider that the investigating officers were required to retain copies of the signed applications, in view of section 2.8.3 of the Manual, as detailed above.⁶³
55. I acknowledge that QPS' original searches did not capture all documents responsive to the application and that the applicant justifiably held concerns about the extent of documentation located in response to his application. However, I am satisfied that, following the further searches conducted by QPS on external review, on two occasions, that QPS has undertaken comprehensive searches in appropriate electronic and hardcopy locations and conducted targeted inquiries with relevant QPS officers. Those searches have revealed numerous additional documents which have been released to the applicant, with minimal redactions.
56. I am further satisfied that QPRIME is the primary location in which documents would be located as this is the database QPS uses to record incidents, complaints and dealings with members of the public. I also consider it was appropriate for the investigating officers to conduct independent searches as they have the requisite knowledge of the applicable recordkeeping practices and procedures, and were involved in creation of relevant documents.

⁶⁰ These documents are referred to as QP 0927 and this code appears in the bottom left corner of the First and Second Warrant Checklists which were located, and released to the applicant by QPS.

⁶¹ Section 12 of the RTI Act defines the term 'document of an agency' as a document in the possession or under the control of the agency.

⁶² Rather, they are documents held by a separate government agency, the Department of Justice and Attorney-General. While the applicant has provided OIC with evidence that he has separately applied to that agency to request a copy of the First Search signed warrant application, I am not in a position to comment on the merits of that application, within the context of this review.

⁶³ QPS did however, locate a draft/unsigned copy of the First Warrant Application, most of which was released to the applicant, through inquiries with the investigating officer. The Manual is silent as to whether an investigating officer is required to retain draft/unsigned copies of the warrant applications and the practice adopted appears to be at the discretion of the relevant officer.

Conclusion

57. On the basis of the above, I find that QPS has taken all reasonable steps to locate documents in response to the terms of the access application and that access to any further documents, including signed copies of the warrant applications, may be refused under sections 47(3)(e) of the RTI Act, on the basis that they are non-existent, in accordance with section 52(1)(a) of the RTI Act.

(v) Irrelevant information

58. During the external review, QPS located a 43 page QPRIME Report responding to item 7 of the access application. QPS submits that the majority of the information in that report⁶⁴ does not respond to the terms of the access application. QPS also removed information appearing in an Occurrence Sheet and Notebook⁶⁵, concerning the Second Search, on the basis of irrelevance.

Relevant law

59. Section 73 of the RTI Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to the access 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. 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 access application.⁶⁶

Analysis

60. The application requested access to a variety of documents in connection with search warrants executed by QPS at a property in 2015 and also sought a range of information pertaining to a particular QPS officer.⁶⁷
61. QPS located a QPRIME report relating to the First Search comprising 43 pages, of which seven pages were identified as containing information relevant to the scope of the application. Whilst the entire report is connected to the First Search, I am satisfied the deleted information relates more broadly to the investigation of offences and concerns complaints about other individuals, not the property search and seizure process.
62. QPS also redacted information from an Occurrence Sheet and Notebook located in relation to the Second Search on the basis of irrelevance. Having examined the redacted information in those documents, I am satisfied that it pertains to internal QPS processes not connected to the terms of the application, other QPS investigations or dealings with other members of the public on unrelated QPS matters.

Conclusion

63. Accordingly, I am satisfied that the deleted information relates to entirely separate QPS matters which do not involve the property search and seizure process, nor do they pertain to the subject officer named in the access application. Accordingly, I find that

⁶⁴ 36 full pages and 6 part pages (19, 20, 23, 24, 29, 36). These remainder of those part pages have been released to the applicant.

⁶⁵ Pages 1 and 3.

⁶⁶ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁶⁷ I have elected not to directly quote the terms of the access application in these reasons, primarily, to protect the privacy of the police officer, and other individuals which the applicant named throughout the application.

this information is not relevant to the terms of the access application and may, therefore, be deleted under 73 of the RTI Act.

DECISION

64. For the reasons set out above, I vary the decision under review, and find that:

- (i) section 40 of the RTI Act applies to the part of the access application seeking all CCC Investigation Documents on the basis that they comprise exempt information under schedule 3, section 10(4) of the RTI Act
- (ii) access to the personal information of other individuals appearing in the Seized Items List, First Warrant Application, First Search Warrant, QPRIME Report (pages 36 and 37), Notated Items List and Notebook (Page 2), may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest
- (iii) section 55 of the RTI Act applies to the parts of the access application seeking information pertaining to a QPS officer
- (iv) access to any further documents, including signed copies of warrant applications, may be refused on the basis they do not exist, under section 47(3)(e) of the RTI Act; and
- (v) section 73 of the RTI Act applies to parts of the QPRIME Report, Notebook and Occurrence Sheet pertaining to subject matter that is unrelated to the terms of the access application.

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

K Shepherd
Assistant Information Commissioner

Date: 20 March 2018

APPENDIX

Significant procedural steps

Date	Event
20 March 2017	OIC received the external review application, supporting submissions and documents from the applicant.
21 March 2017	OIC asked QPS to provide relevant procedural documents.
28 March 2017	OIC received the requested procedural documents from QPS.
6 April 2017	OIC notified QPS and the applicant that the external review application had been accepted. OIC asked QPS to provide the documents located in response to the application and records of the searches conducted by QPS.
24 April 2017	OIC received a copy of the requested documents from QPS.
5 May 2017	OIC notified the applicant that QPS located some additional documents and advised the applicant of the next steps of the review.
29 May 2017	OIC received written submissions from the applicant.
29 June 2017	OIC provided the applicant with an update on the status of the review.
17 July 2017	OIC conveyed a written preliminary view to QPS and invited QPS to provide submissions supporting its case.
14 August 2017	OIC provided the applicant with an update on the status of the review.
17 August 2017	OIC received submissions from QPS dated 16 August 2018.
18 September 2017	OIC provided the applicant with an update on the status of the review.
22 September 2017	OIC spoke with QPS and received further documents from QPS.
17 October 2017	OIC conveyed a written preliminary view to the applicant and invited him to provide submissions supporting his case.
18 October 2017	OIC asked QPS to release additional information to the applicant.
25 October 2017	QPS provided additional information to the applicant.
20 November 2017	The applicant advised that he did not accept OIC's preliminary view and provided submissions and further supporting documents to OIC. OIC provided the applicant with an update on the status of the review
11 December 2017	OIC provided the applicant with an update on the status of the review.
19 January 2018	OIC asked QPS to conduct further searches for information.
23 January 2018	OIC received submissions from QPS in relation to its searches.
24 January 2018	OIC provided the applicant with an update on the status of the review.
30 January 2018	OIC asked QPS for further submissions.
19 February 2018	OIC received submissions from QPS.
23 February 2018	OIC conveyed a written preliminary view to the applicant and invited him to provide submissions supporting his case.
26 February 2018	QPS provided additional information to the applicant.
9 March 2018	OIC received written submissions from the applicant.
12 March 2018	OIC provided the applicant with an update on the status of the review.
13 March 2018	The applicant provided a further submission to OIC.