



Decision and Reasons for Decision

Citation: *V73 and Queensland Police Service [2021] QICmr 32*
(23 June 2021)

Application Number: 315026

Applicant: V73

Respondent: Queensland Police Service

Decision Date: 23 June 2021

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - request for documents and communications about the applicant - whether information may be deleted on the basis it is irrelevant - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information and investigative procedure information - accountability, transparency, fair treatment and administration of justice - personal information, privacy and ability to obtain information - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - NONEXISTENT OR UNLOCATABLE DOCUMENTS - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access a range of documents about him or which contain his name.¹

¹ The application is dated 17 September 2019 and was received by QPS on 25 September 2019.

2. QPS did not make a decision within the required statutory timeframe and was therefore taken to have made a deemed decision refusing access to the requested information.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of QPS' deemed decision.³
4. On external review, QPS located relevant documents⁴ and disclosed them to the applicant, subject to deletion of certain information. The applicant remains dissatisfied with the level of information released to him and believes further relevant documents exist.
5. For the reasons set out below, I vary QPS' decision and find that:
 - certain information may be deleted under section 88 of the IP Act, on the basis it is irrelevant to the scope of the application
 - access may be refused to information on the basis that disclosure would, on balance, be contrary to the public interest;⁵ and
 - access to any further documents may be refused on the basis they do not exist or cannot be located.⁶

Reviewable decision and evidence considered

6. The decision under review is the deemed decision QPS is taken to have made under section 66 of the IP Act.
7. Significant procedural steps taken during the external review process are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and RTI Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

Information and issues for determination

9. QPS deleted information from 719 pages of the documents disclosed to the applicant¹⁰ (**information in issue**). The applicant generally contends that these deletions are '*not*

² Under section 66(1) of the IP Act. In accordance with section 66(2) of the IP Act, QPS provided a notice of the deemed decision to the applicant on 18 November 2019.

³ On 28 November 2019.

⁴ Comprising in excess of 1200 pages.

⁵ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

⁶ Under section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

⁷ Section 21 of the HR Act.

⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁹ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.

¹⁰ There is a significant level of duplication in the information in issue which appears within emails.

*inline with any part of the law and are simply excessive to prevent the documents being legible*¹¹ and that no information can be withheld from him.¹²

10. The information in issue appears in records concerning domestic violence protection orders¹³ and criminal charges brought against the applicant and broadly comprises:
 - information on 55 pages¹⁴ which QPS deleted on the basis that it is irrelevant to the access application (**Irrelevant Information**); and
 - information redacted by QPS on the basis its disclosure would, on balance, be contrary to the public interest (**CTPI Information**).
11. The issues for determination are whether:
 - the applicant is entitled to access the Irrelevant Information
 - access to the CTPI Information may be refused on the basis disclosure would, on balance, be contrary to the public interest;¹⁵ and
 - access to further documents may be refused on the basis that they do not exist or cannot be located.¹⁶

Irrelevant Information

12. Under the IP Act, an individual has a right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.¹⁷ A document will be outside the scope of an access application made under the IP Act if it does not contain the applicant's personal information.¹⁸ Section 88 of the IP Act also permits information that is not relevant to the access application to be deleted from the document before giving access to a copy of the document.
13. The applicant submits that I cannot decide what information is relevant because I do not have the necessary information¹⁹ and I *'have not requested any detail about why the information is needed'*.²⁰
14. The IP Act does not require a person to give reasons for seeking access to documents. 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.²¹ The applicant has, however, been provided with several opportunities on external review to make submissions in relation to why he considers the Irrelevant Information should be disclosed to him.

¹¹ Submission dated 7 June 2020.

¹² Submission dated 4 May 2020.

¹³ Under the *Domestic and Family Violence Protection Act 2012* (Qld).

¹⁴ Pages 45, 322-324, 327-328, 334, 342, 344, 349, 355-356, 358-361, 364-367, 370-371, 378 and 382-383 in Part One; pages 213-215, 272, 277, 296-302, 403-408, 491-493, 527-529 and 608 in Part Two and pages 7, 14, 27, 28 and 33 in Additional documents.

¹⁵ Sections 47(3)(b) and 49 of the RTI Act.

¹⁶ Sections 47(3)(e) and 52 of the RTI Act.

¹⁷ Section 40 of the IP Act.

¹⁸ 'Personal information' is defined in section 12 of the IP Act 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'.

¹⁹ Submissions dated 4 May 2020.

²⁰ Submissions dated 3 June 2020.

²¹ *Van Vennendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

15. Having carefully considered the terms of the access application²² and the Irrelevant Information, I am satisfied that:
- 6 entire pages²³ of the Irrelevant Information comprise documents that do not contain any of the applicant's personal information; and
 - the remaining Irrelevant Information in the documents is not about the applicant but is instead about other individuals.²⁴
16. On this basis, I find that the Irrelevant Information was validly deleted from the documents that QPS has disclosed.²⁵

CTPI Information

17. While I am limited in the extent to which I can describe the CTPI Information,²⁶ it includes:
- the personal information²⁷ of private individuals, including their names, dates of birth, signatures, contact details (such as residential and workplace addresses, emails and telephone numbers), their personal circumstances and their observations, recollections and opinions
 - information about the personal circumstances of QPS staff
 - mobile telephone numbers of QPS staff and telephone extension details for other public sector officers; and
 - information about certain procedures employed by QPS in its investigation of criminal matters involving the applicant.
18. The right of access under the IP Act is subject to some limitations, including the grounds on which access to information may be refused.²⁸ One ground of refusal is where disclosing information would, on balance, be contrary to the public interest.²⁹ 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.³⁰
19. In deciding where the balance of the public interest lies, the RTI Act requires a decision maker to identify factors for and against disclosure, disregard irrelevant factors³¹ and decide, on balance, whether disclosure would be contrary to the public interest.³²
20. I have not taken any irrelevant factors into account in making this decision.

²² The application seeks information about the applicant in the following documents: (i) records held at two police stations; (ii) QPRIME records; (iii) the notebooks and diaries of five officers; (iv) text messages and electronic media sent by five officers; and (v) emails. The date range of the application is 1 April 2015 to 25 June 2018 for items (i)-(iv) and 1 April 2015 to 2 July 2018 for item (v).

²³ Page 45 in the Part One documents and pages 492-493 and 527-529 in the Part Two documents.

²⁴ For example, it includes officer notebook entries about police matters which do not involve the applicant.

²⁵ Under section 88 of the IP Act.

²⁶ Section 121 of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

²⁷ '*Personal information*' is defined in section 12 of the IP Act 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*'.

²⁸ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

²⁹ Sections 47(3)(b) and 49 of the RTI Act.

³⁰ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³¹ Including those at schedule 4, part 1 of the RTI Act.

³² Section 49(3) of the RTI Act.

Factors favouring disclosure

21. A small amount of the CTPI Information relates to the applicant and comprises his personal information. This gives rise to a factor favouring disclosure to which I afford high weight.³³ However, this information about the applicant is intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (which raises the nondisclosure factors discussed below).

22. The applicant submits that no information can be withheld from him and:

Full transparency in the Criminal Justice System once charges are laid is a fundamental protection given to defends [sic]. No one persons [sic] individual right to privacy, can override Common Law fundamentals, of a fair trial, and Equity of arms.

Equity of arms Mandates, that once a charge is laid, there must be no disparity between the information available to either party.

...

To provide equity, we must have equal access to information. Therefore no documents may be refused.³⁴

23. Firstly, the RTI process is not a replacement for Court processes in relation to the disclosure of documents for the purposes of a fair trial.³⁵ The arguments that the applicant makes in this regard are specifically relevant to the requirements that a Judge might consider in criminal or other proceedings against the applicant.

24. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability³⁶
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community³⁷
- reveal the reason for a government decision and any background or contextual information that informed the decision³⁸
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;³⁹ and
- contribute to the administration of justice generally, including procedural fairness, or for a person.⁴⁰

25. QPS must be transparent and accountable about how it deals with received allegations of contraventions, or possible contraventions, of the law. I accept that disclosing the CTPI Information would provide the applicant with a more complete picture of the applications and allegations that have been made to QPS by, and about, him and the actions taken by QPS in respect of those matters. QPS has disclosed a significant

³³ Schedule 4, part 2, item 7 of the RTI Act.

³⁴ Submissions dated 4 May 2020. The applicant also raised 'the interest of Justice' in his submissions dated 3 June 2020.

³⁵ *3FG6LI and Queensland Police Service* [2014] QICmr 32 (29 July 2014) at [30] and *Phylard and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

³⁶ Schedule 4, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, item 3 of the RTI Act.

³⁸ Schedule 4, part 2, item 11 of the RTI Act.

³⁹ Schedule 4, part 2, item 10 of the RTI Act.

⁴⁰ Schedule 4, part 2, items 16 and 17 of the RTI Act.

amount of information to the applicant.⁴¹ I consider disclosure of this information has substantially advanced the accountability and transparency factors,⁴² by enabling scrutiny of QPS' actions and providing background information which informed those actions. Given the particular nature of the CTPI Information, I do not consider its disclosure would further advance these accountability and transparency factors in any significant way. In these circumstances, I attribute low weight to these factors.

26. In determining whether the disclosure of the CTPI Information could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:⁴³
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
27. The applicant has not identified that he is wishing to pursue any particular remedy and there is no evidence before me to indicate that disclosure of the CTPI Information is required to enable the applicant to pursue a legal remedy or evaluate whether a remedy (legal or otherwise) is available or worth pursuing. For these reasons, I do not consider this factor favouring disclosure⁴⁴ applies.
28. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision.⁴⁵ Although the applicant has raised general fairness arguments, he has not enunciated how disclosure of this particular CTPI Information would contribute to his fair treatment or procedural fairness. On the information before me, it appears that the applicant was afforded an opportunity to respond to the various allegations made against him and I note that some of criminal proceedings referenced in the disclosed documents have been completed. In these circumstances, and taking the particular nature of the CTPI Information into account, I am not satisfied that that there is a reasonable expectation its disclosure would, in any meaningful way, advance the applicant's fair treatment or contribute to the general administration of justice, including procedural fairness. On this basis, while these factors may apply,⁴⁶ I afford them only low weight due to the nature of the CTPI Information.
29. The applicant also contends that QPS has used the redactions to hide its improper conduct and that some of the CTPI Information comprises '*improper language, and racist, sexist and hateful slurs, by QPS*'.⁴⁷ Public interest factors favouring disclosure also arise in circumstances where disclosing information could reasonably be expected to:

⁴¹ In his submissions dated 7 June 2020, the applicant stated that some of the documents which were partially disclosed to him had previously been served on him. I also note that this disclosed information confirms that the applicant was legally represented in the criminal proceedings taken against him and that information was provided to his lawyer as part of those court processes.

⁴² Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴³ *Willstord and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

⁴⁴ Schedule 4, part 2, item 17 of the RTI Act.

⁴⁵ The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

⁴⁶ Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴⁷ Submissions dated 7 June 2020.

- reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;⁴⁸ or
- allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of QPS or its officers.⁴⁹

30. I have carefully considered the CTPI Information (together with the applicant's submissions and the information which has been released to the applicant). There is nothing before me which suggests that the CTPI Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Some of the CTPI Information comprises information provided to QPS by other individuals. Information of this nature includes the individuals' observations, opinions and versions of events which are shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not itself mean that the information is necessarily incorrect, misleading or unfairly subjective.⁵⁰ I am also satisfied that there is nothing within the CTPI Information which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. Accordingly, to the extent these disclosure factors⁵¹ apply, I afford them low weight.
31. Taking into account the particular nature of the CTPI Information, I cannot identify any other public interest considerations favouring its disclosure.⁵²

Factors favouring nondisclosure

32. The RTI Act recognises that there is a public interest harm⁵³ in disclosing an individual's personal information to someone else and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁵⁴ The concept of 'privacy' is not defined in 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.⁵⁵
33. Having carefully reviewed the CTPI Information, I am satisfied that most of it comprises the personal information of individuals other than the applicant.
34. Some of this personal information relates to personal circumstances of QPS officers. While personal information of this nature appears in a work context, I am satisfied that it is not wholly related to the routine day-to-day work activities of those officers.⁵⁶ Given the nature of this information, I am satisfied its disclosure would be a significant intrusion into the privacy of the relevant staff and the extent of the harm that would arise from its disclosure would be significant.

⁴⁸ Schedule 4, part 2, item 12 of the RTI Act.

⁴⁹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁵⁰ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

⁵¹ Schedule 4, part 2, items 5, 6 and 12 of the RTI Act.

⁵² Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the CTPI Information could, for example, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); or contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the CTPI Information.

⁵³ Schedule 4, part 4, section 6 of the RTI Act.

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

⁵⁵ 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.

⁵⁶ Refer to *BFU12E and Metro North Hospital and Health Service* [2015] QICmr 21 (31 August 2015) at [29] to [31] and *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [118] to [120].

35. The CTPI Information also includes mobile numbers of QPS staff and direct telephone extension details for other public sector officers.⁵⁷ Mobile phone numbers and direct extensions are different to other contact details (such as email addresses or general office phone numbers) in that they allow an individual to be contacted directly and potentially outside of office hours. This gives rise to a reasonable expectation of intrusion into the officer's personal sphere. Accordingly, for information of this nature, I afford moderate weight to these nondisclosure factors.
36. The remaining personal information relates to private individuals and it is of a highly sensitive and personal nature, appearing in the context of domestic violence protection applications and police investigations of criminal matters. As noted above, some of this information is intertwined with a small amount of the applicant's personal information. Given the sensitive and highly personal nature of this information, I am satisfied that its disclosure would be a significant intrusion into the privacy of these private individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure of this remaining personal information.
37. The applicant submits that the CTPI Information is '*unlikely to contain information that contains a third party I am unaware of*' and he considers that '*No one persons [sic] individual right to privacy, can override Common Law fundamentals, of a fair trial, and Equity of arms*'.⁵⁸ I acknowledge that the applicant may know the identities of some of these other individuals and, as a result of his interactions with QPS and his involvement in criminal proceedings, he may also be aware of some of the information these individuals provided to QPS. However, taking into account the sensitive nature and context of the CTPI Information, I do not consider this reduces the weight of these nondisclosure factors, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
38. Public interest factors favouring nondisclosure also arise where disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies⁵⁹ or prejudice an agency's ability to obtain confidential information.⁶⁰ There is a strong public interest in protecting the free flow of information to law enforcement agencies and the ability of those agencies to obtain information which is relevant to the investigation of potential contraventions of the law, including the opinions and observations of concerned individuals (whether they are complainants, witnesses, informers or the subjects of complaint).⁶¹ Routinely disclosing this type of information would tend to discourage individuals from coming forward with relevant information or participating openly in future investigations, particularly where the information involves sensitive personal matters or where information has been provided on a confidential basis. Accordingly, I afford significant weight to these factors favouring nondisclosure.
39. Where disclosing information could reasonably be expected to prejudice security, law enforcement or public safety, a factor favouring nondisclosure will arise.⁶² Some of the CTPI Information reveals investigation procedures and methods employed by QPS. I am prohibited by the IP Act from disclosing any further details as to the specific

⁵⁷ CTPI Information of this nature was the only information redacted from 35 pages disclosed to the applicant.

⁵⁸ Submissions dated 4 May 2020.

⁵⁹ Schedule 4, part 3, item 13 of the RTI Act.

⁶⁰ Schedule 4, part 3, item 16 of the RTI Act.

⁶¹ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016) and *Marshall and Department of the Police* (Unreported, Queensland Information Commissioner, 25 February 2011).

⁶² Schedule 4, part 3, item 7 of the RTI Act.

procedures or methods that are relevant here.⁶³ Having carefully considered the relevant information, I am satisfied that disclosing information of this nature could allow individuals to use the information to modify their behaviour so as to avoid detection, thereby compromising the ongoing effectiveness of those procedures and methods and detrimentally effecting QPS' ability to effectively discharge its obligations to investigate contraventions, or possible contraventions, of the law. On this basis, I afford significant weight to this factor favouring nondisclosure.

Balancing of the factors

40. I have taken into account that the IP Act is to be administered with a pro-disclosure bias.⁶⁴ For the reasons set out above, I am satisfied that privacy considerations and the protection of the personal information of other individuals warrant moderate weight in respect of the direct contact details of public sector officers and significant weight in favour of nondisclosure of the remaining CTPI Information, given its highly personal and sensitive nature of the CTPI Information. Further, anticipated prejudices to law enforcement, the flow of information to QPS and the ability of QPS to obtain confidential information warrant significant weight.
41. On the other hand, I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the CTPI Information,⁶⁵ however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional factors which favour disclosure of the CTPI Information (including those relating to QPS' transparency and accountability; agency conduct deficiencies; fair treatment; revealing information to be incorrect, misleading or unfairly subjective; and the administration of justice generally).⁶⁶ However, taking into account the nature of the CTPI Information, I have afforded these factors only low weight. For completeness, I have also considered all other factors listed in schedule 4, part 2 of the RTI Act, in case the applicant's submissions may indirectly raise any other factor favouring disclosure. Given the specific nature of the CTPI information, I do not consider that any other factors attract any weight.
42. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the CTPI Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁶⁷

Nonexistent or unlocatable documents

43. On external review, the functions of the Information Commissioner include investigating and reviewing whether an agency has taken reasonably steps to identify and locate documents applied for by applicants.⁶⁸ However, access to a document may be refused if it is nonexistent or unlocatable.⁶⁹

⁶³ Section 121(1) of the IP Act.

⁶⁴ Section 64 of the IP Act.

⁶⁵ Schedule 4, part 2, item 7 of the RTI Act.

⁶⁶ Schedule 4, part 2, items 1, 3, 5, 6, 10, 11 and 16 of the RTI Act.

⁶⁷ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁶⁸ Section 137(2) of the IP Act.

⁶⁹ Sections 47(3)(e) and 52 of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. 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—section 52(1)(b) of the RTI Act.

44. To be satisfied that documents are nonexistent, an agency must rely on their particular knowledge and experience and have regard to a number of key factors.⁷⁰ If searches are relied on to justify a finding that documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the particular circumstances.
45. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of 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. In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors.⁷¹

Findings

46. As a result of concerns raised by the applicant that a specific individual, Ms J, held additional documents about him, OIC asked QPS to conduct further searches for information requested in the access application.⁷² As a result of those searches, additional documents were located and these were partially disclosed to the applicant.⁷³ OIC asked QPS to conduct further searches after the applicant again submitted⁷⁴ that additional documents about him were held by certain QPS officers, however, QPS did not locate any further documents relevant to the access application⁷⁵.
47. Despite the documents which QPS disclosed during the course of the review, the applicant maintains that '*QPS have provided less than 10% of the material specifically covered by the scope*'.⁷⁶ More specifically the applicant submits that the disclosed documents:
- have no detail of his '*court information, references to cases, and the brief*'⁷⁷
 - do not include the file notes, diary entries, emails and logs which he believes were emailed by Officers H, S and D⁷⁸; and
 - omit a '*contemptuous log*'⁷⁹ [sic] kept by Ms J and emails that Ms J sent to QPS officers in 2015.⁸⁰
48. QPS relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the application and provided information to me about its recordkeeping systems and searches, as set out below.

⁷⁰ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19,] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-38]. The key factors include: the administrative arrangements of government; the agency structure; 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. These factors were more recently considered in *Van Veendelaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020).

⁷¹ *Pryor* at [21].

⁷² On 23 June 2020.

⁷³ In October 2020.

⁷⁴ Submissions dated 2 November 2020.

⁷⁵ Submissions dated 6 May 2021.

⁷⁶ Submissions dated 14 May 2021.

⁷⁷ Submissions dated 3 June 2020.

⁷⁸ Submissions dated 16 October 2020 and 2 November 2020.

⁷⁹ I have taken this to refer to a 'contemporaneous log'.

⁸⁰ Submissions dated 2 November 2020.

49. QPS submitted⁸¹ that it made enquiries of QPS staff who had requisite knowledge of matters involving the applicant and searches were conducted of the following:
- its electronic records (including QPRIME and patrol logs)
 - records held at a number of police stations, including the 2 police stations specified in item 1 of the application
 - documents held in a dedicated domestic violence unit
 - notebooks, diaries and text messages of officers specified in item 2 of the access application; and
 - QPS' email records, being those held in QPS' Office 365 system and additional emails that were not migrated to that system.⁸²
50. QPS explained that Ms J's records are not held at the police stations identified in item 1 of the application and therefore, any contemporaneous log that she may have kept, if it exists, falls outside the terms of the application.
51. Having reviewed the terms of the application, the applicant's submissions and QPS' search submissions,⁸³ I consider that QPS has conducted comprehensive searches of locations where it would be reasonable to expect the types of information requested in the access application to be stored. I am also satisfied that enquiries have been made of staff who have relevant knowledge of the matters in which the applicant was involved.
52. In view of the above, and taking into account the documents that were located by QPS (including the information in issue), there is nothing before me, other than the applicant's assertions, to support an expectation that additional relevant documents exist. Accordingly, I am satisfied that QPS has taken all reasonable steps to locate documents relevant to the access application; and access to further documents may be refused on the basis they do not exist, or cannot be located.⁸⁴

DECISION

53. For the reasons set out above, as a delegate of the Information Commissioner, under section 139 of the IP Act, I vary QPS' deemed decision and find that:
- the Irrelevant Information may be deleted under section 88 of the IP Act
 - access to the CTPI Information may be refused as disclosure would, on balance, be contrary to the public interest;⁸⁵ and
 - access to any further information may be refused on the basis it is nonexistent or unlocatable.⁸⁶

S Martin
Assistant Information Commissioner

Date: 23 June 2021

⁸¹ Submissions received 6 May 2021, which included search records and certifications .

⁸² These searches were conducted by ESC Systems Audit and Investigation Unit as well as individual QPS officers.

⁸³ Including search records and certifications.

⁸⁴ Under 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

⁸⁵ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁸⁶ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
28 November 2019	OIC received the external review application.
18 December 2019	OIC notified the applicant and QPS that the application for external review had been accepted and requested information from QPS.
24 January 2020	OIC received the requested information from QPS.
31 January 2020	OIC provided an update to the applicant.
3 February 2020 and 10 March 2020	OIC provided further updates to the applicant
13 March 2020	OIC conveyed a preliminary view to QPS.
17 April 2020	QPS provided a submission and agreed to disclose some of the requested information to the applicant.
24 April 2020	OIC asked QPS to release the information it had agreed to disclose to the applicant.
27 April 2020	OIC notified the applicant that QPS had agreed to disclose some of the requested information and conveyed a preliminary view to the applicant regarding the remaining information.
4 May 2020	OIC received the applicant's submissions.
21 May 2020	QPS notified OIC that information could not be sent electronically to the applicant.
26 May 2020	The applicant notified OIC that he had not received documents from QPS.
27 May 2020	OIC requested, and received, confirmation of the applicant's postal address for delivery of documents and provided those details to QPS.
1 June 2020	QPS notified OIC that documents were posted to the applicant on 28 May 2020.
2 June 2020	OIC notified the applicant that QPS had sent documents to his nominated postal address and invited the applicant to provide submissions if he did not agree with OIC's preliminary view.
3 and 7 June 2020	OIC received the applicant's further submissions, including his concern that records held by a specific individual had been omitted.
23 June 2020	OIC requested search information from QPS and conveyed a second preliminary view to the applicant.
22 July 2020	The applicant confirmed to OIC that he maintained his disagreement with OIC's preliminary view.
10 September 2020	QPS agreed to disclose to the applicant information from additional located documents.

Date	Event
16 October 2020	<p>OIC conveyed a preliminary view to the applicant regarding the sufficiency of QPS' searches and OIC asked QPS to release the further information it had agreed to disclose to the applicant.</p> <p>OIC received a further submission from the applicant about further records he considered would be held by three specific individuals.</p>
29 October 2020	QPS released further information to the applicant.
30 October 2020	OIC asked the applicant to identify how records held by the three specified individuals were relevant to his access application and requested further search information from QPS.
2 November 2020	OIC received the applicant's submissions.
3 November 2020	OIC requested further search information from QPS.
1 December 2020 and 22 December 2020	OIC sought updates from QPS concerning the requested search information.
23 December 2020	OIC provided an update to the applicant.
5 February 2021 and 22 March 2021	OIC sought updates from QPS concerning the requested search information.
23 April 2021	OIC provided a further update to the applicant.
6 May 2021	OIC received the requested search information from QPS.
14 May 2021	OIC conveyed a further preliminary view to the applicant concerning the sufficiency of QPS' searches and received the applicant's further submissions.