



## Decision and Reasons for Decision

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**Application Number:** 310759

**Applicant:** Ogawa

**Respondent:** Queensland Police Service

**Decision Date:** 21 June 2012

**Catchwords:** ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant seeks access to all entries or records about her held by agency – whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation – whether access to documents can be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) on the ground set out in schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for all entries or records about her in QPS's:
  - electronic log of the City Criminal Investigation Branch
  - QPRIME system; and
  - archives held at the Police Information Centre.
2. Following the making of its decision<sup>2</sup> about disclosure of the 250 responsive documents, the applicant sought external review by the Office of the Information Commissioner (**OIC**) of the QPS decision.
3. During the course of the external review, QPS located a further 21 pages of information and relevantly decided<sup>3</sup> to refuse access to 3 of those pages because they were exempt from disclosure.

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<sup>1</sup> By access application dated 29 July 2011 and received by the Queensland Police Service (**QPS**) on 1 August 2012.

<sup>2</sup> On 1 September 2011.

<sup>3</sup> By correspondence to the applicant dated 28 October 2011.

4. As a result of informal resolution during the course of the external review,<sup>4</sup> the single issue remaining for determination is whether QPS is entitled to refuse access to the 3 pages on the basis that they are exempt from disclosure.
5. In the circumstances, QPS is entitled to refuse access to the relevant 3 pages on the basis that the information is exempt from disclosure under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the ground that disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation under schedule 3, section 10(1)(d) of the RTI Act.

## **Background**

6. Significant procedural steps relating to the application are set out in the appendix to this decision.

## **Reviewable decision**

7. The decision under review is QPS's decision dated 1 September 2011.

## **Evidence considered**

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

## **Information in issue**

9. The information in issue comprises a 3 page document created by QPS which also includes information provided to QPS by a third party (**Relevant Document**).

## **Relevant law**

10. Under section 23 of the RTI Act<sup>5</sup> a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.<sup>6</sup>

## **Serious act of harassment or intimidation**

11. An agency may refuse access to information where disclosure of the information could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.<sup>7</sup>

## **Would disclosing the Relevant Document reasonably be expected to result in a person being subject to a serious act of harassment or intimidation?**

12. Yes, for the reasons set out below.

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<sup>4</sup> The applicant did not object to the preliminary view of this Office, conveyed by correspondence dated 13 March 2012, that QPS was entitled to refuse access to 191 pages as they are irrelevant to the access application and parts of 26 pages on the basis that the information comprises the personal information of third parties.

<sup>5</sup> Section 67(1) of the IP Act provides that an agency (such as QPS) may refuse access to a document under that Act in the same way it would be entitled to do so under the RTI Act were the application made under the RTI Act.

<sup>6</sup> As set out in section 47(3) of the RTI Act.

<sup>7</sup> Sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the RTI Act.

***The expected harassment and/or intimidation must be serious in nature***

13. The Information Commissioner has previously indicated that a ‘*serious act of harassment*’ is an action that ‘*attacks, disturbs or torments a person and that causes concern or apprehension or has undesired consequences*’. Further that ‘[a]cts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation’, and ‘[a]cts of intimidation which have undesired consequences or cause concern and/or apprehension are serious acts of intimidation’.<sup>8</sup>

***What is the basis of the expectation in this case?***

14. QPS stated in correspondence to the OIC dated 15 March 2012 that:

*[the]...seriousness of the applicant's response to the disclosure of the material would need to be assessed in the context of the applicant's prior dealings with the individuals identified in the documents.*

15. Accordingly, OIC took steps<sup>9</sup> to obtain the views of a third party mentioned in the Relevant Document.
16. I have very carefully considered the third party's relevant submissions regarding a past pattern of harassment, threats and persistent contact and the likely effect of disclosure of the Relevant Document. The nature of these submissions is sensitive and cannot be set out in these reasons.
17. However, after taking into account all of the information currently available to me, I am satisfied that the behaviour described constitutes harassment, as the applicant's actions are actions that attack, disturb or torment other persons. I am further satisfied that the applicant's actions are acts of intimidation, as her behaviour caused significant and prolonged distress to the individual/s named in the Relevant Document.
18. Further, the actions detailed in the Relevant Document, and in the third party's submission, satisfy me that the applicant's conduct constituted **serious** acts of harassment and intimidation because the conduct caused substantial concern and apprehension in persons to whom the conduct was directed.

***The expectation must be reasonably based and must arise as a result of disclosing the Relevant Document, rather than independently or from any other circumstance***

19. I am satisfied that these requirements are fulfilled for the following reasons.
20. In *Sheridan* the Information Commissioner considered the phrase ‘*could reasonably be expected to*’ and found that depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an expectation is reasonable. These factors may include, but are not limited to:<sup>10</sup>
- past conduct or a pattern of previous conduct
  - the nature of the relevant matter in issue

<sup>8</sup> *Sheridan and South Burnett Regional Council (and others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at paragraphs 199 & 200. The decision in *Sheridan* concerned section 42(1)(ca) of the now repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as the provision considered in *Sheridan*. Therefore, the then Acting Information Commissioner's findings in that matter are relevant in interpreting Schedule 3, section 10(1)(d) of the RTI Act.

<sup>9</sup> Pursuant to section 56 of the IP Act.

<sup>10</sup> *Sheridan* at paragraph 193.

- the nature of the relationship between the parties and/or relevant third parties; and
  - relevant contextual and/or cultural factors.
21. I consider that the past occurrences of serious acts of harassment and intimidation alone provide a reasonable basis for the individual/s named in the Relevant Document to expect to be subjected to further serious acts of harassment or intimidation should disclosure of the Relevant Document occur.
22. The submissions made by the third party, which as explained in paragraph 17 cannot be explained in detail due to their sensitivity, go even further towards satisfying me, that, should the applicant be given access to the Relevant Document, the applicant may become aggrieved with the individuals named in the Relevant Document and commence patterns of inappropriate behaviour towards them.
23. In reaching this conclusion, I note that the applicant has previously and repeatedly targeted persons against whom she holds grievances.<sup>11</sup> I am satisfied that in all the circumstances there is a reasonable basis for concluding that previous patterns of behaviour, constituting serious acts of harassment or intimidation, are likely to recommence should the applicant be given access to the Relevant Document.

## DECISION

24. I vary QPS's decision by finding that QPS is entitled to refuse access to the Relevant Document under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act on the ground set out in schedule 3, section 10(1)(d) of the RTI Act.
25. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**L Lynch**  
**Acting Assistant Information Commissioner**

**Date: 21 June 2012**

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<sup>11</sup> In 2009, the applicant was found guilty under the Commonwealth Criminal Code of two counts of using a carriage service to harass and two counts of threatening to kill on various dates between April 12 and May 19, 2006. The harassment and threats were directed to employees of the Federal Courts. The matter was covered in the media at that time. For example, see <http://www.brisbanetimes.com.au/queensland/stalkers-howls-of-anguish-at-verdict-20090327-9duq.html>

## APPENDIX

### Significant procedural steps

Date	Event
1 August 2011	The Queensland Police Service ( <b>QPS</b> ) receives the applicant's request for access dated 29 July 2011 ( <b>Access Application</b> ).
1 September 2011	QPS locates 250 responsive documents and decides ( <b>Decision</b> ) to: <ul style="list-style-type: none"> <li>• fully release 40 pages</li> <li>• partially release 19 pages subject to the deletion of personal information of third parties</li> <li>• refuse access to 191 pages on the basis the information is outside the scope of the access application; and</li> <li>• refuse access to documents requested by the applicant from the archived records held at the Police Information Centre.</li> </ul>
14 September 2011	The applicant seeks external review of QPS's Decision.
22 September 2011	OIC informs the applicant that the external review application has been accepted.
22 September 2011	OIC informs QPS that the external review application has been accepted and requests a written submission setting out details of searches undertaken to locate documents responsive to the Access Application.
7 October 2011	QPS advised OIC that it has located additional documents relevant to the Access Application.
10 October 2011	QPS provides OIC with copies of the relevant information, a submission and 21 additional pages located as a result of further searches
20 October 2011	OIC requests QPS to release to the applicant the additional pages located which are not subject to any objection to disclosure in accordance with its submission.
28 October 2011	QPS advises OIC that it wrote to the applicant advising that it decided to: <ul style="list-style-type: none"> <li>• fully release 11 pages</li> <li>• partially release 7 pages subject to the deletion of personal information of third parties; and</li> <li>• refuse access to 3 pages on the basis they comprise exempt information.</li> </ul>
3 November 2011	OIC writes to the applicant: <ul style="list-style-type: none"> <li>• confirming the further steps taken by QPS to locate further documents responding to the Access Application; and</li> <li>• seeks confirmation of the remaining issues in this external review.</li> </ul>
3 November 2011	The applicant confirms that she is seeking review of QPS's decisions to refuse access to: <p>(1) 191 documents on the basis the information is outside the scope</p>

	<p>of the access application</p> <p>(2) parts of 26 pages on the basis the information comprises the personal information of third parties; and</p> <p>(3) 3 pages on the basis they comprise exempt information.</p>
13 March 2012	OIC conveys a written preliminary view to QPS on all issues and invites QPS to provide a submission in support of its case by 27 March 2012 if the view is contested.
13 March 2012	OIC conveys a written preliminary view to the applicant on issues (1) and (2) and invites her to provide a submission in support of her case by 27 March 2012 if the view is not accepted.
15 March 2012	QPS accepts OIC's preliminary view regarding issues (1) and (2) and provides a submission (received on 21 March 2012) in relation to issue (3) requesting that OIC consult a relevant third party.
19 April 2012	OIC writes to the relevant third party seeking their views regarding issue (3).
17 May 2012	OIC receives a submission from the relevant third party.
18 May 2012	OIC conveys a written preliminary view to the applicant on issue (3) and invites her to provide a submission in support of her case by 1 June 2012.
19 May 2012	The applicant writes to OIC (received on 21 May 2012) requesting clarification of the written preliminary views dated 13 March 2012 and 18 May 2012.
25 May 2012	OIC writes to the applicant responding to her request for clarification.
31 May 2012	The applicant writes to OIC requesting further clarification.
5 June 2012	OIC writes to the applicant responding to her second request for clarification and directs the applicant to provide any submissions she wishes to make by 13 June 2012.