



Decision and Reasons for Decision

Application Number: 311493

Applicant: Marchant

Respondent: Queensland Police Service

Decision Date: 10 September 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – NEITHER CONFIRM NOR DENY – applicant seeks access to de-identified information about Queensland Police Service callouts to a specified address – whether the existence of responsive information can be neither confirmed nor denied – section 55 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – applicant seeks access to de-identified information about Queensland Police Service call-outs to a specified address – 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)*

REASONS FOR DECISION

Summary

1. The applicant seeks access¹ from the Queensland Police Service (**QPS**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) to de-identified information about QPS callouts to the Anglican Women's Hostel at New Farm between January 2009 to December 2011.
2. QPS neither confirmed nor denied the existence of the information sought by the applicant.² This decision was upheld on internal review.³
3. On external review, QPS has maintained its position of neither confirming nor denying the existence of the information sought by the applicant.
4. QPS's decision is set aside by finding that QPS cannot neither confirm nor deny the existence of the information sought by the applicant and a decision is substituted that disclosure of the information is not, on balance, contrary to the public interest.

¹ By access application dated 5 March 2013.

² By decision dated 18 March 2013.

³ Internal review decision dated 8 April 2013.

Background

5. Significant procedural steps relating to the application and external review are set out in the appendix.

Reviewable decision

6. The decision under review is QPS's internal review decision dated 8 April 2013.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).

Relevant law

Right to access information

8. Under section 23 of the RTI Act, 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. These grounds are contained in section 47 of the RTI Act.

Findings

Can QPS neither confirm nor deny the existence of the information sought?

9. No, for the reasons that follow.
10. Under section 55 of the RTI Act, an agency or Minister may decide⁴ to neither confirm nor deny the existence of a document that, if it did exist, would contain 'prescribed information'. 'Prescribed information' is defined in schedule 6 of the RTI Act to include:
 - information which is exempt on the following grounds:
 - Cabinet matter brought into existence before 1 July 2009⁵
 - Cabinet information brought into existence on or after 1 July 2009⁶
 - Executive Council information⁷
 - information briefing an incoming Minister⁸
 - information revealing particular Sovereign communications⁹
 - national or State security Information¹⁰
 - law enforcement or public safety information;¹¹ or

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

⁵ Schedule 3, section 1 of the RTI Act.

⁶ Schedule 3, section 2 of the RTI Act.

⁷ Schedule 3, section 3 of the RTI Act.

⁸ Schedule 3, section 4 of the RTI Act.

⁹ Schedule 3, section 5 of the RTI Act.

¹⁰ Schedule 3, section 9 of the RTI Act.

¹¹ Schedule 3, section 10 of the RTI Act.

- personal information the disclosure of which would, on balance be contrary to the public interest.¹²
11. When relying on section 55 of the RTI Act to neither confirm nor deny the existence of documents, the agency must establish that the information sought by the applicant is 'prescribed information'.¹³
 12. The QPS submits that the information sought by the applicant is 'prescribed information' as it is personal information¹⁴ the disclosure of which would, on balance be contrary to the public interest.
 13. In her access application, the applicant sought access to information as follows:

Subject matter of the documents the applicant is seeking:
List all the occasions that police have attended The Women's Hostel at ... New Farm.

The type of documents the applicant is seeking:
All available, including job attendance records.

The time period / date range the applicant would like to search within:
January 2009 to December 2011.
 14. Additionally, it should be noted that in her application for internal review the applicant specifically stated she is not seeking the personal information of individuals who resided at, or were employed at, the address for which the information is sought. However, she is seeking the reasons for the callouts and the date of the callouts, but if the actual date would identify any person, the applicant requested only the month and/or year of the callout.
 15. Section 12 of the *Information Privacy Act 2009 (Qld) (IP Act)* states where an individual's identity is not readily apparent, information can still be personal information if a person's identity can be reasonably ascertained. However, even where a person's identity is not readily apparent, it may be possible with the assistance of additional information to identify a person.¹⁵
 16. In *Mahoney*,¹⁶ the Right to Information Commissioner found that whether additional information will mean that an individual's identity can be reasonably ascertained will depend on a number of factors, such as:
 - how available the additional information is
 - how difficult it is to obtain
 - how many steps are required to identify the individual
 - how certain the identification will be
 - whether it will identify one specific individual or a group of people; and
 - whether the individual receiving the information can use it to identify the individual.

¹² Section 47(3)(b) of the RTI Act.

¹³ *Tolone and Department of Police* (Unpublished, Queensland Information Commissioner, 9 October 2009) at paragraph 29.

¹⁴ Personal information is defined in section 12 of the *Information Privacy Act 2009 (Qld) (IP Act)* as "information or an opinion... whether true or not... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".

¹⁵ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (*Mahoney*) at 21.

¹⁶ *Mahoney* at 21.

17. The QPS submits¹⁷ that *'the details ie: time & date of call outs and the reasons why police attendance was required, [is] the personal information of the individual who required police assistance.'* The QPS also objects to the previous New Farm location of the Anglican Women's Hostel being disclosed.¹⁸
18. The Anglican Women's Hostel provides temporary accommodation for women who are experiencing homelessness or are at risk of becoming homeless.¹⁹ The applicant submits²⁰ that Anglicare informed residents at a community meeting that, for the period for which information is sought, 16 women resided at the New Farm location at any one time and the average period they stayed was 16 weeks.
19. In relation to identifying the address at New Farm as being the previous location of the Anglican Women's Hostel, this information is already within the public domain, the location is no longer being used for this purpose and Anglicare has advertised on its website the address for the new development at Toowong.²¹ As residents of the Anglican Women's Hostel are transient with up to 16 women residing at the address at any one time, I am satisfied that the address on its own is not the personal information of individuals as they could not reasonably be identified from the address.
20. The names of the women who reside at the facility at any given time are not published by Anglicare.
21. I am also satisfied that the date and reasons for police callouts to the Anglican Women's Hostel are not the personal information of an individual as, unlike the details of a callout to a private residence, the details of a callout to the address of the Anglican Women's Hostel could not reasonably be expected to identify any one individual, particularly given that information which would directly identify an individual is not being sought, Anglicare does not make the names of the residents publicly available and up to 16 women resided at the location at any one time.
22. In contrast, if the identity of the residents was publicly available, the QPS would be entitled to neither confirm nor deny the existence of the information sought by the applicant because the information sought together with that publicly available could allow a person's identity to be reasonably ascertained. However, this is not the case in the circumstances of this review.
23. Accordingly, I am satisfied that the information sought by the applicant is not personal information as defined by the IP Act. Therefore it is not 'prescribed information' for the purposes of section 55 of the RTI Act.
24. As the information sought by the applicant is not 'prescribed information', the QPS cannot maintain its position of neither confirming nor denying its existence.

¹⁷ Submission to OIC dated 15 July 2013.

¹⁸ Submission to OIC dated 15 July 2013.

¹⁹ See <http://www.anglicaresq.org.au/services/homeless/anglican-womens-hostel/> and <http://www.anglicaresq.org.au/services/homeless/anglican-womens-hostel/new-accommodation-planned-at-st-marys/standard-factual-responses-to-community-questions-faqs/>

²⁰ In the applicant's request for internal review dated 26 March 2013.

²¹ See <http://www.truelocal.com.au/business/anglican-womens-hostel/new-farm>, <http://www.anglicaresq.org.au/services/homeless/anglican-womens-hostel/> and <http://www.anglicaresq.org.au/services/homeless/anglican-womens-hostel/new-accommodation-planned-at-st-marys/standard-factual-responses-to-community-questions-faqs/>

What is the Information in issue?

25. On external review, the QPS conducted searches for information about callouts to the New Farm address of the Anglican Women's Hostel for the period January 2009 to December 2011. As a result of these searches, 104 pages were located.
26. Following the removal of information which is not being sought by the applicant, the information under consideration in this external review is contained within parts of 43 pages (**Information in Issue**) and is the date and reasons for the callouts.

Does the Information in Issue comprise information the disclosure of which would, on balance, be contrary to the public interest?

27. No, for the reasons that follow.
28. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.²²
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. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²³ and explains the steps that a decision-maker must take²⁴ in deciding the public interest as follows:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.²⁵

Irrelevant factors

31. No irrelevant factors arise on the information before me.

Factors favouring disclosure and nondisclosure

32. Disclosure is favoured where disclosure of the Information in Issue could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability²⁶

²² Sections 47(3)(b) and 49 of the RTI Act.

²³ 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, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

²⁴ Section 49(3) of the RTI Act.

²⁵ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

²⁶ Schedule 4, part 2, item 1 of the RTI Act.

- contribute to positive and informed debate on important issues or matters of serious interest;²⁷ and
 - ensure effective oversight of expenditure of public funds.²⁸
33. The public interest factors favouring nondisclosure include that disclosure of the Information in Issue could reasonably be expected to:
- prejudice the protection of an individual's right to privacy²⁹
 - cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead;³⁰ and
 - prejudice the flow of information to the police or another law enforcement or regulatory agency.³¹

Balancing the public interest

34. The Anglican Women's Hostel is currently in the process of seeking approval from Brisbane City Council to develop a new facility at Toowong. The applicant submits³² that drug and alcohol abuse, mental health issues and domestic violence are associated with homeless shelters and that this could result in an influx of related issues within the Toowong neighbourhood. The applicant argues that disclosure of the number and reasons for police callouts to the previous New Farm facility would allow fully informed discussion about the impact of the proposed new facility at Toowong.
35. The applicant's submissions raise the factors in favour of disclosure relating to promoting open discussion of public affairs and enhancing Government's accountability³³ and contributing to positive and informed debate.³⁴ The building of a new facility in the Toowong area, which provides temporary accommodation for women who are experiencing homelessness or are at risk of becoming homeless, would be of serious interest to the local residents, particularly in terms of what impact that facility would have on the local community and the services provided to that community. I am satisfied that disclosure of the Information in Issue would allow the Toowong community to engage in positive and informed debate about these issues and to discuss these issues in submissions to Brisbane City Council in response to the development application in respect of the proposed new facility. Therefore, I consider that significant weight should be given to these factors favouring disclosure.
36. The applicant submits³⁵ that disclosure of the Information in Issue would allow the public to ensure that appropriate levels of services (including police, ambulance and community services) are properly allocated to the Toowong area. This raises the factor in favour of disclosure relating to the effective oversight of expenditure of public funds.³⁶ Disclosure of information about the impact of the previous facility at New Farm on emergency services would allow an assessment of the potential effect that the new facility at Toowong would have on the current services available within that area. I am satisfied that this would enable the community to assess whether the current level of services to the area are appropriate or whether additional funding would be required to

²⁷ Schedule 4, part 2, item 2 of the RTI Act.

²⁸ Schedule 4, part 2, item 4 of the RTI Act.

²⁹ Schedule 4, part 3, item 3 of the RTI Act.

³⁰ Schedule 4, part 4, section 6 of the RTI Act.

³¹ Schedule 4, part 3, item 13 of the RTI Act.

³² In her request for internal review dated 26 March 2013.

³³ Schedule 4, part 2, item 1 of the RTI Act.

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

³⁵ In her request for internal review dated 26 March 2013.

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

meet the demand. Therefore, I consider that moderate weight should be given to this factor favouring disclosure.

37. The QPS submits³⁷ that *‘to release dates, times and the reasons why police attended ... is by QPS’s definition, a breach of the individual’s privacy.’* Further, *‘the details ie: time & date of call outs and the reasons why police attendance was required, [is] the personal information of the individual who required police assistance.’* These submissions raise the factors in favour of nondisclosure relating to prejudice to the protection of an individual’s right to privacy³⁸ and causing a public interest harm by disclosing an individual’s personal information.³⁹
38. For the reasons discussed at paragraphs 12 to 23, I am satisfied that an individual could not reasonably be identified by disclosure of the Information in Issue and that the Information in Issue therefore does not comprise the personal information of an individual. As the Information in Issue is not the personal information of an individual, I am also satisfied that disclosure could not reasonably be expected to prejudice the protection of an individual’s right to privacy. Therefore, I consider that no weight should be given to these factors favouring nondisclosure.
39. As the Information in Issue relates to requests for police assistance being made by members of the public, this raises the public interest factor in favour of nondisclosure relating to flow of information to the police.⁴⁰ There is a strong public interest in the QPS obtaining information from members of the public in relation to alleged criminal activity. I am satisfied that if information which would identify an individual as having provided information to the QPS about alleged criminal activity were to be released, that members of the public would be less likely to provide this type of information in the future. However, in the circumstances of this matter I am satisfied that the Information in Issue does not comprise the personal information of an individual and could not reasonably be expected to identify an individual. Therefore, I consider that minimal weight should be given to this factor favouring nondisclosure.
40. Given the above, I am satisfied that in the circumstances of this review, the public interest factors favouring disclosure of the Information in Issue outweigh the public interest factors favouring nondisclosure and accordingly, disclosure would not, on balance, be contrary to the public interest.

DECISION

41. I set aside the internal review decision of the QPS dated 8 April 2013 by finding that QPS cannot neither confirm nor deny the existence of the information sought by the applicant and substitute a decision that disclosure of the Information in Issue is not, on balance, contrary to the public interest.
42. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 10 September 2013

³⁷ In its submission to OIC dated 15 July 2013.

³⁸ Schedule 4, part 3, item 3 of the RTI Act.

³⁹ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁰ Schedule 4, part 3, item 13 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
5 March 2013	The QPS received the access application.
18 March 2013	The QPS neither confirmed nor denied the existence of the information sought.
26 March 2013	The applicant sought internal review of the decision.
8 April 2013	The QPS upheld its decision to neither confirm nor deny the existence of the information sought.
6 May 2013	OIC received the applicant's request for external review.
29 May 2013	OIC informed the applicant and the QPS that the external review application had been accepted. OIC conveyed a view to the QPS that the information sought is not 'prescribed information' under section 55 of the RTI Act and invited the QPS to provide a submission by 13 June 2013 if it contests this view.
6 June 2013	An officer of the QPS provided verbal advice to the OIC that QPS agreed that it could not rely on section 55 of the RTI Act and sought an extension of time to provide a written response. OIC granted an extension until 20 June 2013.
20 June 2013	OIC received the QPS's written response enclosing 2 pages. The QPS objected to the disclosure of personal information of individuals contained within those 2 pages. The QPS also objected to the disclosure of job code numbers during a subsequent conversation with an OIC staff member.
21 June 2013	The QPS advised that it maintained its objection to disclosure and requested that the OIC make a formal decision.
21 June 2013	The applicant provided a submission.
2 July 2013	OIC conveyed a view to the QPS and asked the QPS to undertake further searches for documents which respond to the scope of the access application. The QPS is asked to provide its response by 16 July 2013.
18 July 2013	OIC received the QPS's submission dated 15 July 2013 and 104 pages located as a result of further searches conducted.
29 August 2013	The applicant provided a verbal submission.