



## Decision and Reasons for Decision

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Citation:	<i>Queensland Newspapers Pty Ltd and Queensland Police Service; Third Parties</i> [2014] QICmr 27 (12 June 2014)
Application Number:	311773
Applicant:	Queensland Newspapers Pty Ltd
Respondent:	Queensland Police Service
Third Parties:	8X5FXF (Venue One) YW87TN (Venue Two) 5FHX2A (Venue Three)
Decision Date:	12 June 2014
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - names and addresses of three venues contained in Liquor Enforcement and Proactive Strategies incident reports - whether access to information can be refused on the basis that it comprises exempt information - sections 47(3)(a) and 48 of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - whether access to information can be refused on the basis that its disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the Liquor Enforcement and Proactive Strategies incident reports (**LEAPS Reports**) for a number of licensed venues between 1 January 2011 and 29 January 2013.
2. QPS located the requested documents and decided to release the LEAPS Reports to the applicant subject to the deletion of information which would identify the venues on the basis that disclosing this information would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to this information.

4. On external review, QPS accepted OIC's view that there was no basis to refuse access to the remaining information under the RTI Act and agreed to release the information to the applicant.
5. OIC notified each of the relevant venues of the likely release of the information under the RTI Act and invited them to provide submissions supporting their case if they objected to disclosure of the information. Venues One, Two and Three objected to disclosure of the information and contended that the relevant information comprised exempt information and also that its disclosure would, on balance, be contrary to the public interest.
6. Despite these objections, and for the reasons set out below, there is no basis to refuse access to the remaining information in issue under the RTI Act.

## Background

7. Significant procedural steps are set out in the appendix to these reasons.
8. The Liquor Enforcement and Proactive Strategies (**LEAPS**) program requires QPS officers to report alcohol-related incidents at licensed venues to the QPS LEAPS Coordinator. This information is compiled in the LEAPS Reports and then conveyed to the Office of Liquor and Gaming Regulation (**OLGR**) which assesses the information as part of its regulatory activities.<sup>1</sup>
9. In correspondence to the third parties, OIC explained that it had previously decided to release similar information under the RTI Act and that some of the reasoning in those decisions was relevant to the information in issue in this review. OIC provided the third parties with a copy of those decisions.<sup>2</sup> The third parties provided objections in this review which are similar to the objections OIC received in the previous reviews and which rely on numerous provisions of the RTI Act. It is necessary for OIC to consider these objections again in the context of this review.

## Reviewable decision

10. The decision under review is the decision QPS was deemed to have made refusing access to the requested information.<sup>3</sup>

## Evidence considered

11. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Information in issue

12. The information in issue is limited to the names and addresses of the three third party venues within the LEAPS Reports between 1 January 2011 and 29 January 2013 (**Information in Issue**).

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<sup>1</sup> QPS Commissioner's Circular No 27/2010 'Drink Safe Precincts and Banning Orders' which sets out police officers' powers and obligations with respect to managing behaviour in the vicinity of licensed premises and is available at: <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>.

<sup>2</sup> *N31ZEO and Department of Justice and Attorney-General; Queensland Newspapers Pty Ltd* (Unreported, Queensland Information Commissioner, 8 November 2013) and *Nine Network Australia Pty Ltd and Queensland Police Service; Third Parties* (Unreported, Queensland Information Commissioner, 5 December 2013).

<sup>3</sup> QPS did not make a decision within the processing period set out in section 18 of the RTI Act. Accordingly, QPS is deemed to have refused access to the requested documents under section 46(1) of the RTI Act. QPS subsequently provided a decision to the applicant dated 2 October 2013 and OIC treated this as a submission in the review.

13. QPS decided to release all other information in the LEAPS Reports. This information is not in issue on external review and was not the subject of consultation with the third parties.

### Issues for determination

14. The issue for determination on external review is whether access to the Information in Issue can be granted under the RTI Act. As QPS has agreed to release the Information in Issue, there is a practical onus on the third parties in this review to establish that access to the Information in Issue can be refused.<sup>4</sup>
15. Many of the objections made by the venues relate to concerns about disclosing the LEAPS Reports in general and details about the incidents. This information is not in issue on external review and, as a result, many of the objections are not relevant to the issues for determination. However, where relevant, I have considered the impact that disclosing the Information in Issue could have when viewed with the remainder of the LEAPS Reports.
16. Based on the third party objections, the issues for determination are whether:
  - the RTI Act applies to the Information in Issue
  - the Information in Issue identifies any individuals
  - the Information in Issue comprises exempt information; and
  - disclosing the Information in Issue would, on balance, be contrary to the public interest.
17. My findings in relation to each of these issues follow.

### Does the RTI Act apply to the Information in Issue?

18. Yes, for the reasons that follow.
19. Venue One submits that the *'information is of a private nature'* concerning its *'business operations'* and therefore is *'not within the scope of the RTI Act'*.
20. I do not accept this submission. Section 23 of the RTI Act creates a legally enforceable right for any person to access *'documents of an agency'*. *'Document'* is broadly defined as including *'any paper or other material on which there is writing'* and *'any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced ...'*<sup>5</sup> This definition covers the LEAPS Reports and the Information in Issue.
21. Section 12 of the RTI Act relevantly defines *'document of an agency'* as *'a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency...'* The Information in Issue is in the physical possession of QPS, which is an agency for the purposes of the RTI Act,<sup>6</sup> and it is not a document to which the RTI Act does not

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<sup>4</sup> Section 87(2) of the RTI Act relevantly provides that, if the decision under external review is a disclosure decision, the participant in the external review who opposes it has the onus of establishing that a decision not to disclose the information is justified. As noted at footnote 3, the reviewable decision in this case is the one that QPS was *deemed* to have made refusing access to the requested information. Therefore, as QPS did not formally make a disclosure decision, section 87(2) of the RTI Act does not apply. However, as QPS agreed to release the Information in Issue to the applicant on external review, there is now a practical onus on the third parties objecting to disclosure to establish that a decision not to disclose the Information in Issue is justified.

<sup>5</sup> Section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Qld).

<sup>6</sup> Section 14 of the RTI Act.

apply.<sup>7</sup> Accordingly, the Information in Issue comprises a document of an agency and is therefore subject to the operation of the RTI Act.

### **Does the Information in Issue identify any individuals?**

22. No, for the reasons that follow.
23. For a number of the exemptions and public interest factors in the RTI Act to apply to the Information in Issue, it must first be possible to identify individuals from the incidents recorded in the LEAPS Reports.
24. The venues all submit that disclosing the Information in Issue, together with the allegations contained in the LEAPS Reports, would provide sufficient detail to enable the identification of various individuals including QPS officers, victims, suspects, witnesses, security personnel and other staff of the venues.
25. The Information in Issue is limited to the name and address of the venues. I am satisfied that disclosing this information on its own would not identify an individual.
26. The summaries of the incidents in the LEAPS Reports do not include names or other identifying information of the individuals involved or venue staff. I am satisfied that it is not possible to directly identify any individual from that information.<sup>8</sup>
27. The LEAPS Reports identify the QPS reporting officer by name. Venues Two and Three submit that disclosing the names of the QPS officers would be of concern to QPS. QPS has not raised concerns about disclosing this information. The names of the QPS officers are not in issue in this review and were not the subject of consultation with the venues. To the extent the venues' submissions relate to concerns about releasing the names of QPS officers, I will not address them any further in these reasons.
28. I have considered whether the identity of any of the individuals can reasonably be ascertained, that is, whether it is possible to indirectly identify an individual from the Information in Issue when read together with incident summaries in the LEAPS Reports and any publicly available information. Due to the general nature of the Information in Issue, which includes only a brief summary of the incident as reported to the attending QPS officers, I do not consider it is possible to definitively link any publicly available information to the incidents in the Information in Issue. At best, disclosure may enable people to *speculate* that individuals named in, for example, media reports and court documents, may have been involved in the incidents referred to within the Information in Issue.
29. For these reasons, I am satisfied that disclosing the Information in Issue would not enable individuals (other than the QPS reporting officers) to be identified.

### **Does the Information in Issue comprise exempt information?**

30. No, for the reasons that follow.
31. Under the RTI Act, an individual has a right to be given access to documents of an agency subject to certain limitations, including grounds for refusal of access. An agency may refuse access to a document comprising exempt information.<sup>9</sup> The categories of exempt information are set out in schedule 3 of the RTI Act. Parliament

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<sup>7</sup> As it is not a document mentioned in schedule 1 of the RTI Act: see section 11 of the RTI Act.

<sup>8</sup> Venue One submitted that a particular incident in the LEAPS Report contained the last name of the involved party. OIC raised this issue with QPS and it has agreed to delete this information from the documents prior to release.

<sup>9</sup> Sections 47(3)(a) and 48 of the RTI Act.

considers disclosure of this type of information would, on balance, be contrary to the public interest.

32. I will now address each of the exemptions relied on by the venues.

***Contempt of court or contrary to an order or direction***

33. Information is exempt if its public disclosure would, apart from the RTI Act and any immunity of the Crown, be:

- in contempt of court;<sup>10</sup> or
- contrary to an order made or direction given by a royal commission or commission of inquiry.<sup>11</sup>

34. Venue One did not rely on these provisions to support its case. Venues Two and Three submit that:

- the Information in Issue identifies suspected perpetrators and victims
- public disclosure of the information would be in contempt of court, jeopardising a fair trial for the potential suspects and could have a *'profound'* effect on any court proceeding
- a large majority of the occurrences have not been finalised and the information details incidents which have not likely been determined by a court
- there is a real possibility that an order has been made or direction given; and
- as decision-makers, QPS and OIC are compelled to ensure that no such orders have been made or directions given, in respect of the whole or any part of the information, prior to any disclosure being contemplated.

35. Venues Two and Three sought (and were granted) an extension of time to provide submissions explaining that they were *'making investigations to identify individuals'* and *'undertaking to identify court proceedings, royal commission and/or a commission of enquiry'* to support their claims that these exemptions applied. However these venues now submit that, although they are unable to identify any proceedings which would identify individuals, they still contend that people can be identified through release of the information.

36. As explained above, I am satisfied that disclosing the Information in Issue would not enable relevant individuals to be identified. The venues have not provided any evidence to support the application of these provisions to the Information in Issue, nor have they identified a particular court proceeding, royal commission or commission of inquiry to which the Information in Issue may relate. OIC is not required to make inquiries to positively determine that these exemptions do not apply. As noted previously, the venues objecting to disclosure of the Information in Issue bear the onus to establish that access to the Information in Issue can be refused on this basis. I am not satisfied that the Information in Issue is exempt under schedule 3, section 6(a) or (b) of the RTI Act.

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<sup>10</sup> Schedule 3, section 6(a) of the RTI Act.

<sup>11</sup> Schedule 3, section 6(b) of the RTI Act.

### **Prejudice the investigation of a possible contravention of the law**

37. Information is exempt if its disclosure could reasonably be expected to<sup>12</sup> prejudice the investigation of a contravention or possible contravention of the law in a particular case.<sup>13</sup>
38. Venue One submits that it is currently involved in '*legal matters and investigations*' with OLG and disclosing the Information in Issue could significantly impact and prejudice the investigations.
39. Venues Two and Three submit that:
- the information relates to contraventions or possible contraventions of the law, all of an allegedly criminal nature, some or all of which are likely to be subject to investigation and court proceedings and the full facts and circumstances are yet to be ascertained
  - the information identifies suspects and victims and, if disclosed, would impact adversely on the ability of QPS to discharge its duties; and
  - disclosing the names of QPS officers would provide an opportunity for the perpetrators and general public to inflict undue influence on these officers before the matters are finalised.
40. QPS did not rely on this exemption as a basis for refusing access to the Information in Issue, nor has it raised any concerns about prejudice to ongoing investigations in submissions to OIC.
41. As explained above, I am satisfied that disclosing the Information in Issue would not enable relevant individuals to be identified. In order for this exemption to apply, there must be an ongoing investigation and a reasonable expectation that the investigation would be adversely impacted by disclosure. The venues have not identified:
- the particular investigation they claim would be prejudiced; nor
  - the nature of the prejudice they consider would arise as a result of disclosing the Information in Issue.
42. I am unable to identify how disclosing the Information in Issue could reasonably be expected to prejudice an investigation and I am not satisfied the Information in Issue is exempt under schedule 3, section 10(1)(a) of the RTI Act.

### **Identify a confidential source of information**

43. Information is exempt if it would enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.<sup>14</sup>
44. The venues submit that the information could reasonably be expected to enable the identity of QPS officers, victims, suspects, security personnel, employees of the venue and witnesses, to be ascertained and, in many cases, they are likely to be confidential sources of information.

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<sup>12</sup> The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. The expectation must arise as a result of disclosure, rather than from other circumstances. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at paragraph 31.

<sup>13</sup> Schedule 3, section 10(1)(a) of the RTI Act.

<sup>14</sup> Schedule 3, section 10(1)(b) of the RTI Act.

45. As explained above, I am satisfied that disclosing the Information in Issue would not enable relevant individuals to be identified. There is no evidence before me to indicate that the Information in Issue was obtained from confidential sources. I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(b) of the RTI Act.

***Endanger a person's life or physical safety or result in a serious act of harassment or intimidation***

46. Information is exempt if its disclosure could reasonably be expected to:
- endanger a person's life or physical safety;<sup>15</sup> or
  - result in a person being subjected to a serious act of harassment or intimidation.<sup>16</sup>
47. Venue One submits that the Information in Issue identifies QPS officers, victims, suspects, security personnel, employees of the venue and witnesses and that alleged offenders or parties involved in the reported incidents could be located and subjected to continual harassment.
48. Venues Two and Three submit that:
- a person who has divulged information or taken action against a person of interest, whose identity is reasonably ascertainable from the information, may reasonably fear their physical safety is in danger
  - the security personnel have been involved with a number of the incidents which included enforcing hotel policies and if this information is used and published out of context there may be backlash towards the security personnel; and
  - publishing information about the incidents which are neither fully investigated nor finalised may result in a reactionary response from the public and cause security personnel and QPS officers *'to have reasonable fear that their physical safety is in danger'*.
49. The venues have provided no evidence about how disclosing the Information in Issue could reasonably be expected to result in the necessary harm to individuals. This is particularly improbable given that disclosing the Information in Issue would not enable relevant individuals to be identified. I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(c) or (d) of the RTI Act.

***Prejudice a person's fair trial or the impartial adjudication of a case***

50. Information is exempt if its disclosure could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.<sup>17</sup>
51. Venue One submits that disclosing the Information in Issue would disadvantage it in current proceedings which include *'legal matters'* with the OLGR and an ongoing Supreme Court action and costs order.
52. Venues Two and Three submit that:
- the information identifies alleged offenders, victims and witnesses
  - the Information in Issue *'discloses specific incidents of an allegedly criminal nature which have not been determined by a court'*; and

<sup>15</sup> Schedule 3, section 10(1)(c) of the RTI Act.

<sup>16</sup> Schedule 3, section 10(1)(d) of the RTI Act.

<sup>17</sup> Schedule 3, section 10(1)(e) of the RTI Act.

- disclosure could reasonably be expected to ‘*impact adversely upon the impartiality of jurors and/or judicial officers*’, jeopardise a fair trial for the potential suspects and have a ‘*profound*’ effect on any court proceeding.

53. As explained above, I am not satisfied that disclosing the Information in Issue would enable relevant individuals to be identified. The venues have not identified a particular proceeding they consider would be impacted by disclosure or provided any evidence to suggest that the incidents referred to in the Information in Issue are the subject of ongoing legal proceedings. In any event, it is not reasonable to expect that jurors or judicial officers in a legal proceeding would be swayed in their views by information which was recorded by QPS shortly after it having been reported, particularly when the information merely states that the incidents occurred at particular venues. I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(e) of the RTI Act.

### ***Prejudice methods, systems or procedures***

54. Information is exempt if its disclosure could reasonably be expected to prejudice:

- the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;<sup>18</sup> or
- a system or procedure for the protection of persons, property or the environment.<sup>19</sup>

55. Venue One submits that disclosing the Information in Issue will ‘*create a wall of protection between the venue and the QPS and information will not be freely provided*’.

56. Venues Two and Three submit that disclosing the Information in Issue will:

- negatively impact on the important relationship between these venues, their staff and QPS as the venues would be less likely to contact QPS when there are incidents if they know that all records of incidents are likely to be released to third parties; and
- the venues and QPS must work together and communicate openly for the safe and effective operation of licensed venues and the safety of the public at large and the environment.

57. I accept that the attendance of QPS officers at licensed venues, either at the request of the venues, or through other sources, and the subsequent reporting of incidents to OLGR through the LEAPS program constitutes a lawful method for preventing, detecting and dealing with contraventions or possible contraventions of the law and a system for the protection of persons and property. The QPS Commissioner’s Circular relevantly states<sup>20</sup> that:

*Minor incidents at licensed premises, considered in isolation, may not warrant breach action or reporting to [OLGR] for further investigation. However, past occurrences have shown that a succession of minor ‘one-off’ incidents may be regarded as precursors to significant incidents such as brawls and other behaviour resulting in injury to members of the public and officers.*

*It may be possible to prevent the occurrence of some significant incidents through negotiations between the OLGR and licensees. Such negotiations should provide a forum for the development of remedial strategies aimed at reducing the identified minor incidents and preventing significant incidents from occurring.*

<sup>18</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>19</sup> Schedule 3, section 10(1)(i) of the RTI Act.

<sup>20</sup> Page 2 of the QPS Commissioner’s Circular No 27/2010 ‘*Drink Safe Precincts and Banning Orders*’.

*The OLGR has agreed to centrally record any incidents reported by officers whether or not breach action has been taken. The purpose of recording these incidents is to enable the OLGR to identify any trends at licensed premises that may require proactive negotiations with the licensee of the premises aimed at curtailing potential significant incidents.*

58. In order for these exemptions to apply, however, a decision-maker must be satisfied that disclosing the Information in Issue could reasonably be expected to *prejudice* the particular method or system. The *Liquor Act 1992* (Qld) (**Liquor Act**) places a number of obligations on licensed venues in relation to safety and security. One of these is the obligation to maintain a safe environment in and around the premises.<sup>21</sup> As part of this obligation, I consider it reasonable to expect that licensed venues would call the police to respond to incidents in or near their premises. Even if licensed venues failed to contact QPS in response to the type of incidents which appear in the LEAPS Reports, information may still be sourced by QPS from victims, witnesses and ambulance staff who would continue to report them.
59. Venues Two and Three also submit that disclosure would discourage the use of Police Specials<sup>22</sup> and the use of QPS generally in and around licensed venues. I do not consider that the broad cooperative relationship between QPS, Police Specials and licensees constitutes a method or procedure used by QPS for preventing, detecting, investigating and dealing with contraventions or possible contraventions of the law or a system for the protection of persons and property. In any event, the venues have not provided any evidence or explanation as to how disclosure would prejudice this relationship.
60. I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(f) or (i) of the RTI Act.

### **Information obtained, used or prepared for an investigation**

61. Information is exempt if it consists of information 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<sup>23</sup>
  - for an investigation by the State Intelligence Group or the State Security Operations Group;<sup>24</sup> or
  - by Crime Stoppers Queensland Limited.<sup>25</sup>
62. Venues Two and Three submit that '*this is a real possibility*' and that QPS and OIC are compelled to ensure these exemptions do not apply. These submissions reference no evidence to support the claims that the exemptions apply and, as noted previously, the venues relying on these provisions bear the onus to establish that access to the Information in Issue can be refused. I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(4) or (5) of the RTI Act.

### **Would disclosing the Information in Issue be contrary to the public interest?**

63. No, for the reasons that follow.

<sup>21</sup> Section 148A(4) of the Liquor Act.

<sup>22</sup> Police Specials are defined in the submissions as '*off duty Queensland Police Officers engaged by the venue at its cost, and provide a very important service over and above security personnel*'.

<sup>23</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>24</sup> Schedule 3, section 10(5)(a) and (b) of the RTI Act.

<sup>25</sup> Schedule 3, section 10(5)(c) of the RTI Act.

### **Relevant law**

64. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>26</sup> The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>27</sup> and explains the steps that a decision-maker must take<sup>28</sup> 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 disclosing the Information in Issue would, on balance, be contrary to the public interest.

### **Irrelevant factors**

65. Venue One submits that the Information in Issue, if disclosed, could:

- be taken out of context
- be published by the applicant; and
- lead the public to assume the venue does not comply with liquor laws, which is *'contrary to the reality'*.

66. Venues Two and Three submit that the Information in Issue *'will not be used to somehow further openness and accountability of Government, but rather, would simply permit those who seek information for their own purposes, enquiring unnecessarily, into the affairs of others'*.

67. Under section 49(3)(d) of the RTI Act, I must disregard whether disclosing the information could reasonably be expected to result in the applicant misunderstanding or misinterpreting the document as the RTI Act states that this is an irrelevant factor.<sup>29</sup> An applicant is not required to provide reasons for requesting information under the RTI Act nor indicate what they intend to do with the information.<sup>30</sup> The RTI Act also provides that it is irrelevant to consider whether disclosing the information could reasonably be expected to result in mischievous conduct by the applicant.<sup>31</sup>

68. To the extent these submissions relate to irrelevant factors, I have not taken them into account in balancing the public interest in disclosure. However, when considering the possible harm or prejudice that may result from disclosing the Information in Issue, I have assessed it as though the Information in Issue would be made publicly available.

### **Relevant factors favouring disclosure**

69. I have considered whether disclosing the Information in Issue could reasonably be expected to:

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<sup>26</sup> Sections 47(3)(b) and 49 of the RTI Act. 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.

<sup>27</sup> 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.

<sup>28</sup> Section 49(3) of the RTI Act.

<sup>29</sup> Schedule 4, part 1, item 2 of the RTI Act.

<sup>30</sup> *CH32GI and Department of Justice and Attorney-General; Third Parties* (Unreported, Queensland Information Commissioner, 22 November 2012) at paragraph 44.

<sup>31</sup> Schedule 4, part 1, item 3 of the RTI Act.

- promote open discussion of public affairs and enhance the government's accountability<sup>32</sup>
- contribute to positive and informed debate on important issues or matters of serious interest<sup>33</sup>
- reveal environmental or health risks or measures relating to public health and safety;<sup>34</sup> and
- inform consumers about the marketplace so they are able to make more informed decisions.<sup>35</sup>

70. Given the nature of the Information in Issue and the context in which it appears, I am satisfied that these factors are relevant. However it is necessary for me to consider the weight to be afforded to these factors.

71. Venue One submits that *'it serves no further purpose to the public interest to disclose details of the venue or street address'* and that disclosing the Information in Issue would be *'premature and cause unnecessary debate, concern and confusion in the community to an extent that would be contrary to public interest'*. There is no evidence before me to support the contention that disclosing the Information in Issue could reasonably be expected to cause unnecessary debate, concern and confusion in the community and I do not accept this submission.

72. Venues Two and Three acknowledge that there are some factors favouring disclosure because of the *'apparent current general interest in the effects of alcohol and alleged alcohol misuse'*. However, these venues also submit that disclosing the information is not in keeping with the purpose and objects of the RTI Act and that:

*As previously espoused, the Preamble to the RTI Act makes clear that its whole purpose (and Parliament's express intention in enacting it) is openness in Government, to enhance, among other things, Government's accountability and to contribute to representative, democratic Government. Parliament has taken the unusual step of including this Preamble within the RTI Act. It is a drafting technique to which regard should be given, particularly when it comes to exercising functions under the RTI Act which take the decision maker into territory in which questions of policy and the balancing of competing interests are involved.*

*Consequently, when the RTI Act states, in Section 3(1), its primary object (not its only object) is to give a right of access to information in the Government's possession, it intends to confer that right to further the more fundamental matters with which the Preamble deals. It is suggested that there are a number of other indications in the Act that Parliament intended it to be applied for the purposes its Preamble articulates. The whole reason for including the range of considerations it does, for example, in considering the public interest, is to ensure that disclosures will occur which promote open, democratic, representative and good government.*

73. As noted previously, the LEAPS Reports are documents of an agency and are subject to the RTI Act. Section 44 of the RTI Act provides that the RTI Act is to be administered with a pro-disclosure bias. This means that an agency should decide to give access to information unless its disclosure would, on balance, be contrary to the public interest. The Information in Issue and the LEAPS Reports were created by QPS in performance of its functions and as a result of responding to incidents at licensed venues. I do not consider that the primary object of the RTI Act is to confer a right of access to information relating to *'more fundamental matters'* as Venues Two and Three submit.

<sup>32</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, item 14 of the RTI Act.

<sup>35</sup> This public interest factor is not listed in schedule 4 of the RTI Act but was recognised by the Information Commissioner in *Seven Network (Operations) Limited and Redland City Council; Third Party* (Unreported, Queensland Information Commissioner, 30 June 2011) at paragraphs 33 - 45.

74. Venues Two and Three also submit that:

*It is again noted that QPS granted access to some information, including the year the incident occurred and description of offence, eg. assault occasioning bodily harm. Accordingly, the Applicant has much of the information it seeks. In light of this, our client submits that the additional information ought not to be disclosed because disclosure of the names and addresses of the licensed premises at which alleged incidents occurred, does nothing to advance the accountability of Government or advanced discussions of public affairs etc, which the RTI Act seeks to achieve. The information is not about government policies and decisions, nor does it describe the manner in which the QPS respond to and deal with such issues.*

75. I acknowledge that the information which QPS has decided to disclose furthers these public interest considerations to a significant degree and the remaining Information in Issue is limited in nature.

76. The access application covers the period from 1 January 2011 to 29 January 2013. Venue One submits that the information is 'outdated' and 'not current'. I also acknowledge that a significant passage of time has elapsed since some of the entries in the LEAPS Reports were recorded.<sup>36</sup>

77. In my view, the age of the LEAPS Reports and the limited nature of the Information in Issue reduce the weight of these public interest factors marginally. Despite this, I am of the view that disclosing the Information in Issue would further these public interest considerations as:

- the Information in Issue was created by QPS officers who responded to reports of incidents at particular licensed venues and shows the way information has been recorded by QPS
- it would enable the public to examine the nature and frequency of alcohol-related incidents reported to QPS at particular venues
- the process whereby QPS officers disclose information about alcohol-related incidents to OLGR is a measure designed to improve public safety at licensed venues by enabling OLGR to identify trends and take proactive action to prevent more serious incidents
- alcohol-related incidents which occur at licensed venues and the safety of licensed venues are issues of serious public interest and debate;<sup>37</sup> and
- disclosing this information will enable patrons to make a more informed decision about their choice of venue by providing some information about the safety of particular identified venues.

78. For these reasons, and in view of the strong public interest in public safety at licensed venues, I afford these four factors moderate weight.

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<sup>36</sup> Venues Two and Three submit that OIC cannot take into account the age of the Information in Issue. I will address this submission under the factor relating to prejudice to business affairs.

<sup>37</sup> Alcohol-related violence at licensed premises has been the subject of consideration and reform by both the Queensland Government and the Federal Government in recent years. Recent Queensland Government measures include, for example, the 'Safe Night Out Strategy' which aims to 'restore responsible behavior and respect, stamp out alcohol and drug-related violence and ensure Queensland's nightlife is safe for all' and is available at: <http://www.qld.gov.au/safenightout>. Also see, for example, the report by the Law, Justice and Safety Committee 'Inquiry into Alcohol-Related Violence - Final Report', Report No 74, March 2010 which is available at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf> and chapter 4 of the National Preventative Health Taskforce's publication 'Australia: the healthiest country by 2020 National Preventative Health Strategy - the roadmap for action' which is available at: <http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap-toc~nphs-roadmap-4>.

## Relevant factors favouring nondisclosure

### Prejudice the business affairs of entities

79. The RTI Act recognises that a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.<sup>38</sup> In most instances, the question of whether disclosing information could reasonably be expected to prejudice business affairs will turn on whether the information is capable of causing competitive harm to an entity.<sup>39</sup>
80. Given the nature of the Information in Issue and the context in which it appears, I am satisfied that this factor is relevant. However it is necessary for me to consider the weight to be afforded to this factor.
81. Venue One submits that disclosing the Information in Issue could reasonably be expected to prejudice its business affairs as:
- the allegations inaccurately and unfairly portray the venue as being *'habitually non-compliant'* with liquor laws and suggest *'misconduct and unlawful, negligent or improper conduct by the venue'*
  - disclosure would adversely affect its reputation which will in turn affect patronage causing *'long term'* competitive and financial harm; and
  - disclosure would lead people to form the view that the venue has not complied with the liquor laws and is unsafe and this may result in *'devious or troublesome'* patrons frequenting the venue and *'troublesome activities being conducted'*.
82. Venues Two and Three submit that disclosing the Information in Issue could significantly prejudice their business affairs and damage their reputations by:
- misleading people to think that the venues are dangerous and unsafe with poor safety measures which would compromise the safety and security of the venues; and
  - enabling the applicant to *'skew the information'* and use it to *'further a certain discourse or angle espoused by the media outlet'* which would lead to an unfair or prejudicial portrayal of the venues being presented to the public.
83. I accept that disclosing the Information in Issue could reasonably be expected to prejudice the venues' business affairs by damaging their reputations and deterring some existing or potential patrons from visiting these venues. However, I consider members of the public are generally aware that alcohol-related incidents occur in many licensed venues and still choose to attend the venues. Incidents generally attract significant publicity when they occur. I also consider that the perceived safety of a venue, based on its history of alcohol-related incidents, is only one factor of many considered by people when selecting a venue to attend. Accordingly, I consider that the weight of this factor is reduced to some degree.
84. Venue One submits that one of the entries in the LEAPS Reports contains a complaint made by a female patron about a security officer relating to an alleged sexual offence at the venue and that:
- disclosing the information could significantly damage the venue's reputation

<sup>38</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>39</sup> *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd; Treasury Department* (Unreported, Queensland Information Commissioner, 9 May 2012) at paragraph 89.

- while alcohol-related offences occur at all premises, offences of a sexual nature are far more damaging to the reputation of a licensed premises and disclosing this information could discourage female patrons from attending the premises; and
- as a result, the allegation should not be disclosed.

85. I have considered the information to which this submission relates. The allegations recorded in the LEAPS Report are not in issue in this review as the Information in Issue is limited to the name and address of the venue. However, I acknowledge that identifying the venue will indicate where the incident was alleged to have occurred. As noted above, I accept that disclosing the Information in Issue could reasonably be expected to damage the reputations of the venues and deter some existing or potential patrons from visiting them. I do not consider that the anticipated harm from disclosing the Information in Issue in association with these allegations of a sexual offence would be any greater than for the other types of offences which appear in the LEAPS Reports, some of which relate to serious allegations of alcohol-related violence involving female patrons. Again, I consider that members of the public are generally aware that sexual offences of this nature occur occasionally in licensed venues and still choose to attend the venues.

86. Venue One submits that:

- the information is untested by Venue One and it has been denied procedural fairness in conducting its own investigations as to the accuracy of the allegations
- releasing this information illustrates *'only one side of the facts and that is an allegation made by a patron'*; and
- the absence of any independent review or investigation by the venue could cause a *'detrimental impact'* on the business and it should be allowed the opportunity to conduct its own investigation into the allegations prior to disclosure.

87. As I have noted previously, the allegations recorded in the LEAPS Report are not in issue in this review. The Information in Issue is limited to the name and address of the venue. However, I acknowledge that the Information in Issue will be associated with the relevant allegations. The entries in the LEAPS Reports were created by QPS officers responding to reports of incidents at the venues shortly after the alleged incidents occurred and based on information provided at the scene. It is clear that the allegations have not been investigated or substantiated. In that regard, I agree with Venue One's submission that the information only records the version of events provided by other patrons or staff. However, I am of the view that readers would understand this and would be able to distinguish the information in the LEAPS Reports from other types of documents which may record the final outcome of any investigations.

88. Venue One submits that disclosing the Information in Issue could reasonably be expected to prejudice its business affairs as it would have a negative effect on the attitudes of people in their dealings with the venue and its staff and lead to *'overzealous compliance activity'*. Licensed venues are subject to oversight by OLGR and other regulatory agencies. I do not accept that an increase in regulatory or compliance activity by government agencies, acting within the law, could reasonably be expected to prejudice a venue's business affairs.

89. The Information in Issue is also somewhat dated.<sup>40</sup> This reduces the likely impact of disclosure on the venues' business affairs as the public will recognise that there may have been significant changes to the venues, their management and their practices

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<sup>40</sup> I also considered the age of the Information in Issue in relation to the factors favouring disclosure and decided that it reduced the weight of these factors to some degree.

since the time of the relevant incidents in 2011-2013. I consider this also reduces the weight of this factor to some degree.

90. Venues Two and Three submit that:

- OIC cannot purport to take the age of the Information in Issue into consideration
- at the time the application was made the Information in Issue was current and relevant and if it had been released at that time, the prejudice to the venue's business affairs would have been significant; and
- the fact that the Information in Issue is now somewhat dated does not justify its release.

91. I do not accept these submissions. The age of the Information in Issue as it appears in the LEAPS Reports is only one factor which I have taken into account in reaching my decision. Furthermore, in the circumstances of this review, it is appropriate to assess the anticipated prejudice which may result from disclosure at the time of the decision.

92. For the reasons addressed above, I afford this factor moderate weight.

### **Prejudice the fair treatment of individuals**

93. A factor favouring nondisclosure will arise where disclosing the Information in Issue could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>41</sup>

94. Venue One submits that the Information in Issue is '*unsubstantiated information*', has not been '*verified*' and '*no evidence has been obtained from the venue in relation to the allegations*'.

95. Venues Two and Three submit that the publication of unfounded accusations and reports pertaining to the incidents could be defamatory towards persons involved, particularly the accused.

96. The information which QPS decided to release contains allegations of unlawful conduct by patrons (such as assault). However, the Information in Issue which is the subject of this review does not contain this type of information. As explained above, I am satisfied that disclosing the Information in Issue would not enable relevant individuals to be identified. As a result, I am not satisfied that this factor is relevant.

### **Prejudice security, law enforcement or public safety**

97. A factor favouring nondisclosure will arise where disclosing the Information in Issue could reasonably be expected to prejudice security, law enforcement or public safety.<sup>42</sup>

98. Venue One submits that disclosing the Information in Issue would:

- '*create the perception that the premises has poor security thereby attracting patrons who may seek to take advantage of the situation and misbehave*' which would significantly impact on security arrangements at the venue; and
- lead people to form the view that the venue has not complied with the liquor laws and is unsafe and this may result in '*devious or troublesome*' patrons frequenting the venue and '*troublesome activities being conducted*'.

<sup>41</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>42</sup> Schedule 4, part 3, item 7 of the RTI Act.

99. Venues Two and Three submit that disclosing the Information in Issue would mislead people to think that the venues are *'dangerous and unsafe'* with poor safety measures in place which would compromise their safety and security.
100. I consider a risk to public safety could reasonably be expected to arise through disclosure if the security arrangements at the venues were in fact inadequate. However, there is no evidence before me to suggest that this is the case. In any event, the Information in Issue does not include details of the security arrangements in place at the venues. I do not consider it reasonable to expect that disclosure would enable patrons to prejudice security or public safety and I am not satisfied that this factor is relevant.

### **Impede the administration of justice**

101. Factors favouring nondisclosure will arise where disclosing the Information in Issue could reasonably be expected to impede the administration of justice generally, including procedural fairness,<sup>43</sup> or impede the administration of justice for a person.<sup>44</sup>
102. Venue One submits that it is currently involved in *'legal matters and investigations'* with OLGR and an ongoing Supreme Court action and that disclosing the Information in Issue would disadvantage it in these matters and impede the administration of justice. Venues Two and Three have merely identified these factors as relevant but have not provided any evidence supporting their application to the Information in Issue.
103. In the absence of any evidence from the venues about how disclosing the Information in Issue could reasonably be expected to impede the administration of justice, I am not satisfied that these factors are relevant.

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

104. Factors favouring nondisclosure will arise where disclosing the Information in Issue could reasonably be expected to prejudice:
- the flow of information to the police or another law enforcement or regulatory agency;<sup>45</sup> or
  - an agency's ability to obtain confidential information.<sup>46</sup>
105. Venue One submits that disclosing the Information in Issue *'will create a wall of protection between the venue and the QPS'* and that *'information will not be freely provided'*.
106. Venues Two and Three submit that:
- a cooperative and open relationship between QPS and licensees is pertinent to the safe and effective operation of licensed venues as well as the safety of the public generally
  - disclosing the information could reasonably be expected to prejudice the effectiveness of LEAPS and similar initiatives which require accurate data in order to address alcohol-related issues, including identifying trends and potential trouble areas; and
  - licensees will not freely communicate with QPS if they know all records of incidents will be released to third parties.

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<sup>43</sup> Schedule 4, part 3, item 8 of the RTI Act.

<sup>44</sup> Schedule 4, part 3, item 9 of the RTI Act.

<sup>45</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>46</sup> Schedule 4, part 3, item 16 of the RTI Act.

107. I refer to my findings in relation to schedule 3 section 10(1)(f) and (i) of the RTI Act at paragraphs 57 to 60. I do not consider it reasonable to expect that disclosing the Information in Issue would prejudice the flow of information to QPS in the future and there is no evidence before me to suggest the Information in Issue was provided to QPS on a confidential basis. I am not satisfied that these factors are relevant.

### **Prejudice a deliberative process of government**

108. The RTI Act recognises that:

- a public interest factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice a deliberative process of government (**Nondisclosure Factor**);<sup>47</sup> and
- disclosing information could reasonably be expected to cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded, or a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**).<sup>48</sup>

109. I am not satisfied the Harm Factor applies as the Information in Issue does not comprise either an opinion, advice or recommendation that has been obtained, prepared or recorded or a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government. However, I will now consider whether the Nondisclosure Factor applies.

110. Venue One submits that:

- the Information in Issue *'is a deliberative process of government and could be prejudicial as it relates to disciplinary action of OLGR against the venue, which is ongoing in the Supreme Court'*; and
- *'disclosure of the information would be a disruption to OLGR objectives and functions contained in the liquor act and would also be premature and cause unnecessary debate, concern and confusion in the community to an extent that would be contrary to public interest'*.

111. It is not enough for a party objecting to disclosure to simply assert that disclosure will result in some kind of adverse consequence. The Nondisclosure Factor requires a reasonable expectation of prejudice to the relevant deliberative process.<sup>49</sup> It is not clear how disclosing the Information in Issue could reasonably be expected to disrupt OLGR's functions or objectives. There is no evidence before me to suggest that disclosing the Information in Issue could reasonably be expected to cause *'premature and unnecessary debate'*. I am not satisfied that the Nondisclosure Factor applies.

### **Disclosure is prohibited by an Act**

112. A factor favouring nondisclosure will arise where an Act prohibits disclosure of the information.<sup>50</sup> The venues submit that the Liquor Act and the *Victims of Crime Assistance Act 2009* (Qld) prohibit the disclosure of the Information in Issue.

<sup>47</sup> Schedule 4, part 3, item 20 of the RTI Act.

<sup>48</sup> Schedule 4, part 4, item 4 of the RTI Act.

<sup>49</sup> *Abbot and The University of Queensland* (Unreported, Queensland Information Commissioner, 16 October 2012) at paragraph 24.

<sup>50</sup> Schedule 4, part 3, item 22 of the RTI Act.

### ***Victims of Crime Assistance Act 2009 (Qld)***

113. Venues Two and Three submit that the *Victims of Crime Assistance Act 2009 (Qld)* prohibits disclosure of the Information in Issue and that:
- *'disclosure of the information in issue may be in conflict with the principles of the Victims of Crime Assistance Act 2009 which declares fundamental principles of justice to [underpin] the treatment of victims by certain entities dealing with them';* and
  - *'[QPS] have a responsibility to protect the interest of the victims and release of the information may prejudice this'.*
114. Disclosing the Information in Issue would not enable the identification of any individual (as previously explained), including any individual who may have been the victim of a crime, and its disclosure is not in conflict with the principles of that legislation. I do not consider that the *Victims of Crime Assistance Act 2009 (Qld)* prohibits disclosure of the Information in Issue under the RTI Act.

### ***Liquor Act 1992 (Qld)***

115. The venues submit that section 48 of the Liquor Act prohibits disclosure of the Information in Issue and that significant weight should be given to this factor.
116. Venue One submits that significant weight should be given to this factor as it specifically prohibits disclosure of information similar to the Information in Issue and that *'the police obtained the information for the purpose of giving effect to the Liquor Act'*.
117. Venues Two and Three also submit that significant weight should be given to this factor because in *'drafting the Liquor Act parliament has turned its mind to the issue of disclosure of such information and consciously deemed it was necessary to include an express provision in the Liquor Act prohibiting disclosure of such information'*.
118. Section 48 of the Liquor Act provides:

#### **48 Preservation of confidentiality**

- (1) *Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.*

*Maximum penalty—35 penalty units.*

- (2) *Subsection (1) does not apply to—*
- (a) *disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or*
  - (b) *disclosing information in the register; or*
  - (c) *disclosing information about the status of an application required to be advertised under section 118(1); or*
  - (d) *disclosing information about the status of an application to the tribunal for a review and the names of the parties to the review; or*
  - (e) *doing anything for the purposes of this Act.*

119. I consider it likely that the primary purpose for QPS to gather the information which appears in the LEAPS Reports (including the Information in issue) was to investigate alleged criminal offences. However, I also note that the QPS Commissioner is required

to convey information about certain incidents to OLGR at OLGR's request for the purpose of OLGR deciding whether to classify licensed premises as high risk.<sup>51</sup> Accordingly, I consider the Information in Issue may have been gathered by QPS officers for the purpose of giving effect to the Liquor Act. I therefore consider that section 48 of the Liquor Act would generally prohibit disclosure of the Information in Issue and this factor favouring nondisclosure arises for consideration. It is then necessary to consider the weight to be afforded to this public interest factor.

120. Officers of the agency administering the Liquor Act have access to a wide range of information, some of which is particularly sensitive, for example, individuals' criminal history checks. Section 48 of the Liquor Act is, in my view, a standard confidentiality provision included in legislation to prevent the indiscriminate disclosure of information which an agency officer may have access to in the course of their duties. It is not, however, a blanket prohibition on disclosure. The Liquor Act still authorises disclosure of information in a range of specific circumstances including, for example, doing anything for the purposes of the Liquor Act or producing documents in compliance with a lawful process requiring production of documents.
121. This provision must be balanced against the express intention of the RTI Act, a later Act, to override provisions in other Acts prohibiting the disclosure of information.<sup>52</sup> Parliament did not include information gathered under the Liquor Act in schedule 3, section 12 of the RTI Act, which specifically exempts information the disclosure of which is prohibited under several listed Acts. Accordingly, while I consider this factor is relevant, it warrants only moderate weight.

### Personal information

122. If disclosing the Information in Issue would disclose the personal information of a person, a public interest harm factor will arise.<sup>53</sup> Personal information is '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.<sup>54</sup>
123. Venue One submits that the Information in Issue could enable the identity of QPS officers, victims, suspects, security personnel, employees of the licensee and witnesses to be ascertained.
124. Venues Two and Three submit that the Information in Issue discloses personal information of QPS officers, the licensee, victims, suspects, security personnel and the licensee's staff '*by facilitating identification due to association with the incidents*'.
125. The Information in Issue comprises the name and address of the venues. An '*individual*' is a natural person.<sup>55</sup> As the venues are not natural persons, I do not consider information about the venues is '*personal information*'. I refer to my previous finding that disclosing the Information in Issue would not enable relevant individuals to be identified. I am not satisfied that this factor is relevant.

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<sup>51</sup> Section 99G of the Liquor Act.

<sup>52</sup> Section 6 of the RTI Act.

<sup>53</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>54</sup> Section 12 of the *Information Privacy Act 2009* (Qld).

<sup>55</sup> Section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Qld).

### **Insignificance of the data**

126. The venues submit that that incidents in the LEAPS Reports represent an insignificant incident rate as against patronage at the venues and, accordingly, it is not in the public interest to disclose the information.
127. As noted above, there is a public interest in enabling the public to examine the nature and frequency of alcohol-related incidents reported to QPS. I do not consider the public interest is reduced simply because the venues consider the rate of incidents is insignificant for the rate of patronage at the venue.
128. These submissions do not give rise to a factor favouring nondisclosure of the Information in Issue.

### **Incorrect information**

129. Venue One raised concerns about the accuracy of some of the Information in Issue as a reason for not disclosing the Information in Issue. I note that the RTI Act gives rise to a factor favouring *disclosure* where disclosing the information could reasonably be expected to reveal that the information was incorrect.<sup>56</sup>
130. Venue One submits that the address recorded for a particular entry in the LEAPS Report is incorrect as it records the wrong suburb and therefore doesn't relate to Venue One. I acknowledge that the street address appears to have been recorded incorrectly but, in my view, it is clear that this entry in the LEAPS Report otherwise relates to Venue One.
131. Venue One submits that two of the entries in the LEAPS Reports are for a different venue. I agree that these entries relate to other venues and it appears this information was inadvertently provided to Venue One by QPS in the consultation process. As this information does not relate to Venue One, it was not intended to be the subject of consultation with Venue One.
132. Venue One submits that it has been incorrectly identified as the trading entity of a particular company throughout the LEAPS Reports and disclosing the Information in Issue would be misleading, defamatory and would result in legal action by the company. Based on my review of the LEAPS Reports, it is clear that the entries relate to Venue One. The fact that the venue may have concerns with how it is identified in the LEAPS Reports is an issue which the venue may raise with QPS or OLGR.
133. These submissions do not give rise to a factor favouring nondisclosure of the Information in Issue.

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

134. The RTI Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.<sup>57</sup>
135. Alcohol-related incidents which occur at licensed venues and the safety of licensed venues are issues of serious public interest and debate and disclosing the Information in Issue will enable patrons to make a more informed decision about their choice of venue by providing some information about the safety of particular identified venues. I consider the four factors favouring disclosure warrant moderate weight in the circumstances of this review.

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<sup>56</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>57</sup> Section 44 of the RTI Act.

136. These factors must be weighed against the potential prejudice to the venues' business affairs and the fact that disclosing the Information in Issue is prohibited by the Liquor Act. I afford moderate weight to both of these factors favouring nondisclosure of the Information in Issue.

137. For the reasons outlined above, I do not consider the two factors favouring nondisclosure are of sufficient weight to outweigh the four public interest factors favouring disclosure, particularly given the high and ongoing public interest in the safety of licensed venues. Accordingly, I am not satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest.

## **DECISION**

138. As QPS was deemed to have refused access to the Information in Issue, I set aside the decision under review and find that there is no basis to refuse access to the Information in Issue under the RTI Act.

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

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

**Date: 12 June 2014**

## APPENDIX

### Significant procedural steps

Date	Event
29 January 2013	QPS received the access application under the RTI Act.
2 October 2013	QPS did not issue a decision within the required timeframe and was therefore deemed to have refused access to the requested information. Despite this, QPS issued a purported decision to the applicant.
10 October 2013	OIC received the external review application.
11 October 2013	OIC asked QPS to provide relevant procedural documents by 18 October 2013.
23 October 2013	OIC received the requested documents from QPS.
25 October 2013	OIC notified QPS and the access applicant that the external review application had been accepted and asked QPS to provide the relevant documents to OIC by 11 November 2013.
20 November 2013	OIC received the requested documents from QPS.
22 November 2013	OIC conveyed its preliminary view to the applicant by phone that the requirement for OIC to consult with the large number of venues covered by the scope of the application would result in a substantial and unreasonable diversion of OIC's resources and that OIC could refuse to deal with the application on this basis.
3 December 2013	OIC confirmed the preliminary view in writing and invited the applicant to narrow the scope of the application or provide further submissions supporting its case by 17 December 2013.
7 January 2014	The applicant agreed to narrow the scope of the application to the LEAPS Reports for 16 venues for the relevant timeframe.
9 January 2014	OIC conveyed a preliminary view to QPS by phone that there was no basis to refuse access to the Information in Issue. QPS accepted the preliminary view and agreed to release the Information in Issue.
10 January 2014	OIC asked QPS to provide another copy of the relevant documents to OIC by 24 January 2014.
7 February 2014	QPS requested an extension of time to provide the requested information. OIC agreed to extend the timeframe until 14 February 2014.
17 February 2014 18 February 2014	QPS provided the requested information to OIC.
19 February 2014	OIC asked QPS to provide further documents to OIC by 27 February 2014.
20 February 2014	OIC received the requested response from QPS.
24 February 2014	OIC notified 16 relevant venues about the likely release of the Information in Issue and invited them to provide submissions supporting their case by 10 March 2014 if they objected to release of the information.  OIC asked QPS to forward the relevant LEAPS Reports to the venues by 3 March 2014.
4 March 2014	QPS provided OIC with a copy of the LEAPS Reports in the form they were sent to the relevant venues.
7 March 2014	Lawyers, on behalf of Venue Two, requested an extension of time until 24 March 2014 to provide submissions supporting its case. OIC granted Venue Two the requested extension of time.
10 March 2014	OIC received submissions from Venue One.
24 March 2014	OIC received submissions from Venue Two.

Date	Event
26 March 2014	Lawyers contacted OIC by phone and, on behalf of Venue Three, requested an extension of time to provide submissions in response to OIC's letter. OIC granted Venue Three an extension of time until 4 April 2014.
3 April 2014	OIC received submissions from Venue Three.
30 April 2014	OIC conveyed its preliminary view to Venues One, Two and Three and invited them to provide final submissions supporting their case by 15 May 2014 if they continued to object to disclosure of the Information in Issue.
12 May 2014	Venue Two requested an extension of time until 29 May 2014 to respond to the preliminary view. OIC granted Venue Two an extension of time until 26 May 2014.
13 May 2014	Venue Three requested an extension of time until 29 May 2014 to respond to the preliminary view. OIC granted Venue Three an extension of time until 26 May 2014.
14 May 2014	Venue One requested an extension of time until 19 May 2014 to respond to the preliminary view. OIC granted Venue One the requested extension of time.
19 May 2014	OIC received submissions from Venue One.
26 May 2014	OIC received submissions from Venues Two and Three.