



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>GM31AM and Queensland Police Service [2015] QICmr 6 (25 March 2015)</i></b>
<b>Application Number:</b>	<b>312010</b>
<b>Applicant:</b>	<b>GM31AM</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>25 March 2015</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant seeks information about access to her personal information – investigation conducted by Queensland Police Service – whether information was obtained, used or prepared for an investigation by a prescribed crime body or another agency in the performance of the prescribed functions of the prescribed crime body – whether information is exempt from disclosure under sections 47(3)(a) and 48 and schedule 3, section 10(4) 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 documents about a complaint she made in 2012 regarding *'my personal details being inappropriately accessed and released to a media outlet'*.<sup>1</sup> In particular, the applicant sought details of the person/s identified as accessing her details, their reason for accessing her details and any disciplinary outcomes relating to this matter.
2. QPS refused access to the requested information on the basis that it comprised exempt information under sections 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act because it had been used, obtained 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.
3. For the reasons set out below, I affirm QPS's decision to refuse access to the Information in Issue.

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<sup>1</sup> Access application received 14 March 2014. The date range for the documents specified by the applicant was *'March 2012 to current'* – that is, March 2012 to 14 March 2014 (being the date that QPS received the access application – see section 27 of the RTI Act).

## Background

4. Significant procedural steps relating to the application and external review are set out in the Appendix.
5. During the course of this review, the Crime and Misconduct and Other Legislation Amendment Act 2014 (Qld) (**CMOLA Act**) made amendments to the Crime and Corruption Act 2001 (Qld) (**CC Act**) and schedule 3, section 10 of the RTI Act. Among other things, the amendments changed the name of the Crime and Misconduct Commission to the Crime and Corruption Commission.<sup>2</sup> For ease of reference, I will refer to the agency as the **Commission** throughout these reasons for decision. Relevantly for this review, the amendments also replaced the concept of official misconduct with corrupt conduct,<sup>3</sup> and the Commission's misconduct function with a corruption function.<sup>4</sup>

## Reviewable decision

6. The decision under review is QPS's decision dated 16 April 2014.

## Material considered

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

## Information in issue

8. The information in issue in this review can generally be described as comprising correspondence, reports and audio files relating to the investigation of a complaint by the applicant about inappropriate access to her personal information, and two associated complaints made by the applicant's husband (**Information in Issue**).

## Relevant law

9. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>5</sup> However, this right of access is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.<sup>6</sup>
10. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.<sup>7</sup> Schedule 3 of the RTI Act specifies the type of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest.
11. Relevantly, information is exempt if it was obtained, used or prepared for an investigation by a prescribed crime body or another agency, during its performance of a prescribed function of the prescribed crime body.<sup>8</sup>
12. An exception to this exemption will apply where:

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<sup>2</sup> Section 7(1) of the CMOLA Act.

<sup>3</sup> Section 9 of the CMOLA Act.

<sup>4</sup> Section 12 of the CMOLA Act.

<sup>5</sup> Section 23 of the RTI Act.

<sup>6</sup> Set out in section 47 of the RTI Act.

<sup>7</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>8</sup> Schedule 3, section 10(4) of the RTI Act.

- the information consists of information about the applicant; and
- the investigation has been finalised.<sup>9</sup>

## Findings

13. I have carefully reviewed the Information in Issue and the parties' submissions. Based on this review, I find that:
- the applicant's husband made a complaint to QPS that an unidentified QPS officer or officers had inappropriately accessed his personal information on a QPS database and passed this information to the media,<sup>10</sup> and QPS referred the complaint to the Commission
  - the applicant made a complaint to the Commission that an unidentified QPS officer or officers had inappropriately accessed her personal information on a QPS database and passed information to the media; and
  - the applicant's husband made a complaint to the Commission about how QPS dealt with the first two complaints.
14. Further, I find that, for each of the three complaints, the Commission:
- assessed the complaint as raising allegations which, if proved, could amount to official misconduct; and
  - devolved the complaint to QPS to deal with, subject to the Commission's monitoring role.
15. I note that, following enquiries made by a third party on behalf of the applicant and her husband, the Commission continued to devolve the second and third mentioned complaints<sup>11</sup> to QPS to deal with, subject to the Commission's monitoring role.
16. I also note that the three complaints are related in terms of the allegations of conduct they raise. Further, I note that issues arising from the complaints were often dealt with together (for example, in the same report or correspondence) by both the Commission and QPS. It is for these reasons that, although the applicant only sought documents about the complaint she made, the Information in Issue also includes documents relating to the two complaints made by her husband.
17. Further detail about how the first complaint was referred, and how all three complaints were assessed, devolved, dealt with and monitored, is not included in these reasons. This is because doing so would disclose information that QPS claims, and I consider to be, exempt information.<sup>12</sup>

### ***Has QPS 'obtained, used or prepared' the Information in Issue for an investigation?***

18. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) (**AI Act**), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.
19. Based on my review of the Information in Issue, I am satisfied that each document was either obtained, used or prepared for the purposes of investigations by QPS into one or

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<sup>9</sup> Schedule 3, section 10(6) of the RTI Act.

<sup>10</sup> And that QPS had failed to consider him for duties relieving at a higher rank because of his political activities.

<sup>11</sup> At this stage, the Commission considered that the matter arising from the first mentioned complaint had been finalised.

<sup>12</sup> Sections 108(3) and 110(7) of the RTI Act.

more of the complaints set out at paragraph 13 above. As mentioned at paragraph 16, the complaints are interrelated and the steps taken to deal with them often overlapped.

***Is the relevant investigation being conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?***

20. The Commission is a prescribed crime body under the RTI Act.<sup>13</sup>
21. From my review of the Information in Issue and the parties' submissions, I am satisfied that the conduct alleged in the complaints would, if proved, amount to corrupt conduct.<sup>14</sup>
22. The Commission's corruption function<sup>15</sup> is a prescribed function under the RTI Act.<sup>16</sup> It involves ensuring that complaints, information and matter about corruption – which is defined<sup>17</sup> to include corrupt conduct<sup>18</sup> – are dealt with in an appropriate way.<sup>19</sup> In these circumstances, I am satisfied that QPS's investigations of the complaints were carried out in the performance of the Commission's corruption function, and therefore in the performance of a prescribed function as defined in the RTI Act.
23. The applicant submits that the exemption cannot apply as the matter was investigated by QPS rather than by the Commission. The applicant contends that the Commission '*only assessed and referred the matter to the QPS for investigation*' and that '*[a]ny such investigation would have been conducted under the Police Service Administration Act, to which the QPS can not claim protection under the CMC legislation*'.<sup>20</sup>
24. However, the RTI Act states that information will be exempt if it is obtained, used or prepared for an investigation by an agency *other than a prescribed crime body*, if the agency is performing the prescribed functions of the prescribed crime body.<sup>21</sup> An agency *other than a prescribed crime body* clearly includes QPS when QPS is performing the Commission's corruption function.
25. Also, the CC Act provides that dealing with complaints about corruption in an appropriate way requires having regard to the principles set out in section 34 of the CC Act.<sup>22</sup> These principles include the principle of *devolution* – which provides that action to deal with corruption in a unit of public administration should generally happen within the unit.<sup>23</sup> Provisions setting out how the Commission may perform its corruption function and deal with complaints enable devolution by providing that the Commission may refer complaints to a relevant public official to be dealt with by the public official, or in cooperation with the Commission, subject to the Commission's monitoring role.<sup>24</sup> Similarly, provisions setting out how public officials deal with complaints provide that a public official has a responsibility to deal with a complaint, information or matter about corruption that is referred to it by the Commission,<sup>25</sup> and must deal with the complaint

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<sup>13</sup> See definition of *prescribed crime body* in schedule 3, section 10(9) of the RTI Act.

<sup>14</sup> See definition of *corrupt conduct* in section 15(1) of the CC Act. As a consequence of amendment of the CC Act by the CMOLA Act, the concept of *corrupt conduct* has replaced what was, at the time of QPS's investigations, referred to as *official misconduct*: see section 400(c) of the CC Act.

<sup>15</sup> Section 33 of the CC Act.

<sup>16</sup> See definition of *prescribed function* in schedule 3, section 10(9) of the RTI Act.

<sup>17</sup> See definition of *corruption* in schedule 2 of the CC Act.

<sup>18</sup> Section 15(1) of the CC Act.

<sup>19</sup> Either by the Commission itself, or through referral to, or cooperation with, a unit of public administration, subject to the Commission's monitoring role – see section 35(1) of the CC Act.

<sup>20</sup> Page 1 of submission dated 25 February 2015.

<sup>21</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>22</sup> Section 33 of the CC Act.

<sup>23</sup> Section 34(b) of the CC Act.

<sup>24</sup> Sections 35(1)(b),(d) and (e) and 46(2)(b) of the CC Act.

<sup>25</sup> Section 43 of CC Act.

subject to the Commission's monitoring role.<sup>26</sup> (The Commission's monitoring role is set out in section 48 of the CC Act).

26. Given these provisions, and on careful consideration of the information before me, I am satisfied that, in conducting the investigation, QPS was performing the Commission's corruption function, by dealing with complaints about corrupt conduct devolved to it by the Commission in accordance with the requirements of the CC Act and, when doing so, QPS was subject to the Commission's monitoring (in the form of intermittent oversight).
27. Accordingly, I am satisfied that the exemption applies to the Information in Issue.

### **Does the exception apply?**

28. The exception to the exemption only applies where the investigation is finalised and the information is about the applicant.
29. In *G8KPL2 and Department of Health*,<sup>27</sup> the Right to Information Commissioner considered the meaning of 'about' in schedule 3, section 10(6) of the RTI Act and found that an investigation report, while created as a result of the applicant's complaint, was not about the applicant but was about the persons who were the subject of the allegations and related investigation. On this basis, the Right to Information Commissioner concluded that the exception in schedule 3, section 10(6) of the RTI Act did not apply.
30. While I acknowledge that the applicant has a personal interest in the matters under investigation, the Information in Issue is not *about* the applicant as she was not the subject of the investigation. Therefore, and in accordance with the reasoning in *G8KPL2*, I find that this information is not *about* the applicant and the exception does not apply to this information.

### **Other matters raised by the applicant**

31. The applicant submits, under the RTI Act, *'there is no automatic reference to exemptions but rather they are to be dealt with on a public interest basis'*.<sup>28</sup> The applicant also submits that, even if the exemption applies, it is in the public interest to release the information.<sup>29</sup> Further, the applicant submits *'if a public interest test has been applied ... I would like to know what that test was'* and *'there was no realistic public interest test displayed but rather a self-interest test'*.<sup>30</sup> Finally, in terms of public interest considerations, the applicant submits that *'the privacy of [those] who have been unethical in their conduct is not sufficient grounds for nondisclosure'*.<sup>31</sup>
32. In creating exemptions for the types of information listed in schedule 3 – including the exemption considered in this review – Parliament has determined that disclosure of those types of information would, on balance, be contrary to the public interest in all instances.<sup>32</sup> That is, where information comprises one of these types of information,

<sup>26</sup> Section 44(2) of CC Act.

<sup>27</sup> (Unreported, Queensland Information Commissioner, 31 January 2011) (*G8KPL2*). In considering the appeal of *G8KPL2*, the Queensland Civil and Administrative Tribunal did not disagree with the Information Commissioner's interpretation of 'about' in schedule 3, section 10(6) of the RTI Act. See *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012) and *Dickinson and Queensland Police Service* [2014] QICmr 30 (20 June 2014).

<sup>28</sup> Pages 2 and 3 of submissions dated 25 February 2015.

<sup>29</sup> Page 2 of submission dated 25 February 2015.

<sup>30</sup> Pages 2-3 of submission dated 25 February 2015.

<sup>31</sup> Page 3 of submission dated 25 February 2015.

<sup>32</sup> Section 48(2) of the RTI Act.

Parliament has already decided that it is contrary to the public interest for such information to be disclosed. In these circumstances, I am not required or able to take public interest considerations into account, or conduct a public interest balancing test to determine if, on balance, it would be contrary to the public interest to disclose the information. Also, I have no discretion to release the information despite my finding that it is exempt.<sup>33</sup>

33. The applicant further submits that '*the conduct of QPS is questionable and their claims and arguments should also be viewed as questionable*'.<sup>34</sup> The applicant raises concerns about QPS's investigation into her complaint and suggests that QPS is trying to avoid disclosing the Information in Issue '*to support the unethically or negligent course of conduct displayed in the investigation of [her] complaint*' and '*to have the OIC unwittingly complicit in their actions*'.<sup>35</sup>
34. I have carefully considered the applicant's submissions regarding QPS's conduct. However, I am satisfied they are not relevant to the issue for determination in this review. As noted above, I am satisfied that the QPS conducted an investigation in performing the prescribed functions of the Commission. The RTI Act does not require or enable me to consider the adequacy of that investigation in determining whether the exemption applies.

### **Conclusion**

35. I am satisfied that the Information in Issue:
- was obtained, used or prepared for an investigation by QPS in the performance of the prescribed functions of a prescribed crime body
  - is not subject to the exception in schedule 3, section 10(6) of the RTI Act; and
  - is therefore exempt information under schedule 3, section 10(4) of the RTI Act.
36. Access to the Information in Issue may therefore be refused under sections 47(3)(a) and 48 of the RTI Act.

### **DECISION**

37. I affirm QPS's decision to refuse access to the Information in Issue under sections 47(3)(a) and 48 of the RTI Act.
38. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

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**A Rickard**  
**Acting Assistant Information Commissioner**

**Date: 25 March 2015**

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<sup>33</sup> Section 105(2) of the RTI Act.

<sup>34</sup> Page 3 of submission dated 25 February 2015.

<sup>35</sup> Page 2 of submission dated 25 February 2015.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
14 March 2014	QPS received the access application.
16 April 2014	QPS issued a decision on the access application.
29 April 2014	OIC received the applicant's application for external review and asked QPS to provide information relevant to the application.
30 April 2014	OIC received the requested information from QPS.
9 May 2014	OIC notified the applicant and QPS that the external review had been accepted. OIC asked QPS to provide a copy of the Information in Issue.
23 May 2014	OIC received a copy of the Information in Issue from QPS.
31 July 2014	OIC asked QPS to provide a submission in support of its position on disclosure of the Information in Issue.
31 July 2014	An OIC review officer raised the need for OIC to consider the CMOLA Act's amendment of the CC Act and RTI Act in a telephone conversation with the applicant.
1 August 2014	OIC received a submission from QPS in support of its position that the Information in Issue is exempt under schedule 3, section 10(4) of the RTI Act.
16 September 2014	OIC conveyed a preliminary view to QPS and invited QPS to make a submission by 30 September 2014 if it did not accept the preliminary view.
24 September 2014	QPS requested, and OIC granted, an extension of time for QPS to make a submission in response to the preliminary view.
14 October 2014	QPS responded to OIC's preliminary view and made a submission in support of its case.
4 February 2015	OIC conveyed a preliminary view to the applicant and invited the applicant to make a submission by 25 February 2015 if she did not accept the preliminary view.
25 February 2015	OIC received a submission from the applicant.