



Decision and Reasons for Decision

Citation: *Eaves and Queensland Police Service* [2017] QICmr 23
(30 June 2017)

Application Number: 312936

Applicant: Eaves

Respondent: Queensland Police Service

Decision Date: 30 June 2017

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL TO DEAL - application for access to information in police database - whether application is expressed to relate to all documents containing information of a stated kind - whether all of the documents to which the application relates would comprise exempt information - whether section 59 of the *Information Privacy Act 2009* (Qld) applies

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - whether disclosure of information in police database 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 - schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - applicant alleges unauthorised access to personal information in police database - whether information consists of matter revealing that the scope of a law enforcement investigation has exceeded its limits - schedule 3, section 10(2)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - INVESTIGATION BY PRESCRIBED CRIME BODY - complaint information - information obtained, used or prepared for an investigation by police in performing the prescribed functions of the prescribed crime body - schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (IP Act)* for access to information showing instances of access to, and amendment of, her personal information in the QPRIME database.¹
2. QPS decided to refuse to deal with the application on the basis that all of the documents to which the application relates comprise exempt information.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision.³ In support of her right to access her personal information in the QPRIME database, the applicant generally relies on:⁴
 - previous release of QPRIME information to her by QPS, under the IP Act
 - her belief that there is a culture of unlawful access to QPRIME data at QPS; and
 - her belief that her details have been searched many times without authority.
4. During the review, QPS confirmed that the QPRIME access information sought by the applicant would be contained in a document known as a QPRIME Activity Report.⁵ QPS also confirmed to OIC that the QPS Ethical Standards Command (**ESC**) was in the process of investigating a complaint made by the applicant, in relation to unauthorised access of her personal information, subject to the oversight of the Crime and Corruption Commission (**CCC**).⁶
5. I affirm QPS' decision to refuse to deal with the application under section 59 of the IP Act on the basis that all of the documents to which the application relates are comprised of exempt information.

Background

6. Significant procedural steps taken in the external review are set out in the Appendix.

Reviewable decision

7. The reviewable decision is the QPS decision dated 15 August 2016 refusing to deal with the access application under section 59 of the IP Act.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and Appendix).

¹ Access application dated 8 July 2016. QPRIME is the Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

² Decision dated 15 August 2016, relying on section 59 of the IP Act and referring to the schedule 3, section 10(1)(a) of the *Right to Information Act 2009 (Qld) (RTI Act)* exemption.

³ External review application dated 24 August 2016.

⁴ External review application dated 24 August 2016 and submission to OIC dated 18 November 2016.

⁵ Oral submissions made to OIC on 16 September 2016. OIC had received, around this time, a number of external review applications seeking review of QPS decisions where applicants had sought access to similar information.

⁶ QPS submission to OIC dated 20 March 2017.

Issue to be determined

9. The issue in this review is whether the access application may be the subject of a refusal to deal decision under section 59 of the IP Act. For that section to apply, the following two questions must be answered in the affirmative:
- i. is the application expressed to relate to all documents of a stated kind or relate to a stated subject matter?
 - ii. would all the documents to which the application relates comprise exempt information?

Relevant law

10. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.⁷ One of the very few circumstances in which it would not be in the public interest to deal with an access application is set out in section 59 of the IP Act as follows:

59 Exempt Information

- (1) *This section applies if—*
- (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
 - (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*
- (2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

11. Exempt information is information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.⁸

Findings

12. OIC has recently considered the application of section 59 of the IP Act to access applications framed in very similar terms to, and seeking access to the same type of information, as the application which is the subject of this review.⁹ As set out in those decisions, for section 59 of the IP Act to apply, I must be firstly satisfied that the access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind, or relate to a stated subject matter. To determine this issue, it is necessary to consider the terms of the access application.
13. The applicant requested access to the following information spanning a six year period:
- Details of officers that have accessed my Qprime file. Time, Date, ID Details of any amendments made to my file Detail on the reason for each entry Any Flag on my file*
14. I am satisfied that the application is framed as a request to access *all* entries in the QPRIME database relating to the applicant. I am further satisfied that the application is

⁷ Section 58(1) of the IP Act.

⁸ The Dictionary in schedule 5 of the IP Act provides that 'exempt information' means information that is exempt information under the RTI Act. See section 48 and schedule 3 of the RTI Act.

⁹ See *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (*Isles*), *Flori and Queensland Police Service* [2017] QICmr 5 (16 February 2017) (*Flori*) and *Shelton and Queensland Police Service* [2017] QICmr 18 (29 May 2017) (*Shelton*).

expressed to relate to all documents that contain information of a *stated kind*, i.e., information demonstrating when the applicant's personal information in QPRIME has been accessed or amended. Accordingly, I find that the first limb of section 59 of the IP Act is satisfied.

15. Secondly, I must be satisfied that all of the documents to which the application relates are comprised of exempt information. For the reasons that follow, I am satisfied that all of the information requested by the applicant would comprise exempt information on *either* of the following bases:
- 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 (**Lawful Method or Procedure Exemption**);¹⁰ and
 - it was obtained, used or prepared for an ongoing investigation by the QPS ESC¹¹ in the performance of the corruption function of the CCC (**Prescribed Crime Body Exemption**).¹²

Lawful Method or Procedure Exemption

16. This exemption will apply where:
- there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - disclosure *could reasonably be expected* to prejudice that method or procedure.¹³
17. Having considered the evidence provided by QPS on external review,¹⁴ I am satisfied that the process of QPS officers accessing the QPRIME database forms an integral part of the lawful methods and procedures used by QPS for preventing, detecting or investigating contraventions, or possible contraventions of the law, specifically with respect to intelligence and surveillance operations.
18. QPS has submitted that disclosure of QPRIME Activity Reports would generally reveal the number of occasions on which QPS officers have accessed the QPRIME database in relation to a particular individual and would disclose the badge number of the inquiring officer and the reasons for access.¹⁵ QPS has submitted that it has serious concerns that the disclosure of such information would enable an individual to deduce the level of QPS surveillance/investigation they are under, and/or identify any particular QPS units which may/may not be monitoring an individual's behaviour/involvement in activities.¹⁶
19. In this case, the applicant specifically seeks information that would reveal details of particular officers, ID numbers, detail of amendments made to the file and detail on the reasons for access. I am satisfied that QPRIME Activity Reports contain this type of information and that disclosure of such information could reasonably be expected to

¹⁰ Schedule 3, section 10(1)(f) of the RTI Act.

¹¹ Relevantly here, I note that complaints about police misconduct may be dealt with by QPS, subject to the CCC's monitoring role: sections 45 and 46(2) of the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

¹² Schedule 3, section 10(4) of the RTI Act. While QPS relied on the exemption in schedule 3, section 10(1)(a) of the RTI Act in its decision, that exemption did not form part of QPS's submissions on external review. Therefore, I have not considered it necessary to examine that exemption in these reasons, and also in view of my finding that both the Lawful Method or Procedure Exemption and Prescribed Crime Body Exemption apply in the circumstances of this case.

¹³ Schedule 3, section 10(1)(f) of the RTI Act.

¹⁴ Particularly the oral submissions made by QPS to OIC on 16 September 2016.

¹⁵ A QPRIME Activity Report also reveals any amendments made to the database.

¹⁶ Submissions made by QPS to OIC on 16 September 2016.

- prejudice QPS' lawful methods and procedures for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
20. As to whether this expectation of prejudice is reasonable,¹⁷ I am satisfied that QPS has demonstrated to OIC that there are particular circumstances in which disclosing information could reasonably be expected to prejudice QPS' lawful methods and procedures, even though the information may appear innocuous, on its face, or when read in isolation.¹⁸
 21. For the reasons set out above, I am satisfied that the QPRIME Activity Report comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.
 22. On external review, the applicant has made submissions¹⁹ which essentially seek to set aside the application of the Lawful Method or Procedure Exemption, including:
 - information relating to her on the QPRIME database has been accessed many times even though she does not have a criminal record
 - certain media outlets have reported on her allegations of improper access
 - she believes there is a '*culture within the QPS of officers accessing the QPRIME database unlawfully*'
 - a number of QPS officers have been charged for unlawfully accessing the QPRIME database in relation to other people; and
 - she does not consider she is under *legitimate* surveillance or investigation.
 23. Given the applicant's submissions, I have considered whether the exception to the Lawful Method or Procedure Exemption applies.²⁰ The exception provides that information will not be exempt if it consists of a matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law.
 24. As set out in *Isles*,²¹ *Flori*,²² and *Shelton*,²³ for the exception to apply, the requested information must consist of material that objectively and authoritatively reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law. QPRIME Activity Reports generally reveal the amount of activity and the number of occasions on which QPS officers have accessed QPRIME in relation to an individual, the badge number of the inquiring officer, and a technical log of interactions within the database. This information alone (or together with any information currently before me) does not reveal in any authoritative manner that any particular access was unauthorised, or that the scope of a law enforcement investigation has exceeded the limits imposed by law in any other way. At its highest, this type of information may amount to untested evidence concerning authority to access the QPRIME database in a particular instance.
 25. I acknowledge that the applicant has concerns about QPS officer conduct and I have considered the additional material the applicant has provided OIC to demonstrate her history of interactions with QPS. However, it is the *requested material* itself which must reveal that the scope of a law enforcement investigation has exceeded the limits imposed

¹⁷ The requirements of the phrase '*could reasonably be expected to*' in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

¹⁸ Under section 121(3) of the IP Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. I am therefore constrained in the extent to which I can explain the particular circumstances put forward by QPS in support of the application of this exemption.

¹⁹ Dated 18 November 2016.

²⁰ Schedule 3, section 10(2)(a) of the RTI Act.

²¹ At [21].

²² At [25].

²³ At [28]

by law, for the exception to apply. In this case, I do not consider the QPRIME Activity Report reveals evidence of an investigation having exceeded its limits. Accordingly, I am satisfied that on the evidence available to OIC, including the relevant QPRIME Activity Report, the exception to the Lawful Method or Procedure Exemption in schedule 3, section 10(2) of the RTI Act is not made out.²⁴

26. The applicant has also submitted that as she has previously been granted access to a QPRIME Activity Report, it is incongruous for QPS not to release the same information to her again. I acknowledge that QPS has, in the past, disclosed QPRIME Activity Reports.²⁵ However, QPS has recently reconsidered its position on releasing QPRIME Activity Reports. In the past year, a series of applications has been made to QPS under the IP Act, by various individuals seeking access to their personal information in QPRIME Activity Reports. In considering this trend, QPS identified a number of issues associated with disclosure of QPRIME Activity Reports, which ultimately led QPS to form the view that the expectation of prejudice to its methods and procedures posed too great a risk.²⁶
27. As a decision-maker conducting merits review, I am required to determine each matter on its own facts and on the basis of available evidence at the time of making my decision—there is no requirement for me to follow the approach taken by an agency in a previous external review. Similarly, there is nothing in the IP Act which prevents an agency from, over time, reconsidering its approach to the disclosure of particular information. I also note that while an agency retains the discretion to disclose exempt information, the Information Commissioner does not.²⁷
28. On the basis of the above, I am satisfied that the position previously taken by QPS in relation to disclosure of QPRIME Activity Reports under the IP Act does not have any impact on my finding that this information meets the requirements for exemption under schedule 3, section 10(1)(f) of the RTI Act.

Prescribed Crime Body Exemption

29. This exemption covers information that is obtained, used or prepared for an investigation by a prescribed crime body²⁸ or another agency, in the performance of the prescribed functions²⁹ of the prescribed crime body. An exception to this exemption applies where the information consists of information about the applicant and the investigation has been finalised.³⁰
30. Relevantly here, QPS has confirmed to OIC that the information sought by the applicant, i.e., the QPRIME Activity Report, was obtained and is currently being used by the ESC for an investigation into the applicant's complaint about unauthorised access of her personal information in QPRIME.³¹ Based on the information available to OIC, I am satisfied that the investigation was devolved to QPS by the CCC in the performance of its corruption function, and the investigation is subject to the CCC's monitoring role, in accordance with the requirements of the CC Act.
31. Accordingly, I find that the QPRIME Activity Report sought by the applicant was obtained and is currently being used by the QPS ESC in the performance of a prescribed

²⁴ There is no evidence available to OIC to indicate that any other exceptions in schedule 3, section 10(2) of the RTI Act apply.

²⁵ To the applicant, and in the matter of *Wolfe and Queensland Police Service* [2016] QICmr 27 (30 June 2016).

²⁶ Discussed previously in paragraph 18 in this decision.

²⁷ Sections 64(4) and 118(2) of the IP Act.

²⁸ Under schedule 3, section 10(9) of the RTI Act, the 'prescribed crime body' relevantly means the CCC.

²⁹ Under schedule 3, section 10(9) of the RTI Act, the 'prescribed functions' of the CCC are the crime function, the intelligence function and the corruption function as defined by the relevant provisions of the CC Act.

³⁰ Schedule 3, section 10(6) of the RTI Act.

³¹ QPS submission to OIC dated 20 March 2017.

function³²—namely, the corruption function³³—of a prescribed crime body³⁴—that is, the CCC. As at the date of this decision, QPS has confirmed that the investigation is ongoing.³⁵

32. On the basis of the above, I am satisfied that the QPRIME Activity Report has been obtained and used for an investigation by the ESC in the performance of the corruption function of the CCC, and the exception to the exemption does not apply because the investigation is ongoing.³⁶ Accordingly, I am satisfied that the QPRIME Activity Report comprises exempt information under schedule 3, section 10(4) of the RTI Act.

Public interest considerations

33. The applicant has put forward a number of public interest arguments in favour of disclosure of the QPRIME Activity Report. I acknowledge that the IP Act is to be administered with a pro-disclosure bias.³⁷ However, the exemptions in schedule 3 of the RTI Act represent the types of information which Parliament has already decided, would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption have been established, as I have found in this case, the legislation precludes me from considering public interest factors, no matter how compelling.³⁸

Conclusion

34. In summary, I find that section 59 of the IP Act applies in this case, as:
- the application is expressed to relate to all documents of a stated kind; and
 - all of the documents to which the application relates comprise exempt information under the Lawful Method or Procedure Exemption and the Prescribed Crime Body Exemption.

DECISION

35. I affirm the decision of QPS to refuse to deal with the application under section 59 of the IP Act.
36. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 30 June 2017

³² As defined in schedule 3, section 10(9) of the RTI Act. Corruption is a 'prescribed function' of the CCC for the purpose of schedule 3, section 10(4) of the RTI Act. Dealing with corrupt conduct comprises an aspect of the CCC's corruption function: schedule 2 and section 15 of the CC Act. Corruption is a 'prescribed function' of the CCC for the purpose of schedule 3, section 10(4) of the RTI Act.

³³ See section 33 of the CC Act and definitions of 'corruption' and 'police misconduct' in schedule 2 of the CC Act.

³⁴ Under schedule 3, section 10(6) of the RTI Act, the 'prescribed crime body' relevantly means the CCC.

³⁵ Advice received from QPS on 30 June 2017.

³⁶ As the investigation has not been finalised, it is unnecessary to form a view on the second limb of the exception, i.e. whether the information is 'about' the applicant.

³⁷ Section 58 of the IP Act.

³⁸ Under section 118 of the IP Act, the Information Commissioner does not have the power to direct that access to an exempt document be granted.

APPENDIX

Significant procedural steps	
Date	Event
24 August 2016	OIC received the external review application.
7 September 2016	OIC notified the applicant and QPS that the external review had been accepted.
16 September 2016	OIC received oral submissions from QPS.
29 September 2016	OIC conveyed a preliminary view to QPS and invited QPS to provide submissions in response.
7 October 2016	QPS accepted OIC's preliminary view.
18 October 2016	OIC conveyed a preliminary view to the applicant and requested submissions in response.
8 November 2016	The applicant requested, and was granted, an extension of time to provide submissions.
18 November 2016	The applicant provided written submissions to OIC.
11 January 2017	The applicant's legal representative requested an update on the status of the review.
30 January 2017	OIC provided the applicant's legal representative with an update on the status of the review.
8 March 2017	OIC provided QPS with an update on the status of the review.
17 March 2017	OIC asked QPS to provide information about the ESC investigation.
20 March 2017	QPS provided OIC with information about the ESC investigation.
4 April 2017	OIC conveyed a further preliminary view to the applicant and invited her to provide final submissions.
10 May 2017	OIC confirmed the further preliminary view to the applicant and granted her an extension of time within which to provide final submissions.
23 and 30 June 2017	QPS confirmed to OIC that the ESC investigation had not been finalised.