



## Decision and Reasons for Decision

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Citation:	<i>L60 and Queensland Police Service [2023] QICmr 54 (26 September 2023)</i>
Application Numbers:	316959 and 317150
Applicant:	L60
Respondent:	Queensland Police Service
Decision Date:	26 September 2023
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information of a deceased person and other individuals - information relating to criminal charges and a fatal traffic incident - eligible family member of the deceased - ongoing coronial investigation - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT - information provided by QPS Media Unit to enquiring journalists about criminal charges - whether formal media statement was issued - whether there are reasonable grounds to be satisfied the requested documents do not exist - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant made two separate access applications under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Queensland Police Service (**QPS**) for a wide range of information generally relating to the death of her son as a result of a traffic incident and his dealings with QPS prior to his death. The two separate external review applications are dealt with together in this decision.
2. QPS initially located information relating to the fatal traffic incident and QPS contact with the media. QPS decided to release only a small amount of information to the applicant about its contact with the media and refused access to the remaining information on the ground that its disclosure 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 QPS's decisions contesting the refusal of access to the located information and raising sufficiency of search issues.

4. QPS agreed to release some additional information to the applicant on external review. For the reasons set out below, I find that access to the remaining information in issue can be refused on the grounds that its disclosure would, on balance, be contrary to the public interest or the requested information is nonexistent.

### Reviewable decisions

5. In external review 316959, the reviewable decision is the internal review decision QPS was deemed to have made on 18 October 2022 affirming the original decision.
6. In external review 317150, the reviewable decision is QPS's decision dated 12 December 2022.<sup>1</sup>

### Evidence considered

7. Significant procedural steps taken in these reviews are set out in the appendix. The evidence, submissions, legislation, and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and the appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to freedom of expression and reputation.<sup>2</sup> I consider a decision-maker will be 'respecting and acting compatibly with' those rights and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.<sup>3</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>4</sup>

### Background and issues for determination

9. The applicant's son was killed in a fatal traffic incident which QPS treated as a suicide. In the days prior to his death, the applicant's son had been charged with a number of criminal offences. The State Coroner is continuing its investigation into the death. QPS has confirmed that the criminal charges are relevant to, and form part of, the coroner's investigation.<sup>5</sup>
10. The access applications to QPS were very broad and were framed as including all documents relating to 16 distinct categories of information. These categories can be summarised as:
  - complaints made to QPS by the applicant's son or about the applicant's son
  - the criminal charges
  - the fatal traffic incident
  - the applicant's contact with QPS; and
  - QPS contact with the media about the criminal charges and fatal traffic incident.
11. In external review 316959, QPS originally located and decided to refuse access to the QPrime report for the fatal traffic incident (80 pages) and part release QPS media records relating to that incident (3 pages). In external review 317150, QPS located and decided

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<sup>1</sup> The applicant applied to QPS for internal review of this decision, however, was advised internal review was not available for matters about sufficiency of search only.

<sup>2</sup> Sections 21 and 25(b) of the HR Act.

<sup>3</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>4</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '... it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act'.

<sup>5</sup> QPS submission on 15 June 2023.

to part release QPS media records relating to the criminal charges (3 pages). Access to all other information was refused on the ground that its disclosure, would, on balance be contrary to the public interest.

12. QPS performed further searches for relevant documents on external review and located a large amount of additional information which it had not previously considered in its decisions. The information considered on external review comprises:
  - QPrime reports for the fatal traffic incident and various criminal matters
  - the prosecution file relating to the criminal investigations; and
  - records from the QPS Media Unit relating to QPS contact with journalists and social media posts in relation to the traffic incident and criminal charges.
13. On external review, QPS agreed to release additional information to the applicant comprising partially redacted versions of:
  - the QPrime report about the fatal traffic incident; and
  - records from the QPS Media Unit of QPS contact with journalists and social media posts in relation to the traffic incident and criminal charges.
14. The issues for determination in these reviews are whether:
  - access to the remaining information in issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest;<sup>7</sup> and
  - there are reasonable grounds to be satisfied that the information the applicant contends has not been located is nonexistent.<sup>8</sup>

## **Contrary to public interest information**

### ***Relevant law***

15. Under the RTI Act, an individual has a right to be given access to documents of an agency. However, this right is subject to limitations, including grounds for refusal of access.<sup>9</sup> Under the RTI Act, access to information may be refused where disclosure would, on balance, be contrary to the public interest.<sup>10</sup> The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest<sup>11</sup> and explains the steps that a decision-maker must take in deciding the public interest as follows:<sup>12</sup>
  - identify any irrelevant factors and disregard them<sup>13</sup>
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosing the information would, on balance, be contrary to the public interest.

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<sup>6</sup> The redacted information forms part of the information in issue in this decision.

<sup>7</sup> Section 47(3)(b) of the RTI Act.

<sup>8</sup> Section 47(3)(e) of the RTI Act. The applicant raised various sufficiency of search issues on external review which were resolved by QPS locating the information and/or the applicant not providing further submissions on the issues and therefore accepting the preliminary view. There is only one remaining sufficiency of search issue.

<sup>9</sup> Section 23(1)(a) of the RTI Act. Grounds for refusal of access are set out in section 47 of the RTI Act.

<sup>10</sup> Section 47(3)(b) of the RTI Act.

<sup>11</sup> Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and therefore, other factors may also be relevant in a particular case.

<sup>12</sup> Section 49(3) of the RTI Act.

<sup>13</sup> No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making this decision.

## Findings

16. The information in issue comprises:
- complaints made to QPS by or about the applicant's son
  - information relating to the criminal charges against the applicant's son; and
  - some information about the fatal traffic incident within the QPrime report.
17. I have provided a general description of this information only and am prevented from identifying much of this information in more detail, particularly the first two categories, as to do so would reveal sensitive personal information of other individuals including alleged victims and witnesses.<sup>14</sup>
18. In her external review application, the applicant provides the following background to her concerns:<sup>15</sup>

*My son died within 36 hours of being charged by QPS. I believe his death was either related to QPS as a failure of duty of care operation or that the operation was a significant contributing factor. I am seeking the information to clarify what happened so that I can progress this matter to the CCC with a clearly focused disclosure. This will result in a specific request to QPS to explain and account for their actions including the conduct of a senior detective officer and apparent breaches of the QPS procedures manual of operations. It will also clarify the request for QPS to reopen the investigation, which was closed because my son had died, with the hope that the true perpetrator of the offenses that he was charged with will be held to account. I also wish to clear my son's name as it is embedded on his personal criminal history with no prospect of justice or a hearing. I then wish to find out if I can pursue a further legal remedy to hold QPS to account all and everything. I have had several disturbing conversations with QPS that give conflicting information and I believe that my son was charged on circumstantial evidence only and also for someone else's offenses by mistake, negligence or because of corruption and that QPS redacted/ changed the record after his death. I also believe that QPS removed many items from my son's dwelling that remain unaccounted for.*

19. The applicant has provided further submissions to OIC supporting her case and which are relevant to the public interest factors. I have considered all these submissions carefully and extracted the relevant parts below.

### Personal information and privacy of the deceased and other individuals

20. The RTI Act gives rise to a public interest factor favouring disclosure in circumstances where the information relates to a person who has died and:<sup>16</sup>
- the information would, if the person were alive, be personal information of the person;<sup>17</sup> and
  - the applicant is an eligible family member of the person.
21. Schedule 5 of the RTI Act defines the term 'eligible family member' of a deceased person as:

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<sup>14</sup> Section 108(3) of the RTI Act prevents me from including information in reasons for a decision that is claimed to be contrary to public interest information.

<sup>15</sup> Email to OIC on 21 October 2022.

<sup>16</sup> Schedule 4, part 2, item 9 of the RTI Act.

<sup>17</sup> Section 12 of the *Information Privacy Act 2009* (Qld) defines 'personal information' as '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'.

- a spouse of the deceased person; or
  - if a spouse is not reasonably available—an adult child of the deceased person; or
  - if a spouse or adult child is not reasonably available—a parent of the deceased person; or
  - if a spouse, adult child or parent is not reasonably available—an adult sibling of the deceased person; or
  - if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was not an Aboriginal person or Torres Strait Islander—the next nearest adult relative of the deceased person who is reasonably available; or
  - if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was an Aboriginal person or Torres Strait Islander—a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.
22. Item 2 of this definition provides that a person described in item 1 is not reasonably available if:
- a person of that description does not exist or is deceased; or
  - a person of that description can not be reasonably contacted; or
  - a person of that description is unable or unwilling to act as the eligible family member of the deceased person for the purposes of this Act.
23. An eligible family member for the purpose of the RTI Act is not necessarily the same as the deceased's next of kin. Also, a person does not need to first establish that they are the deceased's next of kin if they otherwise meet the definition of the *'eligible family member'* under the RTI Act. The fact that agency records do not, on their face, provide evidence of a close relationship between the applicant and the deceased does not preclude the applicant from being the eligible family member.
24. If an applicant can provide sufficient evidence to establish their relationship with the deceased in accordance with the definition in schedule 5 of the RTI Act, and no one higher up in the list of family members in the schedule 5 definition is available, that person will be acknowledged as the eligible family member for the purposes of applying the relevant public interest factors under the RTI Act. The RTI Act clearly sets out the hierarchy of relationships and provides a clear process for a decision-maker to follow in determining whether the applicant is the eligible family member. If an applicant meets the definition of the eligible family member (and the information would, if the person were alive, be personal information of the person), this factor will apply and the decision-maker must then assess the weight to be attributed to it, taking a range of other considerations into account.
25. This factor specifically recognises that there is a public interest in the eligible family member being given access to their deceased relative's personal information. However, the relevance of this factor does not create an automatic entitlement to access information about a deceased person and the factor does not carry determinative weight in favour of disclosure. It gives rise to one factor favouring disclosure, but also another factor favouring nondisclosure (which I will consider below) and both of these factors must be considered and weighed with reference to the circumstances, which may include:<sup>18</sup>

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<sup>18</sup> WEU27L and Mackay Hospital and Health Service [2017] QICmr 44 (11 September 2017).

- the extent to which the eligible family member was in contact with and/or had a relationship with the deceased and the extent to which that overlaps with the time the information covers
  - the nature and sensitivity of the information; and
  - the extent to which the information is or may be known to the applicant.
26. The applicant provided clear evidence to QPS of her identity and her relationship with the deceased to establish that she is his mother.<sup>19</sup> I am satisfied that the deceased did not have a spouse or adult child at the time of his death.<sup>20</sup> I find that the applicant is the eligible family member in this case and the public interest factor at schedule 4, part 2, item 9 of the RTI Act is relevant in these circumstances. I will now consider the weight to attribute to this factor.
27. In this case, evidence of a close relationship between the applicant and her son is not apparent from the documents.<sup>21</sup> I note that the applicant is likely aware of the general nature of the criminal charges and some of the circumstances surrounding her son's death. However, I have not considered these points in more detail, nor requested evidence from the applicant on them, as the information relates to very personal and private aspects of the lives of the applicant's adult son and the other individuals involved, particularly in so far as the information relates to the criminal investigation. I consider the nature and sensitivity of this information is such that it overrides these other considerations. The applicant's relationship with the deceased, regardless of how close that may have been, does not reduce the weight of the factors designed to protect this sensitive information. For this reason, I afford this public interest factor favouring disclosure only moderate weight.
28. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing the information could reasonably be expected to prejudice the protection of an individual's right to privacy;<sup>22</sup> and
  - disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of another person.<sup>23</sup>
29. The information comprises the personal information of the deceased and other individuals; in most cases the personal information of each of these individuals is interwoven. In submissions to OIC on external review, the applicant advised that she knows the names of the alleged victims of the criminal charges and is '*...happy to take some documents in redacted form as I know the names of most of the persons involved and can extrapolate*'.<sup>24</sup> This strengthens my view on this information that it is not possible for me to simply redact the names of relevant individuals to protect their privacy.
30. As noted above, the eligible family member factors include a factor favouring nondisclosure.<sup>25</sup> The nondisclosure factor will apply where the information:
- relates to a person who has died
  - the information would, if the person were alive, be their personal information; and
  - the applicant is the eligible family member of the person.

<sup>19</sup> The applicant provided this information to QPS with her access application, and I have had reference to it on external review.

<sup>20</sup> As confirmed by the applicant in her external review application and on 6 February 2023.

<sup>21</sup> My findings on this issue do not comment on, or evaluate the strength of, the relationship between the applicant and her son; I merely note that the located documents do not provide any evidence of the nature of their relationship.

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

<sup>23</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>24</sup> Email on 9 August 2023.

<sup>25</sup> Schedule 4, part 3, item 5 of the RTI Act.

31. As noted above, the applicant is the eligible family member and the information would comprise the personal information of her son, if he were alive. Therefore, this nondisclosure factor applies in this case.
32. I must then consider the extent of the harm that could result from disclosing the personal information of other individuals under the RTI Act and the weight to be attributed to these nondisclosure factors. The information relating to the deceased and other individuals comprises their identifying information and information obtained about them in the context of a criminal investigation and the fatal traffic incident. In this context, the information is highly personal and sensitive in nature and I consider it is the type of information which those individuals are entitled to keep private. Its disclosure under the RTI Act would be an unwarranted intrusion into the privacy of these individuals (and the deceased if he were alive) and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford each of these public interest factors favouring nondisclosure significant weight.

### **Accountability, transparency and administration of justice factors**

33. I have considered whether disclosing the information could reasonably be expected to contribute to the administration of justice<sup>26</sup> and promote QPS accountability and transparency<sup>27</sup> by allowing scrutiny of police handling of the criminal matters and the investigation into the death. I consider these factors are relevant in this case and I must now consider the weight to be afforded to each of these factors.
34. QPS investigated the death of the applicant's son and treated his death as an apparent suicide. The matter was referred by QPS to the coroner as a reportable death. Both QPS and the applicant confirmed that the matter is still before the coroner.<sup>28</sup> The role of the coroner in Queensland is to investigate reportable deaths under the provisions of the *Coroners Act 2003 (Qld)* (**Coroners Act**). The investigation determines the identity of the deceased person, how they died, and the place, date and medical cause of the death. An inquest is not held for every death, but the coroner may decide to hold an inquest into a reportable death if satisfied it is in the public interest to do so.<sup>29</sup> The object of an inquest is to help to prevent deaths from similar causes happening in the future by allowing coroners to comment on matters connected with deaths, including matters related to public health or safety or the administration of justice.<sup>30</sup>
35. The applicant relevantly submits:<sup>31</sup>
- She seeks an inquest into her son's death as she is concerned about the circumstances and the possibility that the death resulted during a police operation given that he died a few days after being charged with criminal offences.
  - The local coroner decided to not hold an inquest and the applicant has received the findings on that issue. The applicant believes the local coroner failed to examine relevant witnesses and scrutinise the actions of some QPS officers and that QPS has been selective in what it has provided to the coroner or has withheld

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<sup>26</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, items 1 and 11 of the RTI Act.

<sup>28</sup> Email from QPS on 25 September 2023 and applicant submissions on 14 September 2023.

<sup>29</sup> Section 28 of the Coroners Act. Section 27 of the Coroners Act provides that an inquest is required for certain deaths.

<sup>30</sup> Section 3 of the Coroners Act.

<sup>31</sup> Applicant submissions on 21 October 2022, 10 February 2023, 7 August 2023, 9 August 2023, 14 September 2023 and phone calls on 12 May 2023 and 11 August 2023.

relevant information. The applicant has asked the State Coroner to consider holding an inquest.

- The applicant wishes to identify relevant information that QPS has not provided to the local coroner and she will then be able to guide the State Coroner as to where to locate this information within QPS and draw the State Coroner's attention to the issues.
- The applicant has engaged with the State Coroner about seeking access to relevant documents through part 3 of the Coroners Act. However, she believes that only documents that have already been provided to the coroner will be available and her request will not capture those that were not provided by QPS.

36. The applicant advises that the local coroner has made findings in relation to the death and reasons for the decision to not hold an inquest. At the applicant's request, the State Coroner will now reconsider whether an inquest is in the public interest. As noted by the applicant, the State Coroner will also consider the applicant's request for relevant documents through that process and separate to the RTI Act, which, in my view, may result in her being given access to a broader range of information. I understand that the applicant would like to form her own view on these issues and assist the coroner by identifying gaps in the investigation process or evidence of what she believes may cast doubt on the cause of death being suicide. I acknowledge that she wishes to understand what happened to her son and *'seek the justice for him that he was denied, as [she believes] he was wrongly and falsely charged but [she does] not know the motive'*.<sup>32</sup>
37. However, I consider the ongoing coronial process is the appropriate forum for allowing scrutiny of police handling of the criminal matters, the investigation into the death and all the circumstances leading up to the death, including the deceased's interactions with QPS. The coroner will determine if any aspects of the case require further investigation and will separately determine if holding an inquest into the death will be in the public interest. The coroner has wide ranging powers under the Coroners Act to obtain information relevant to its enquiries and it is an offence to not comply with a reasonable request.<sup>33</sup> It is also relevant to note the QPS officers have a clear and specific duty to assist a coroner during the investigation of a death.<sup>34</sup> I am satisfied that a coroner would have a comprehensive understanding of the type of information which would have been created and obtained by QPS in its investigation and the coroner, in turn, would be able to identify, obtain and consider any additional information relevant to its decision-making process.
38. These public interest factors favouring disclosure will be achieved through a robust and comprehensive coronial investigation. Refusing access to this information under the RTI Act will not impede the applicant in identifying her specific areas of concern or questions for the coroner – but it is the role of the coroner, not the applicant, to assess the relevant evidence and determine which issues, if any, warrant further investigation. Disclosing the information to the applicant under the RTI Act, and at this stage of the investigation process would not, in my view, advance these factors in a meaningful way and I afford each of them low weight as a result.
39. To further this argument, I am satisfied that disclosing the information could also reasonably be expected to impede the administration of justice which gives rise to a factor favouring nondisclosure.<sup>35</sup>

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<sup>32</sup> Applicant submission on 14 September 2023.

<sup>33</sup> Section 16 of the Coroners Act.

<sup>34</sup> Section 15 of the Coroners Act and section 794 of the *Police Powers and Responsibilities Act 2000* (Qld).

<sup>35</sup> Schedule 4, part 3, item 8 of the RTI Act.



40. As previously noted, the coronial investigation into the death is ongoing – on the information currently available to me, I understand the coroner is also considering the deceased’s previous dealings with QPS as part of that process which includes the criminal charges and the complaints made by him or about him to QPS. The coronial investigation is independent and will provide the applicant with objective findings about the death. The coroner may still ask QPS to conduct further investigations into the death or obtain information from other parties. I am conscious that disclosing information to the applicant under the RTI Act, which is directly relevant to the coronial process and while that process is ongoing, could reasonably be expected to interfere with the coroner’s investigation and independent consideration of the relevant issues.
41. The applicant disagrees with the application of this factor in the circumstances and submits that she would not interfere with the coroner’s consideration of the relevant issues but would draw the coroner’s attention to issues which she believes are relevant and her perspective. She also submits that: *‘To date, I have limited my inquiries and interactions with potential witnesses so as not to influence the process’*.<sup>36</sup> I acknowledge the applicant’s submissions on her intentions and her desire to be helpful in ensuring that all the issues are considered by the coroner. Nevertheless, I consider the importance of protecting the integrity of the ongoing coronial process in this case is paramount and I afford this nondisclosure factor significant weight.

#### **Prejudice flow of information to QPS**

42. As noted above, some of the information was provided to QPS by alleged victims and witnesses. In addition to the factors identified above, I also consider that disclosing the information could reasonably be expected to prejudice the flow of information to police which gives rise to another factor favouring nondisclosure.<sup>37</sup>
43. QPS investigators dealing with these types of matters rely on the free flow of information from witnesses and complainants. I consider that giving access to this information under the RTI Act and outside of the investigation process would mean that witnesses or complainants would be less likely to provide that information to police in the future. I afford this factor significant weight in these circumstances to the extent the information was provided to QPS by these individuals.

#### **Social and economic well-being of the community**

44. The public interest factors in schedule 4 of the RTI Act are not exhaustive, allowing additional factors to be identified. The Information Commissioner has previously recognised that there is a public interest in the social and economic well-being of the community, which includes:<sup>38</sup>
- the ability of its members to improve their health and outlook
  - assisting bereaved members to recover from their grief; and
  - assisting people to function as productive members of society.
45. I have considered whether disclosing the information could contribute to the applicant’s social and economic well-being by assisting in her grieving process. This factor will most often arise where the applicant is a close family member of the deceased. The benefit

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<sup>36</sup> Applicant submission on 14 September 2023.

<sup>37</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>38</sup> *OKP and Department of Communities* (Unreported, Queensland Information Commissioner, 9 July 2009).

does not need to be guaranteed to result from the information being disclosed; it is only necessary that disclosure could have the positive effect.

46. In this case, I acknowledge the impact that the unexpected death of a son or daughter can have on a parent and the particularly devastating impact of suicide. I also note that the death occurred shortly after he was charged with criminal offences and I acknowledge the applicant's concerns in that regard. I am satisfied that it is more probable than not that disclosure of the information would assist the applicant to move forward with her grieving process, which would contribute to the social and economic well-being of the community, and I afford significant weight to this factor favouring disclosure.

#### **Information provided to another family member by QPS**

47. The applicant believes the father of the deceased (from whom the applicant is estranged) has received information from QPS about her son and the applicant submits that she has equal entitlement to the material and information from QPS and seeks access to the same material that has been provided to him.<sup>39</sup> While I empathise with the applicant on this issue and acknowledge her frustration in this regard, the applicant seeks access to information pursuant to an RTI application and I am therefore constrained by the provisions of the RTI Act which determine the extent to which information can be released. I do not have jurisdiction to investigate or query any disclosure of information to the father of the deceased by QPS and it is not a relevant consideration in this review.

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

48. I acknowledge the applicant's personal and strong commitment to ensuring that her son's death, and the preceding events, receive appropriate scrutiny and the importance of the coronial process for her in that regard. I also understand the importance of providing the applicant, as the mother of the deceased and the eligible family member, access to information which can assist in some way with her grieving the loss of her son. These are important considerations in this case.
49. I acknowledge that granting full and unfettered access to the information in issue would provide the applicant with a more detailed, if not complete, understanding of the nature of the criminal charges, the evidence QPS obtained in investigating the alleged offences and the information taken into account in reaching the conclusion that the death was caused by suicide. However, the RTI Act requires me to balance this consideration with the factors favouring nondisclosure, which in this case carry very strong weight.
50. Releasing the information under the RTI Act for the applicant herself to consider and raise questions about will not in itself result in a more robust coronial process or investigation outcome and, as noted above, would not be possible without encroaching, to an unreasonable degree, on the personal sphere and privacy of other individuals. Providing the applicant with access to this sensitive information under the RTI Act is not the primary mechanism for achieving transparency and accountability and ensuring integrity in the relevant processes. The coronial process can provide a degree of independent and objective scrutiny into the relevant issues while balancing and protecting the privacy of the deceased and other individuals and the flow of information to QPS.
51. For the reasons set out above, I am satisfied that the combined weight of each of the nondisclosure factors tips the balance in favour of nondisclosure given the nature of the

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<sup>39</sup> Applicant submission on 9 February 2023.

information and the context in which it appears. I have considered whether there are any other public interest factors favouring disclosure of this information in addition to those identified above, and the general public interest in furthering access to government-held information and the RTI Act's pro-disclosure bias.<sup>40</sup> I have not identified any other relevant factors. Therefore, I find that disclosing this information would, on balance, be contrary to the public interest and access can be refused.<sup>41</sup>

### **Other personal information**

52. The following information has been redacted from the documents released to the applicant:
- personal information about staff such as their mobile phone numbers, dates of birth, ages and addresses
  - some of the deceased's property details such as credit card and Medicare numbers
  - direct contact details of QPS officers and journalists; and
  - a complaint to the Crime and Corruption Commission.
53. It is unclear whether the applicant accepted the preliminary view on this information and I have therefore dealt with it in this decision for completeness.
54. This information comprises the personal information of other individuals and its disclosure under the RTI Act would be an unwarranted intrusion into the privacy of those individuals, giving rise to two public interest factors favouring nondisclosure.<sup>42</sup> I attribute moderate weight to both of these factors in the circumstances. I have considered whether there are any public interest factors favouring disclosure of this information which would carry sufficient weight to override these factors in the circumstances, other than the general public interest in furthering access to government-held information and the RTI Act's pro-disclosure bias.<sup>43</sup> I have not identified any other relevant factors. Therefore, I find that disclosing this information would, on balance, be contrary to the public interest and access can be refused.<sup>44</sup>

### **Nonexistent information**

#### ***Relevant law***

55. Access to a document may be refused if it is nonexistent or unlocatable.<sup>45</sup> A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>46</sup> A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.<sup>47</sup>
56. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:<sup>48</sup>

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<sup>40</sup> Section 44 of the RTI Act.

<sup>41</sup> Section 47(3)(b) of the RTI Act.

<sup>42</sup> Schedule 4, part 3, item 3 and part 4, item 6(1) of the RTI Act.

<sup>43</sup> Section 44 of the RTI Act.

<sup>44</sup> Section 47(3)(b) of the RTI Act.

<sup>45</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>46</sup> Section 52(1)(a) of the RTI Act.

<sup>47</sup> Section 52(1)(b) of the RTI Act.

<sup>48</sup> *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38].

- the administrative arrangements of government
- the agency's structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
- the agency's practices and procedures (including, but not limited to, its information management approaches); and
- other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.

57. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.

58. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.<sup>49</sup> Such steps may include inquiries and searches of all relevant locations identified after consideration of the key factors listed above.

### **Findings**

59. The media reported on the criminal charges prior to the applicant's son's death. The applicant has referred me to the relevant media publications which I have considered.<sup>50</sup> She contends that QPS issued a media release or statement about the criminal charges because two separate media outlets reported the same information.

60. QPS has located, and granted the applicant access to, 46 pages of its records from the QPS Media Unit which show contact with the media about the criminal charges and the fatal traffic incident (as it was relevant to traffic management in the area).<sup>51</sup> This information comprises the QPS Media Unit logs, correspondence with enquiring journalists and an internal email. In addition to these documents, I have also received submissions from QPS which I have summarised below:<sup>52</sup>

- QPS located the Media Logs for the criminal charges and fatal traffic incident. QPS explains that the Media Log is not a summary but their central repository for the recording and storage of matters / incidents that the 24/7 Media Operations Room deals with.
- QPS confirmed that there were no other media releases issued in relation to this matter, nor any written media statements provided.
- Information about the criminal charges was provided to the media in accordance with QPS policy on the type of information which can be provided once a person has been charged, that is, general information about the arrest and charges which does not directly or indirectly identify the alleged offender.

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<sup>49</sup> As set out in *PDE* at [49].

<sup>50</sup> Applicant submissions to OIC on 14 September 2023.

<sup>51</sup> The information redacted from these documents is dealt with above as the contrary to public interest information.

<sup>52</sup> QPS submissions on 5 May 2023 and 15 June 2023.

61. Pages 19 and 20 of the documents released to the applicant comprise an email from QPS to a journalist about the criminal offences responding to the journalist's initial enquiry. Pages 39 and 40 of the documents released to the applicant comprise the QPS Media Log and show QPS received enquiries from two different media outlets about the criminal charges and the information which QPS gave them in response.
62. Having carefully considered the information about the offences which was published in the media, the submissions provided by the applicant and QPS and QPS's correspondence with enquiring journalists, it is clear that the information reported by the two media outlets is consistent with the information it received from QPS, evidence of which is contained in the information released to the applicant. I accept the submission from QPS that there were no other media releases or statements issued in relation to this matter and the applicant has not provided any evidence to refute this.
63. I am satisfied that the relevant information has been located by QPS, and released to the applicant, and that no further documents exist. Therefore, I find that access to any further information on this issue can be refused on the ground that it is nonexistent.<sup>53</sup>

## **DECISION**

64. For the reasons set out above, I set aside the reviewable decision in external review 316959 and vary the reviewable decision in external review 317150. I find that access to the remaining information can be refused under sections 47(3)(b) and 47(3)(e) of the RTI Act.
65. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**T Mainwaring**  
**Principal Review Officer**

**Date: 26 September 2023**

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<sup>53</sup> Section 47(3)(e) of the RTI Act.

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

<b>Date</b>	<b>Event</b>
21 October 2022	OIC received external review application 316959. OIC notified the applicant and QPS that external review application 316959 had been received and asked QPS to provide procedural documents.
29 November 2022	OIC received some of the requested documents from QPS.
1 December 2022	OIC notified the applicant and QPS that external review application 316959 had been accepted and asked QPS to provide a copy of the remaining procedural documents, the information in issue and search records.
18 January 2023	OIC received some of the requested information from QPS.
1 February 2023	OIC received some of the information in issue from QPS.
6 February 2023	OIC received submissions from the applicant. OIC spoke with the applicant by phone.
10 February 2023	OIC received submissions from the applicant.
21 February 2023	OIC received external review application 317150.
22 February 2023	OIC notified the applicant and QPS that external review application 317150 had been received and asked QPS to provide procedural documents.
24 February 2023	OIC received the procedural documents from QPS.
3 March 2023	OIC spoke with the applicant by phone.
14 March 2023	OIC notified the applicant and QPS that external review application 317150 had been accepted and asked QPS to provide a copy of the information in issue.
30 March 2023	OIC conveyed a preliminary view to QPS covering both external reviews and asked QPS to provide further searches for the requested information.
5 May 2023	QPS provided submissions to OIC.
11 May 2023	OIC received more of the information in issue from QPS.
12 May 2023	OIC spoke with the applicant by phone.
13 May 2023	QPS provide a copy of its media guideline.
16 May 2023	OIC wrote to QPS again confirming the information that was still required for the conduct of the reviews and confirming the preliminary view.
28 March 2023	OIC received the information in issue from QPS in external review 317150.
6 June 2023	OIC received further information in issue from QPS.
13 June 2023	OIC spoke with QPS by phone and confirmed the information which was still required.

Date	Event
14 June 2023	OIC spoke with QPS by phone.
15 June 2023	OIC received submissions from QPS.
16 June 2023	OIC received further information in issue from QPS.
19 July 2023	OIC asked the applicant to provide further submissions supporting her case.
4 August 2023	OIC received submissions from the applicant.
7 August 2023	OIC received submissions from the applicant.
8 August 2023	OIC conveyed a preliminary view to QPS and requested submissions. OIC spoke with QPS by phone.
9 August 2023	OIC received submissions from the applicant. QPS notified OIC that it accepted the preliminary view and agreed to release information to the applicant.
10 August 2023	OIC received submissions from the applicant. OIC spoke with QPS by phone.
11 August 2023	OIC conveyed a preliminary view to the applicant by phone and the applicant provided submissions.
18 August 2023	OIC spoke with QPS by phone and QPS agreed to release information to the applicant. QPS notified OIC that it had released this information to the applicant.
21 August 2023	OIC conveyed its preliminary view to the applicant and invited her to provide submissions supporting her case.
14 September 2023	OIC received the applicant's submissions in response to the preliminary view letter.
25 September 2023	QPS confirmed the coronial investigation had not been finalised.