



Decision and Reasons for Decision

Citation:	<i>W61 and Queensland Police Service [2025] QICmr 36 (18 June 2025)</i>
Application Number:	318479
Applicant:	W61
Respondent:	Queensland Police Service
Decision Date:	18 June 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PRESCRIBED CRIME BODY - police investigative material - whether obtained, used or prepared for an investigation by a prescribed crime body or another agency - whether investigation is about the applicant - sections 47(3)(a) and 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information and privacy of individuals - information supplied to police during an investigation - prejudice to future supply of confidential information - whether 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)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to certain information concerning an investigation into a fatal road accident in 2019 that resulted in the death of his son.
2. QPS located 227 responsive documents and decided² to give full access to 87 documents, partial access to 126 documents and to refuse access in full to 14 documents. It refused access to some information on the grounds that it was either exempt information, or its disclosure would, on balance, be contrary to the public interest.

¹ Application received on 31 October 2024.

² Decision dated 19 December 2024.

3. The applicant applied³ for internal review of QPS's decision. The initial decision was affirmed on internal review.⁴
4. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision.
5. For the reasons explained below, I decide to affirm the decision under review.

Background

6. The applicant is aggrieved by QPS's investigation into a road accident which resulted in the death of his son. While the investigation determined that it was a single vehicle accident, the applicant believes that there were suspicious circumstances surrounding the accident and that another vehicle, and other persons, were involved. He has accused various individuals who were involved in the investigation, including forensic crash investigators, forensic medical officers, mechanics, emergency responders, and coronial staff, of falsifying and/or withholding evidence, providing misleading information, and failing to act on the information that the applicant presented to them. The applicant has complained to a number of bodies, including the Crime and Corruption Commission (**CCC**), and the State Coroner, about the investigation.

Reviewable decision

7. The decision under review is QPS' internal review decision dated 2 February 2025.

Evidence considered

8. Evidence, submissions,⁶ legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes).
9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,⁸ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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.*'⁹

Information in issue

10. The documents to which QPS refused access in full are pages 62-64, 105-108, 153-154, 156-159, and 227. Pages 153-154 and 156-159 concern an investigation/review by QPS into the applicant's complaint to the CCC. The remaining pages comprise a record of a

³ Application dated 19 December 2024, received by QPS on 14 January 2025.

⁴ Internal review decision dated 2 February 2025.

⁵ By email on 23 February 2025.

⁶ Including the submissions made by the applicant in his internal and external review applications, and in his emails of 28 May 2025 and 6 June 2025.

⁷ As embodied in section 21 of the HR Act.

⁸ *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].

⁹ *XYZ* at [573].

witness statement and other information provided to police by members of the public,¹⁰ as well as a Relinquishing Order concerning the vehicle involved in the accident.

11. The remaining refused information comprises segments of information scattered throughout the 126 partially released pages.¹¹ It consists primarily of references to names, contact details, and associated personal information of witnesses and others who provided information to police during the investigation, or who were otherwise involved in the investigation.

Issues for determination

12. The issues for determination are:
 - whether access to pages 153-154 and 156-159¹² may be refused because they comprise exempt information under schedule 3, section 10(4) of the RTI Act (**CCC exemption**); and
 - whether access to the remaining information in issue may be refused because its disclosure would, on balance, be contrary to the public interest.

Submissions of the applicant

13. On a number of occasions during the course of the review,¹³ I explained to the applicant that, having reviewed QPS's decision and the refused information, I had formed the preliminary view that access to the information in issue could be refused on the grounds identified by QPS, and that QPS's decision therefore ought to be affirmed by OIC on external review. In the event that he did not accept my preliminary view, the applicant was invited to provide a submission in support of his case for disclosure of the information.
14. While clearly not accepting my preliminary view, the applicant, in his responses,¹⁴ did not engage with the relevant provisions of the RTI Act or explain why he did not consider that the information was exempt information, or contrary to the public interest information. Rather, he raised the same type of issues or complaints that he had raised in his applications for internal and external review, and which (as he was advised during the review), OIC has no jurisdiction to consider when undertaking an external review under the RTI Act. These issues/complaints may be summarised as follows:
 - the police investigation was flawed from the start
 - there were other witnesses present at the time of the accident
 - police officers and others falsified documents and committed perjury, and the information is needed in order to take civil action against them
 - police investigating police¹⁵ *'is an absolute and complete utter joke'*

¹⁰ Including audio of a 000 call.

¹¹ Pursuant to section 60 of the RTI Act, the applicant has not been given access to the information that QPS decided to release because he did not pay the final amount of the processing charge. Given the particular circumstances of this matter, this decision addresses QPS's decision that access to further information should not be given. However, where an applicant continues to refuse to pay charges, or the time limit for payment in section 69 of the RTI Act has expired, it may be appropriate for the Information Commissioner to consider whether a decision not to deal further with the review under section 94 of the RTI Act is justified. This is because, even if the Information Commissioner were to decide that access to further information should be given, the agency would not be required to release that information due to the non-payment of charges, thereby rendering the external review futile.

¹² While QPS's decision mistakenly refers to only pages 153-154 as comprising exempt information, it is evident from the copies of the documents provided to OIC by QPS that pages 156-159 are marked with the same ground of exemption and contain information of a similar nature.

¹³ Letters dated 14 May 2025 and 29 May 2025.

¹⁴ Responses received on 28 May 2025 and 6 June 2025.

¹⁵ Presumably a reference to the applicant's complaint to the CCC being referred back to QPS to deal with.

- the applicant wrote to the Chief Magistrate in 2019¹⁶ to complain about the actions of certain coronial officers: the matter was referred to the State Coroner for response, but no response had ever been received; and
 - no entity, including OIC, was doing their job and investigating the matter competently: *If you want to keep covering this up, I will be going public with the names and the lies that they told and you will be named to [sic]. So you will be a party to aiding and abetting and perverting the course of justice*.
15. The applicant submitted that the *'level of corruption involved in this matter is in the public[sic] interest and I also believe there is political interference and [it] is politically motivated against my family. This will be taken further if it is covered up again and I believe that the Executive Order of America 13818¹⁷ applies to Australia, as you have tied registrations to America [sic]. It is in the public interest because of corruption and covering up to protect highly incompetent or criminally intent people in the Queensland Government Businesses'*.
 16. The applicant contended that OIC had a duty of care and a responsibility to report corrupt conduct to the appropriate authorities: *'So if down the track it is found that there is a number of fabricated statements, then you are a party to this and should be criminally charged'*.
 17. As the applicant was advised during the review, when conducting an external review under the RTI Act, OIC does not have jurisdiction to investigate or make findings about his allegations of falsified documents, or his complaints about the police investigation more generally, or his complaints about any other entity, including QPS's Ethical Standards Command (**ESC**), the CCC, or coronial staff. OIC's jurisdiction on external review is limited to reviewing the agency's decision on access and deciding whether it should be affirmed, varied or set aside.¹⁸ OIC does not hold an investigative role on external review and has no jurisdiction to examine, assess or make any findings about the police investigation, how it was conducted, or the veracity or otherwise of the evidence that was gathered. In any event, OIC is in no position to make any judgment about the veracity or otherwise of the documents in issue, simply from an examination of their contents.
 18. As to the applicant's contention that an Executive Order made by the President of the United States, that concerns 'blocking the property' of corrupt persons or those who have been involved in serious human rights offences, applies in Australia because of 'tied registrations' to America, I do not understand the applicant's reference to 'tied registrations' and nor has he provided an explanation. I am unable to identify any valid legal basis for the applicant's contention that such an Order would apply to government agencies or public officials in Australia, or how it is otherwise contended to have any relevance to the issues for determination in this review.
 19. I acknowledge that, pursuant to section 38 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**), public officials have a statutory duty to report suspected corrupt conduct to the CCC. However, the discharge of that duty is a matter for the Information Commissioner (and the Information Commissioner's authorised delegates). There is no obligation to account to an applicant in that regard.

¹⁶ A copy of the letter was supplied by the applicant as part of his 28 May 2025 submission.

¹⁷ Executive Order 13818 is an Executive Order of President Trump of the United States of America – *'Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'*: <https://www.presidency.ucsb.edu/documents/executive-order-13818-blocking-the-property-persons-involved-serious-human-rights-abuse-or> (accessed 10 June 2025).

¹⁸ See section 110 of the RTI Act.

Relevant law - exempt information

20. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.¹⁹ The Act must be applied and interpreted to further this primary object,²⁰ and is to be administered with a pro-disclosure bias.²¹
21. Section 23 of the RTI Act gives effect to the Act's primary object by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,²² including grounds on which access may be refused.²³ These grounds are to be interpreted narrowly.²⁴
22. One of these grounds permits an agency to refuse access to information to the extent that it is exempt information under sections 47(3)(a) and 48, and schedule 3 of the RTI Act.

Application of the CCC exemption

23. Schedule 3, section 10(4) of the RTI Act provides that information is exempt if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performance of the prescribed functions of the prescribed crime body. A 'prescribed crime body' is defined in the RTI Act as the CCC.²⁵ However, if the investigation has been finalised **and** the information applied for is about the applicant, it will not be exempt under the CCC exemption. This only applies to information that satisfies both requirements.²⁶
24. The terms '*obtained, used or prepared*' are not defined in the RTI Act or in the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning.
25. Section 46 of the CC Act allows the CCC to refer allegations of corrupt conduct back to the relevant agency to deal with (known as the 'devolution principle'), subject to the CCC's monitoring role, and with or without a requirement that the agency advise the CCC of the outcome of the investigation. In these circumstances, information '*obtained, used or prepared*' for the investigation by the agency will be subject to the CCC exemption, because the agency has taken on the role of investigator and is performing the prescribed function of the CCC.

Discussion

26. As evidenced by the responsive documents, the applicant complained to the CCC about the actions of police in investigating the accident. Pursuant to its devolution power, the CCC referred the matter back to QPS to deal with, subject to CCC oversight. ESC²⁷ reviewed the actions of police and decided that they were lawful and reasonable.

¹⁹ Section 3(1) of the RTI Act.

²⁰ Section 3(2) of the RTI Act.

²¹ Section 44 of the RTI Act.

²² Section 23(1) of the RTI Act.

²³ Section 47 of the RTI Act.

²⁴ Section 47(2)(a) of the RTI Act.

²⁵ Schedule 3, section 10(9) of the RTI Act.

²⁶ Schedule 3, section 10(6) of the RTI Act.

²⁷ ESC is the QPS unit responsible for managing/investigating allegations of corruption, misconduct and serious breaches of discipline by police officers: <https://www.police.qld.gov.au/organisational-structure/ethical-standards-command> (accessed 10 June 2025).

Findings

27. Having reviewed pages 153-154 and 156-159, I am satisfied that:
- they were obtained, used or prepared for an investigation
 - the investigation was conducted by a prescribed crime body (CCC) or another agency (QPS); and
 - the investigation was in the performance of the prescribed functions of the CCC as the prescribed crime body: that is, the CCC's function of dealing with allegations of police misconduct/corrupt conduct.
28. While the investigation has been finalised, I am satisfied that it was not 'about' the applicant,²⁸ and the exception in schedule 4, section 10(6) therefore does not apply.
29. I find that the requirements of schedule 3, section 10(4) of the RTI Act are satisfied by the pages in question, and that the exception in schedule 3, section 10(6) of the RTI Act does not apply. Access may therefore be refused on that basis.

Relevant law - public interest balancing test

30. Under the RTI Act, access to information may be refused where disclosure would, on balance, be contrary to the public interest.²⁹ The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest³⁰ and explains the steps that a decision-maker must take in deciding the public interest as follows:³¹
- a) identify any irrelevant factors and disregard them³²
 - b) identify relevant public interest factors favouring disclosure and nondisclosure
 - c) balance the relevant factors favouring disclosure and nondisclosure; and
 - d) decide whether disclosing the information in issue would, on balance, be contrary to the public interest.
31. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case.
32. Each of the factors contains the phrase, '*could reasonably be expected to*'. This phrase means that the relevant expectation must be reasonably based: that is, there must be real and substantial grounds for expecting the relevant occurrence, which can be supported by evidence or cogent reasoning. There cannot be merely an assumption or allegation that the occurrence will take place, nor an expectation of an occurrence that

²⁸ The Information Commissioner has previously decided that information will be *about* the applicant where they are the *subject* of the relevant investigation: *G8KPL2 and the Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [32]. This decision was affirmed on appeal: *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014). An appeal against this decision was also dismissed: *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167.

²⁹ Section 47(3)(b) of the RTI Act. The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

³⁰ 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.

³¹ Section 49(3) of the RTI Act.

³² No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making this decision.

is merely a possibility or that is speculative, conjectural, hypothetical or remote.³³ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.³⁴ Importantly, the expectation must arise as a result of disclosure of the specific information in issue, rather than from other circumstances.³⁵

Discussion

33. In his submissions, the applicant did not specifically engage with the application of the public interest balancing test, or identify particular factors contained in schedule 4 of the RTI Act that he contended applied to the refused information. Rather, he asserted generally that there is a public interest in OIC exposing corrupt conduct/misconduct, and that he needs access to the refused information so that he can take civil action against those whom he considers have committed perjury.
34. I have considered the complete list of public interest factors contained in schedule 4 of the RTI Act. I have identified the following public interest factors that I consider may weigh in favour of disclosure of the refused information:
 - a) disclosure could reasonably be expected to enhance QPS's accountability and transparency³⁶
 - b) disclosure could reasonably be expected to inform the community of QPS's operations³⁷
 - c) disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official³⁸
 - d) the information is the applicant's personal information³⁹
 - e) disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision;⁴⁰ and
 - f) disclosure could reasonably be expected to contribute to the administration of justice.⁴¹
35. I have identified the following nondisclosure prejudice and harm factors that I consider weigh against disclosure:
 - a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy⁴²
 - b) disclosure 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 conduct⁴³

³³ *Murphy and Treasury Department* (1995) 2 QAR 744 at [44] (**Murphy**), citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. See also *Attorney-General's Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180.

³⁴ *Murphy* at [45]-[47].

³⁵ *Murphy* at [54].

³⁶ Schedule 4, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, item 3 of the RTI Act.

³⁸ Schedule 4, part 2, item 5 of the RTI Act.

³⁹ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the IP Act 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'.

⁴⁰ Schedule 4, part 2, item 11 of the RTI Act.

⁴¹ Schedule 4, part 2, items 17 and 18 of the RTI Act.

⁴² Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in either the *Information Privacy Act 2009* (Qld) (**IP Act**) or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their personal sphere free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56).

⁴³ Schedule 4, part 3, item 6 of the RTI Act.

- c) disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information;⁴⁴ and
- d) disclosure could reasonably be expected to cause a public interest harm through the disclosure of personal information of a person.⁴⁵

Disclosure factors

36. Having considered the refused information, I am not satisfied that factors c) or f) apply in favour of its disclosure. I acknowledge the applicant's allegations concerning fabricated evidence, perjury and corruption. However, given the nature and contents of the refused information, I am not satisfied that there are reasonable grounds (as opposed to the applicant's assertions or allegations) for expecting that disclosure would allow or assist inquiry into whether QPS officers or other public officials have engaged in misconduct. The bulk of the refused information concerns witnesses/members of the public rather than public officials. Similarly, while I acknowledge the applicant's statement that he intends to take civil action against those whom he considers have fabricated evidence and engaged in corrupt conduct, I am not satisfied that there are reasonable grounds for expecting that disclosure of the refused information would contribute to the administration of justice in that regard.
37. I acknowledge that there is a small amount of refused information that is the applicant's personal information. The RTI Act recognises a strong public interest in a person obtaining access to their own personal information. However, in this case, the references to the applicant's personal information are inextricably intertwined with the personal information of others, such that access cannot be given to the applicant's personal information without also disclosing the personal information of others. As I will discuss below, the RTI Act automatically recognises a public interest harm in disclosing another person's personal information.
38. As regards factors a), b) and e), I afford each of them low to moderate weight when balancing the public interest. Taking account of the volume and nature of information about its investigation that QPS decided to disclose to the applicant,⁴⁶ as well as the contents of the refused information, I do not consider that disclosure of the refused information could reasonably be expected to significantly enhance QPS's accountability or transparency for the manner in which it discharged its investigative functions, or the accountability or transparency of any other government agency or public official involved in the matter. Nor do I consider that it would contribute in any meaningful way to the applicant's understanding of the police investigation and the conclusions reached.

Nondisclosure factors

39. The bulk of the refused information is the personal information of individuals other than the applicant. As noted above, the RTI Act recognises that a public interest harm⁴⁷ automatically arises through the disclosure of another person's personal information under the RTI Act. There is also the associated nondisclosure factor that recognises the public interest in protecting a person's right to privacy.⁴⁸
40. I acknowledge that the applicant will be aware of some of this refused information as it is contained within material that he provided to police. However, while the applicant's

⁴⁴ Schedule 4, part 3, item 16 of the RTI Act.

⁴⁵ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁶ It is relevant to consider the information that QPS decided to release to the applicant in this context, although the applicant has not been given access to the information because he did not pay the processing charge.

⁴⁷ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁸ Schedule 4, part 3, item 3 of the RTI Act.

knowledge of the personal information of others may act to reduce the weight to be given to the public interest in protecting the privacy interests of those persons in respect of that information, it does not negate it entirely. This is particularly so when account is taken of the fact that there are no restrictions upon what a person may do with information that is released to them under the RTI Act, including the possibility of further dissemination.⁴⁹

41. I also note that some of the information that the applicant provided to police was in the nature of allegations of wrongdoing or misconduct that, on the material before OIC, do not appear to have been substantiated. I consider that disclosure under the RTI Act may have an adverse effect on the reputation of these persons and, in turn, could reasonably be expected to prejudice their fair treatment.
42. Given the sensitive nature of some of the refused information, and the context in which it was gathered/provided/recorded (that is, during a police investigation into a fatal road accident), I afford these harm and prejudice nondisclosure factors discussed above significant weight in the public interest balancing test.
43. I would also afford significant weight to the public interest in protecting the future flow of information to police from witnesses and others involved in a police investigation. Where individuals cooperate with police by providing relevant information to assist police with their investigation, the Information Commissioner has recognised that it is reasonable to expect that significant prejudice may be caused to the ability of police to obtain voluntary cooperation from individuals were the information they provide to be subject to release, without restriction, to an applicant under the RTI Act. This, in turn, would prejudice the ability of police to discharge their important law enforcement and public safety obligations as efficiently and effectively as possible.

Finding

44. Taking account of the application and weighting of the factors favouring both disclosure and nondisclosure of the refused information that I have discussed above, I am satisfied that the factors favouring nondisclosure outweigh those favouring disclosure. Accordingly, disclosure of the refused information would, on balance, be contrary to the public interest. Access under the RTI Act may be refused on the basis.

DECISION

45. For the reasons given above, I decide to affirm QPS's decision that access to the information in issue may be refused on the grounds that:
 - it is exempt information under sections 47(3)(a) and 48, and schedule 3, section 10(4) of the RTI Act; or
 - it is contrary to the public interest information under sections 47(3)(b) and 49 of the RTI Act.

⁴⁹ As Judicial Member McGill SC of QCAT observed '*... the effect of the... [RTI Act] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. 'There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.'*' FLK v Information Commissioner [2021] QCATA 46 at [17].

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

R Moss
Principal Review Officer

Date: 18 June 2025