



Decision and Reasons for Decision

Application Number: 210113

Applicant: Mr S Sheehan

Respondent: Queensland Police Service

Decision Date: 5 April 2007

Catchwords: Arrangements made by an agency – section 22(a) *Freedom of Information Act 1992 (Qld)* – access to documents concerning speed camera – sufficiency of search

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Reasons for Decision

Background

1. The applicant seeks review of a decision of the Queensland Police Service (QPS) to refuse him access, under the *Freedom of Information Act 1992 (Qld)* (FOI Act) to documents in response to his application dated 20 September 2006.
2. In his freedom of information (FOI) application, the applicant sought access to 9 categories of documents in relation to a specified traffic infringement notice. These were:
 - Category 1:** the Radar Speed Detection – Operational Procedures
 - Category 2:** documents relating to the equipment used and calibration
 - Category 3:** weather conditions on the day including wind speed and direction
 - Category 4:** details of the equipment used including, make, model and date of purchase
 - Category 5:** dates of calibration and certificate and servicing of the unit in question
 - Category 6:** the camera operating manual
 - Category 7:** the incidence of ghost readings
 - Category 8:** rules for operating speed guns
 - Category 9:** margins of error known by the traffic camera office
3. In a decision dated 5 October 2006, Acting Senior Sergeant McGhie determined that:
 - (a) the QPS Speed Detection (Radar) Operations Guide (SDRO Guide) was responsive to the documents requested in categories 1 and 8;
 - (b) access to the SDRO Guide was refused on the basis that this document is available through another scheme, pursuant to section 22(a) of the FOI Act;
 - (c) the documents requested in category 3 are not documents of the QPS;
 - (d) the Gatso (Type 24) Speed Camera Instruction Manual (Instruction Manual) was responsive to the request for documents in category 6;
 - (e) access to the Instruction Manual would be provided by means of 'viewing' only, pursuant to section 30(3)(c) of the FOI Act; and
 - (f) upon receipt of the application fee, the QPS would conduct searches for documents responsive to categories 2, 4, 5, 7 and 9.
4. In a decision dated 30 October 2006, R J Shillington, Acting Senior Administration Officer, indicated that QPS searches had located a further four folios that were responsive to the applicant's FOI application and determined that all folios would be

released, including two folios which were outside of the scope of the applicant's FOI application.

5. By letter dated 3 November 2006, the applicant sought internal review of the decisions referred to at paragraphs 3 and 4 above.
6. In an undated decision, Assistant Commissioner Nolan upheld the decisions referred to at 3 and 4 above (Internal Review Decision).
7. By letter dated 25 November 2006, the applicant sought external review of AC Nolan's decision.

Steps taken in the external review process

8. On 8 January 2007, a staff member of this Office contacted the applicant by telephone and clarified that the request for review included a concern regarding the sufficiency of searches undertaken by the QPS.
9. In a letter dated 17 January 2007, I invited the applicant to set out the grounds on which he believed the QPS held additional documents responsive to his FOI application and to detail any additional searches that he believed the QPS should reasonably be required to undertake.
10. By letter dated 29 January 2007, the applicant provided submissions in support of his application with respect to categories 1, 6, 7 and 8. The applicant noted in particular that he sought information regarding the procedures for setting up the Gatso (Type 24) Speed Camera (Speed Camera). The applicant also indicated that the copy of the Instruction Manual which he had viewed at Injune Police Station was a poor copy and incomplete.
11. By letter dated 7 February 2007, I forwarded a copy of the applicant's submissions to the QPS and requested responses to a number of the matters raised in the applicant's submissions.
12. In a telephone discussion with a staff member of this Office on 13 February 2007, a QPS officer indicated that Chapter 6 of the Traffic Manual contained the information sought by the applicant regarding the procedures for setting up a Speed Camera. The QPS had not referred to this document in any of its decisions in this matter.
13. On 15 February 2007, a staff member of this Office had a further telephone discussion with a QPS officer regarding the applicant gaining access again to the Instruction Manual and to Chapter 6 of the Traffic Manual.
14. By letter dated 16 February 2007, the QPS provided submissions in response to my letter at paragraph 11 above.
15. By letter dated 22 February 2007, I indicated to the applicant that it was my preliminary view that the QPS had:
 - (a) correctly exercised its discretion in refusing access to documents in categories 1 and 8, pursuant to section 22(a) of the FOI Act; and
 - (b) conducted a sufficient search for documents responsive to his FOI request.

I indicated to the applicant that if he did not accept my preliminary view, he could provide further submissions in support of his case. I also indicated that the QPS had advised this office that Chapter 6 of the Traffic Manual contains procedures for setting up a Speed Camera.

16. In a telephone discussion with a staff member of this Office on 1 March 2007, the applicant indicated that he did not accept my preliminary view and intended to provide submissions.
17. By letter dated 1 March 2007, received by this Office on 9 March 2007, the applicant indicated that he did not accept my preliminary view and provided further submissions in respect of categories 1, 6 and 8 and sufficiency of search in respect of 'ghost readings'.
18. By letter dated 16 March 2007, I requested that the QPS arrange for the applicant to have access for viewing, to either:
 - (a) an original Instruction Manual; or
 - (b) a good quality copy of an Instruction Manualat Injune Police Station, by no later than 28 March 2007.
19. On 16 March 2007, a staff member of this Office, in a telephone discussion with a QPS officer, requested that the QPS arrange for the applicant to view the Instruction Manual, in accordance with my letter at paragraph 18 above.
20. In making my decision in this matter, I have taken the following into account:
 - the applicant's FOI application dated 20 September 2006, application for internal review dated 3 November 2006 and application for external review dated 25 November 2006;
 - Acting Senior Sergeant McGhie's initial decision dated 5 October 2006, R J Shillington's decision dated 30 October 2006 and Assistant Commissioner Nolan's undated internal review decision;
 - the documents that the QPS released to the applicant pursuant to the decision of RJ Shillington;
 - the applicant's submissions dated 29 January 2007 and 1 March 2007;
 - QPS submissions dated 16 February 2007; and
 - File notes of telephone conversations between staff of this Office and the:
 - (a) applicant; and
 - (b) QPS.

Findings

Refusal of access

21. The applicant has been refused access to the SDRO Guide pursuant to section 22(a) of the FOI Act.

Section 22(a) of the FOI Act

22. Section 22 of the FOI Act provides that an agency may refuse access to a document in a number of circumstances, including as follows:

22 Documents to which access may be refused

An agency or Minister may refuse access under this Act to—

- (a) *a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge...*

Arrangements made by the QPS

23. In his decision dated 5 October 2006, Acting Senior Sergeant McGhie indicated that the SDRO Guide is a QPS policy document and stated that:

In order to obtain policy documents you are advised to contact the Officer in charge of Service Operational Procedures (Officer in Charge) to arrange a viewing of a particular policy document, and then purchase an entire document or individual pages of your choice.

The contact details for the Officer in Charge were provided.

24. In his Internal Review Decision, Assistant Commissioner Nolan indicated that particulars for gaining access to the SDRO Guide had previously been provided.

25. In a letter to this office dated 16 February 2007, Inspector D M Kilpatrick stated that:

Inquiries have identified that the SDOG and chapter 6 of the Traffic Manual contain the information sought by the applicant.

The cost of purchase are as follows:

- SDOG \$22.00
- Traffic Manual Chapter 6 \$37.50

Details to arrange viewing of the above documents were also provided.

26. The information outlined at paragraph 24 above was communicated to the applicant by my letter dated 22 February 2007.

27. The applicant has made the following submissions in respect of the above documents:

- (a) 'The QPS said my requests 1 & 8 have been refused ... The QPS stated that 'The QPS Speed Detection (Radar) Operations Guide contains the information you are seeking.' Therefore, it would seem to me, that the QPS are fully aware of what I seek and have tried to block my request in 1 & 8.'
- (b) At no stage did the QPS advise the costs of purchasing the SDOG and the Traffic Manual or that the information sought was contained in these documents.
- (c) 'Who determines what a 'QPS Policy document' is, and since when have policy documents been exempt from FOI?'

28. The term 'policy document' is defined in section 7 of the FOI Act to include:

...

(a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents ...

29. Section 19(1)(b) of the FOI Act provides that:

Availability of certain documents

(1) An agency must make copies of—

...

(b) each of its policy documents;

available for inspection and purchase by members of the community.

30. I am satisfied that:

(a) the SDRO Guide is a QPS policy document, in accordance with section 7 of the FOI Act; and

(b) both the SDRO Guide and Chapter 6 of the Traffic Manual can be accessed for viewing or purchase through arrangements made by the QPS.

31. I note that the applicant has indicated to a staff member of this office that he should not have to pay for documents sought under the FOI Act. However, 22(a) of the FOI Act clearly anticipates that access to documents under arrangements made by an agency may incur a charge. I am satisfied that the charge for access to these documents is reasonable.

Sufficiency of search

32. The applicant has indicated that he is not satisfied that sufficient searches have been undertaken by the QPS in respect of his FOI application, particularly in respect of documents in category 7.

33. The Information Commissioner explained the principles applicable to 'sufficiency of search' cases in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 (at paragraphs 18 and 19) as follows:

18. *It is my view that in an external review application involving 'sufficiency of search' issues, the basic issue for determination is whether the respondent agency has discharged the obligation, which is implicit in the FOI Act, to locate and deal with (in accordance with Part 3, Division 1 of the FOI Act) all documents of the agency (as that term is defined in s.7 of the FOI Act) to which access has been requested. It is provided in s.7 of the FOI Act that:*

'document of an agency' or 'document of the agency' means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes -

- (a) *a document to which the agency is entitled to access;
and*
- (b) *a document in the possession or under the control of an
officer of the agency in the officer's official capacity;*

19. *In dealing with the basic issue referred to in paragraph 18, there are two questions which I must answer:*

- (a) *whether there are reasonable grounds to believe that the
requested documents exist and are documents of the agency (as
that term is defined in s.7 of the FOI Act);*

and if so
- (b) *whether the search efforts made by the agency to locate such
documents have been reasonable in all the circumstances of a
particular case.*

34. In his letter dated 30 October 2006, seeking internal review, the applicant expressed concern that R J Shillington's letter dated 30 October 2006 indicated that searches had been undertaken at the Broadbeach Police Station.

35. However, in the Internal Review Decision, Assistant Commissioner Nolan confirmed that the reference to 'Broadbeach Police Station' was a typographical error and that searches for documents relating to the applicant's FOI application had been undertaken at:

- (a) the Radio and Electronics Section, Traffic Camera Office; and
- (b) Dalby Police Station.

36. A QPS officer has also indicated that he had since liaised with personnel of the Traffic Camera Office to address inquiries made by this Office.

37. In his letter dated 1 March 2007, the applicant submitted that:

In relation to 'Ghosting', Ghost Readings, the QPS have admitted to you that it is in fact a real factor and that if detected, they withdraw further action. I'm certain that the action of 'withdrawal of further action', as put by the QPS, constitutes a record. So, in fact, the QPS does record 'Ghostings', as per their own words and actions.

38. One of the documents released to the applicant pursuant to RJ Shillington's decision dated 30 October 2006 comprised a report prepared by Sergeant N B Davidson of the Traffic Camera Office, dated 18 October 2006. The report described a ghost reading as 'a reported incident of a reflective issue that has influenced the detections on the deployment film', which I understand to be a camera reading which has been affected by an external factor other than the vehicle in the radar beam.

39. In its submissions dated 16 February 2007, the QPS indicated that:

Inquiries with personnel of the Traffic Camera Office have identified the following:

- (a) *Incidents of 'ghosting' are site related and not device related;*
- (b) *Incidents of 'ghosting' are not recorded by the QPS; and*

(c) Incidents of 'ghosting' that are located in relation to detected offences immediately result in withdrawal of any further action.

40. A document titled 'Camera Accuracy and Camera Calibration', published on the QPS website states at pages 3 and 4 that:

Adjudication staff at the Traffic Camera Office undertake specific training in accordance with the Australian Standards to identify areas of the captured image to determine detection area ... evaluators also apply procedures to identify the target vehicle ...

...

The Gatso speed radar is designed to ensure immunity from external influences. A highly directional slotted wave guide antenna is used to transmit the 24.125 GHz carrier signal and to receive the reflected signal back. The Doppler signal is derived in the antenna unit and then conducted to the Radar Control Unit. The speed computing software analyses the speed readings from the Doppler signal and assesses these readings for consistency and spread. When the software checks are passed the Gatso Type 24 speed camera then takes a photograph of the target vehicle. Importantly, if the software checks are not passed, for example if there are two speed readings indicating two vehicles in the beam at the same time, no photograph is taken or no speed is shown ...

41. Sergeant Davidson's report referred to at paragraph 38 above states that there were no 'reflective issues' with the deployment film that contained the applicant's detection.

42. I am satisfied that:

- (a) the Traffic Camera Office conducts adjudication of captured images;
- (b) where incidents of 'ghosting' are detected, action is withdrawn, that is, no steps are taken to issue an infringement notice;
- (c) in light of (a) and (b) above, the Traffic Camera Office has determined that, in respect of the traffic infringement notice referred to in the applicant's FOI application, no 'ghosting incident' occurred; and
- (d) in any event, no record, that is, documentation, of incidents of 'ghosting' is maintained by the QPS.

I do not agree with the applicant's contention that 'the action of 'withdrawal of further action' constitutes a record.

43. In his letter dated 1 March 2007, the applicant stated:

Now, as you are probably not aware, 'Imperial Acts Application Act 1984' Div. 3 – Justice and Liberty, 'All fines and forfeitures of particular person prior to conviction are null and void.' Put in plain Australian, this means that a person can not be convicted by a bureaucrat, is presumed innocent, until found otherwise by a Court and that a bureaucrat is not Judge Jury & Executioner.

44. As the *Imperial Acts Application Act 1984* (Qld) (IAA Act) does not contain a division 3, it may be that the reference above is to the *Imperial Acts Application Act 1980* (Vic). Notwithstanding this, section 5 of the IAA Act provides that each Imperial enactment specified in Schedule 1 continues to have the same force and effect (if any) as it had in Queensland prior to the enactment of the IAA Act. Schedule 1 of the IAA Act includes a reference to (1688) 1 William & Mary Sess. 2 Ch 2 (Bill of Rights). The purpose of the Bill of Rights is stated as being:

An act for declaring the rights and liberties of the subject, and settling the succession of the crown.

Sess. 2 Ch 2 of the Bill of Rights provides relevantly:

... And thereupon the said lords spiritual and temporal, and commons ... declare ...

12. That all grants and promises of fines and forfeitures of particular person before conviction, are illegal and void ...

45. As this review is conducted under Part 5 of the FOI Act, the scope of the review is limited to a consideration of whether the decision under review, that is, a decision regarding access to requested documents, has been made in accordance with the FOI Act. The review does not extend to a consideration of the power of the Queensland legislature to enact legislation in respect of the imposition and enforcement of penalties. I note in passing however, that the extent to which the Bill of Rights applies in Australia is limited by section 3 of the *Australia Act 1986* (Cth), which provides that:

3 Termination of restrictions on legislative powers of Parliaments of States

(1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Conclusion

46. I am satisfied that:

- (a) the QPS correctly exercised its discretion to refuse access to the SDOG pursuant to section 22(a) of the FOI Act;
- (b) exercising the power granted to the Information Commissioner under section 88(1)(b) of the FOI Act, the QPS is not required to provide the applicant with access (under the FOI Act) to a copy of Chapter 6 of the Traffic Manual, pursuant to section 22(a) of the FOI Act;
- (c) there are no reasonable grounds to believe that additional QPS documents responsive to the applicant's FOI application exist; and
- (d) the searches undertaken by the QPS were reasonable in all of the circumstances.

Decision

47. I vary the undated decision of Assistant Commissioner Nolan by including an additional finding that the QPS is not required to provide a copy of Chapter 6 of the Traffic Manual to the applicant, pursuant to section 22(a) of the FOI Act.

48. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

M Gittins
Assistant Information Commissioner

Date: 5 April 2007