



Decision and Reasons for Decision

Citation:	<i>T9HY4J and Crime and Misconduct Commission [2014] QICmr 3 (22 January 2014)</i>
Application Number:	311400
Applicant:	T9HY4J
Respondent:	Crime and Misconduct Commission
Decision Date:	22 January 2014
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION – QUEENSLAND – REFUSAL OF ACCESS - applicant sought access to all documents arising out of the agency’s conduct of its major crime function, specifically, documents concerning several individuals named on the applicant’s access application including himself – whether section 55 of the <i>Right to Information Act 2009 (Qld)</i> may be used to neither confirm nor deny the existence of documents

REASONS FOR DECISION

Summary

1. The applicant, a prisoner, applied to the Crime and Misconduct Commission (**CMC**) for access to all information regarding several named individuals including himself arising from investigations undertaken by the CMC in the conduct of its functions under the *Crime and Misconduct Act 2001 (Qld)* (**CM Act**).
2. The CMC refused the applicant access to the information sought¹ pursuant to schedule 3 section 10(1)(f) and (i) and schedule 3 section 10(3) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).
3. The applicant applied² to the Office of the Information Commissioner (**OIC**) for external review of the CMC’s decision.
4. For the reasons set out below, I vary the CMC’s decision and find that it may neither confirm nor deny the existence of the documents sought under section 55 of the RTI Act on the basis that the documents to which access is sought, if they were to exist, would contain ‘prescribed information’ which is information that is exempt from disclosure under schedule 3 section 10(4) of the RTI Act.

¹ Decision dated 21 February 2013.

² Application received 28 February 2013.

Background

5. Significant procedural steps relating to the application and external review are set out in the appendix.

Reviewable decision

6. The decision under review is the CMC's decision dated 21 February 2013.

Evidence considered

7. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in part in these reasons (including footnotes and appendix).

Relevant law

8. Section 55 of the RTI Act provides that nothing in the Act requires an agency or Minister to give information as to the existence or non-existence of a document containing 'prescribed information'.
9. Prescribed information is defined in the schedule 6 Dictionary of the RTI Act as meaning:
 - (a) exempt information mentioned in schedule 3 section 1,2,3,4,5,9 or 10; or
 - (b) personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b).
10. Exempt information, in the first limb of the definition, is information the disclosure of which Parliament has determined is exempt because its release would, on balance, be contrary to the public interest.³ Schedule 3 section 10 of the RTI Act provides that information relating to law enforcement or public safety information is exempt from release and states:

10 Law enforcement or public safety information

- (4) Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a **prescribed crime body** [my emphasis], or another agency, in the performance of the **prescribed functions** [my emphasis] of the prescribed crime body.

...

- (6) However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if –

- (a) it consists of information about the applicant; and
- (b) the investigation has been finalised.

11. Therefore, for section 55 of the RTI Act to apply, the documents to which access is sought must contain 'prescribed information'. 'Prescribed information' includes 'exempt information' which in itself includes law enforcement or public safety information as listed in schedule 3 section 10(4) of the RTI Act but the following requirements must be satisfied:

- the information must have been obtained, used or prepared for an investigation

³ See section 47(3)(a) and 48 of the RTI Act.

- the investigating body or agency must be a prescribed crime body or other agency performing a prescribed crime body's functions; and
- the exception set out in schedule 3, section 10(6) of the RTI Act must not apply.

Findings

Does the access application relate to prescribed information?

12. Yes. After careful assessment of the access application, I find that it relates to 'prescribed information' because if they were to exist, all of the requested documents would comprise exempt information under schedule 3, section 10(4) of the RTI Act⁴ and the exception listed in schedule 3, section 10(6) would not apply.
13. The following paragraphs 14 to 19 explain how the requirements are fulfilled to establish that if they were to exist the documents sought would comprise 'exempt information,' under the category of law enforcement and public safety information.

If the requested information were to exist, would it have been 'obtained, used or prepared' for an 'investigation'?

14. The terms 'obtained, used or prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning.⁵ The relevant term in this case is 'obtained', in other words, '*to come into possession of; get, acquire; or procure, as through an effort or by a request*'.⁶
15. I accept the CMC's submission that, if the requested documents were to exist, they would have been obtained as a result of investigations⁷ undertaken by the CMC in the conduct of its functions under the CM Act.

Is the CMC a prescribed crime body?

16. Yes. The term 'prescribed crime body' is defined in schedule 3 section 10(9) of the RTI Act and at paragraph (a), the definition includes the CMC.

Would the CMC have been performing its prescribed crime body's functions?

17. Yes. The CMC's prescribed functions include its '*crime function*', '*intelligence functions*' and '*misconduct functions*' as defined in the CM Act.⁸ On the material before me, I am satisfied that any investigations undertaken by the CMC in relation to the applicant would have been done so in exercise of its crime function.⁹

Does the exception set out in schedule 3 section 10(6) apply?

18. I have carefully assessed the exception to this exemption in schedule 3 section 10(6) of the RTI Act¹⁰ and find that it does not apply in this case.
19. For the reasons above, I find that the documents to which access is sought, if they were to exist, would comprise 'exempt information' under schedule 3 section 10(4) of

⁴ The category of law enforcement or public safety information.

⁵ *Springborg, MP and Crime and Misconduct Commission* (2006) 7 QAR 77 at [58].

⁶ Dictionary.com online (accessed 8 January 2014).

⁷ The term 'investigate' means 'examine and consider' as defined in Schedule 2 of the CM Act.

⁸ Schedule 3 section 10(9) of the RTI Act.

⁹ Section 25 of the CM Act.

¹⁰ For the exception to apply information must be about the applicant and the investigation must be finalised.

the RTI Act. Therefore, I neither confirm nor deny the existence of the documents to which access is sought, because if they were to exist, they would contain 'prescribed information' under the RTI Act, disclosure of which would be contrary to the public interest.

DECISION

20. I vary the CMC's decision and find that it may neither confirm nor deny the existence of the documents sought under section 55 of the RTI Act on the basis that the documents to which access is sought, if they were to exist, would contain 'prescribed information' which is information that is exempt from disclosure under schedule 3 section 10(4) of the RTI Act.
21. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

JS Mead
Right to Information Commissioner

22 January 2014

APPENDIX**Significant procedural steps**

Date	Event
16 January 2013	CMC received the applicant's access application under the RTI Act.
21 February 2013	CMC issued its initial decision to the applicant.
28 February 2013	OIC received the external review application and asked CMC to provide a number of processing documents.
26 March 2013	OIC advised the applicant and CMC it had accepted the external review application.
23 May 2013	OIC requested CMC provide written submissions relevant to the external review.
29 May 2013	CMC contacted OIC to discuss the request for submissions.
30 May 2013	OIC wrote to the CMC requesting further submissions.
6 June 2013	CMC provided written submissions in response to OIC's request dated 23 May 2013.
12 July 2013	OIC attended CMC's premises to discuss issues relevant to this external review.
1 August 2013	OIC conveyed the first preliminary view to the applicant.
8 August 2013	OIC received submissions from the applicant in response to the first preliminary view.
16 August 2013	OIC requested the CMC provide further submissions in response to the applicant's submission.
16 August 2013	OIC wrote to the applicant enclosing a copy of the applicant's submissions dated 8 August 2013 as acknowledgment of OIC's receipt of this.
20 September 2013	CMC provided further submissions in response to OIC's request dated 16 August 2013.
22 October 2013	OIC attended the CMC's premises to discuss issues relevant to the external review.
8 November 2013	OIC conveyed a second preliminary view to the applicant.
18 November 2013	OIC received submissions from the applicant in response to the second preliminary view.