



Decision and Reasons for Decision

Citation: *6D1NUY and Queensland Police Service* [2015] QICmr 7 (10 April 2015)

Application Number: 311991

Applicant: 6D1NUY

Respondent: Queensland Police Service

Decision Date: 10 April 2015

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – UNLOCATABLE AND NONEXISTENT DOCUMENTS – information held by police about applicant – applicant contends additional documents exist – an agency may refuse access to a document because the document is nonexistent or unlocatable – whether the agency has taken all reasonable steps to locate documents but documents cannot be found or do not exist – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – police information – an agency may refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest – whether disclosure would, on balance, be contrary to the public interest – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b), 49 and schedule 4 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**), for information covering a 23¹ year period and comprising:

¹ 1990 to November 2013.

- complaints, reports and investigations made about the applicant or her property; and
 - complaints or reports made by the applicant to QPS.
2. QPS located 116 pages of information and decided to:
- release 73 pages in full and parts of 43 pages; and
 - refuse access to the remaining parts of 43 pages on the ground that disclosure of the information would, on balance, be contrary to the public interest.²
3. The applicant applied to QPS for an internal review of its decision. QPS located an additional 24 pages of information and deleted parts of each of the 24 pages that were irrelevant because they comprised information about police matters and people unrelated to the applicant.³ Also, QPS refused access to information on nine of the 24 pages on the basis that disclosure of the information was, on balance, contrary to the public interest.⁴
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's refusal of information on the ground that disclosure was, on balance, contrary to the public interest. The applicant also raised concerns that QPS had not located all information relevant to her access application.
5. For the reasons set out below, I am satisfied that QPS is entitled to refuse access to:
- additional information that the applicant contends should have been located in response to her access application (**Additional Information**) on the ground that the information is nonexistent or unlocatable;⁵ and
 - information on 52 pages⁶ (**Third Party Information**) on the ground that its disclosure would, on balance, be contrary to the public interest.⁷

Background

6. Significant procedural steps relating to the application and the external review process are set out in the Appendix.

Reviewable decision

7. The decision under review is QPS's internal review decision dated 19 March 2014.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

² Under section 67 of the IP Act and section 47(3)(b) and schedule 4, part 4, section 6 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

³ Under section 88 of the IP Act. The application of this provision to the information in issue is not in issue in this review.

⁴ Under section 47(3)(b) of the RTI Act.

⁵ Under section 67 of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

⁶ That is, parts of 43 pages located in processing the applicant's access application and nine of the pages located on internal review.

⁷ Under section 67 of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

Issues for determination

9. Section 67 of the IP Act provides an agency or Minister may refuse access to information sought under the IP Act in the same way and to the same extent that the agency or Minister could refuse access to the information under section 47 of the RTI Act, as if the information was the subject of an application under the RTI Act.
10. Accordingly, in this review, the issues for determination are whether access to:
 - the Additional Information can be refused under section 47(3)(e) of the RTI Act on the ground that it is nonexistent or unlocatable under section 52(1) of the RTI Act; and
 - the Third Party Information can be refused under section 47(3)(b) of the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

The Additional Information

11. In her external review application, the applicant submitted that '*many documents relating to many complaints and matters are missing*'.⁸

Relevant law

12. Under the RTI Act, a person has a right to be given access to documents of an agency.⁹ However, this right is subject to other provisions of the RTI Act, including grounds on which an agency may refuse access to documents.¹⁰ Relevantly, an agency may refuse access to documents¹¹ which:
 - do not exist;¹² or
 - have been (or should be) in an agency's possession, but cannot be located.¹³
13. A document is nonexistent if there are reasonable grounds for the agency or Minister dealing with the access application to be satisfied that the document does not exist.¹⁴
14. The RTI Act is silent on how an agency can be satisfied that a document does not exist. In *PDE and The University of Queensland*,¹⁵ the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:
 - the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not limited to information management); and

⁸ Page 1 of external review application received on 13 April 2014.

⁹ Section 23 of the RTI Act.

¹⁰ These grounds are set out in section 47 of the RTI Act.

¹¹ Under section 47(3)(e) of the RTI Act.

¹² Section 52(1)(a) of the RTI Act.

¹³ Section 52(1)(b) of the RTI Act.

¹⁴ Section 52(1)(a) of the RTI Act.

¹⁵ (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]. Although *PDE* concerned the application of section 28A of now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

- 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.
15. By considering the factors above, an agency may ascertain that a particular document was not created because, for example, its processes do not involve creating the specific document. In such instances, it is not necessary for the agency to search for the document. It is sufficient that the relevant circumstances to account for the nonexistent document are explained.
16. In assessing whether documents are nonexistent, an agency may also conduct searches. Where searches are conducted, an agency must demonstrate that it has taken all reasonable steps to locate responsive documents, prior to deciding that the documents are nonexistent.¹⁶ In determining whether all reasonable steps have been taken, regard should be had to the factors listed in *PDE* as set out above.¹⁷
17. To determine whether a document exists, but is unlocatable, the RTI requires consideration of whether:
- there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and
 - the has agency taken all reasonable steps to find the document.¹⁸
18. In answering these questions, regard should be had to the circumstances of the case and the factors listed in *PDE* as set out above.¹⁹

Analysis

19. OIC requested QPS to provide information about all searches it conducted.²⁰ In response, QPS provided OIC with submissions explaining that despite searches of its records, the Additional Information could not be located.²¹ QPS provided copies of its search records to demonstrate its searches.
20. OIC then requested that QPS clarify aspects of its searches.²² In response, QPS provided clarification regarding specific locations searched, search terms used, additional searches undertaken regarding wilful exposure and wilful damage matters, and the QPS officers who conducted the searches. Also, QPS indicated that it had conducted further searches for the Additional Information, but had not located any additional documents.²³
21. In its submissions, QPS advised that the specific locations searched by it were:
- the old watch house where all old paper based documents are held at Gin Gin
 - local hard drive of computers at Gin Gin as well as the local file server²⁴
 - the ITAS²⁵ database; and

¹⁶ As set out in *PDE* at [44]. See also section 130(2) of the RTI Act.

¹⁷ *PDE* at [49].

¹⁸ Section 52(1)(b) of the RTI Act.

¹⁹ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21].

²⁰ OIC's letter to QPS dated 21 October 2014.

²¹ QPS's letter to OIC dated 10 November 2014.

²² OIC's letter to QPS dated 9 December 2014.

²³ QPS's letter to OIC dated 20 January 2015.

²⁴ In their letter to OIC dated 20 January 2015, QPS advised that as the Bundaberg file server backs up the Gin Gin server, it contains the same information.

²⁵ Intelligent Tasking Analysis System. QPS advises that ITAS is a computer application developed by the QPS integrating resourcing, rostering, tasking and reporting of enforcement activities, including traffic enforcement.

- the QPRIME²⁶ database.
22. The reasons, QPS submitted, it searched those locations were:
- physical searches of old paper based documents would capture documents from earlier in the 24 year period specified by the applicant in her access application
 - the computers at Gin Gin hold all electronic patrol logs from 2001 to 2011
 - ITAS is now used for electronic logs; and
 - QPRIME is now the electronic source used to store documents.
23. QPS submitted that the searches undertaken by it on the basis of the applicant's initial application and in accordance with OIC's requests were extensive, and focussed on all locations where documents created by relevant QPS officers as a result of their dealings with the applicant would be located – therefore, QPS concluded that all viable search avenues for Additional Documents were exhausted.²⁷
24. Given the reference to CRISP²⁸ on some pages of the information in issue²⁹ and in QPS's submissions to OIC, OIC queried why QPS had not conducted searches of CRISP, as well as QPRIME and ITAS. QPS advised that CRISP was a central data collection system in operation from approximately 1997 until its replacement by QPRIME in 2007. QPS advised that CRISP can no longer be searched – however, all information that QPS was required to retain in accordance with its obligations under its retention and disposal schedules was migrated to QPRIME when CRISP was decommissioned.
25. OIC wrote to the applicant and requested she provide more detail about the Additional Information that she considered QPS had failed to locate, in order for OIC to determine the extent of further searches required and their reasonableness.³⁰ In response, the applicant advised OIC that she would not provide any further information and that:

The main information I am seeking relates to the documents including the original complaint and withdrawal relating to the wilful obscene occurrence and the domestic violence complaint documents.³¹

26. I note that QPS released some information about a wilful obscene exposure complaint made in 1996 and a domestic violence application made in 2013 to the applicant.³²
27. In relation to the wilful exposure complaint, QPS submitted:³³

Specific documents can't be found in relation to the wilful exposure. The Officer in Charge of Gin Gin has physically searched for paper based records in the station and in the old watch house especially from 1996 re the wilful exposure. Unable to locate any paper based records. However, a withdrawal of comp in 1996 was sent to CRISP³⁴ from Gin Gin by Sgt GILES (no longer used) and in 2007 records converted over to Qprime. Withdrawal recorded, but no document can be found.

²⁶ Queensland Police Records and Information Management Exchange. QPS advises that this database contains the records of official police crime reports, including reported crimes (victims, offenders, prosecutions of offenders and criminal histories of offenders), road crashes, missing persons and domestic violence applications and orders.

²⁷ QPS's letter to OIC dated 20 January 2015.

²⁸ Crime Reporting Information System for Police.

²⁹ For example, at page 24 of the 116 pages initially located by QPS.

³⁰ OIC's letter to the applicant dated 9 December 2014.

³¹ OIC received the applicant's submissions, dated 6 January 2015, via email on 7 January 2015.

³² At pages 24-30 and 107-108 of the 116 pages initially located by QPS respectively.

³³ In QPS's letter to OIC dated 10 November 2014.

³⁴ Crime Reporting Information System for Police.

28. The information released to the applicant about the wilful exposure complaint confirms that this complaint was withdrawn.³⁵
29. Further, in relation to the domestic violence application, QPS stated:³⁶

[I]nquiries have revealed that the application was made privately by a third party and was struck out and therefore no further action resulted.

30. The information released to the applicant about the domestic violence application confirms that it was made privately³⁷ but does not record that it was withdrawn. However, given that the applicant did not become aware of the application until QPS released the information about it to her,³⁸ it may be concluded that the application was indeed withdrawn.

Conclusion

31. I have carefully considered the information before me, including the information about the Additional Information provided by the applicant³⁹ and QPS's search records and related submissions.
32. I note that the documents sought by the applicant traverse a large period of time – 23 years – and that, within this period, QPS's record keeping practices evolved substantially, from reliance on hard copies stored locally, to electronic copies stored locally, to more generalised information management databases.⁴⁰ In my view, the age of some of the documents sought by the applicant, and the superseded document management methods that would have been employed at the time that they may have been created, in combination with QPS obligations regarding record retention and disposal (which have also evolved over time), render it reasonable to assume that some Additional Documents may, at some stage, have been in QPS's possession – but were not located by QPS's searches.
33. Further, on the information before me, it is my understanding that the wilful exposure complaint was withdrawn and the domestic violence application was privately made and then struck out. I consider it reasonable to conclude that relatively few documents were created by QPS in either instance. The likely nonexistence of such documents also provides some explanation as to why further documents were not located by QPS.
34. I have carefully considered the searches conducted by QPS, and its explanation of those searches in its submissions, in light of the factors listed in *PDE* as set out above.⁴¹ Having regard to QPS's evolving recordkeeping practices and systems over the relevant period of time, and taking into account the information provided by the applicant, the broad date range of the applicant's application, the consequent age of some of the information (should it exist), and the low likelihood that some information would exist (for example, further information about discontinued matters), I am satisfied that QPS conducted sufficient searches in appropriate locations.
35. On the basis of the above, I find that QPS has taken all reasonable steps to locate the Additional Information, but it either cannot be located or does not exist. Therefore, I am

³⁵ At page 29 of the 116 pages initially located by QPS.

³⁶ In its internal review decision.

³⁷ At pages 107 and 108 of the 116 pages initially located by QPS.

³⁸ As stated at page 2 of the applicant's external review application.

³⁹ To QPS in her access application and internal review application, and to OIC in her external review application and correspondence during the external review.

⁴⁰ Firstly CRISP, and currently QPRIME and ITAS.

⁴¹ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21].

satisfied that QPS is entitled to refuse access to the Additional Information⁴² on the ground that it is nonexistent and/or unlocatable.⁴³

The Third Party Information

36. As mentioned earlier, the Third Party Information is parts of 52 pages⁴⁴ that QPS refused to release to the applicant on the ground that the disclosure of the information would, on balance, be contrary to the public interest.⁴⁵
37. The Third Party Information comprises information about third party individuals including names and other identifying information which fall within the definition of 'personal information' in the IP Act.⁴⁶

Relevant law

38. Under the RTI Act, access to a document may be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.⁴⁷
39. Whether disclosure of personal information is contrary to the public interest or not is determined by weighing up any factors favouring disclosure and any factors favouring nondisclosure.⁴⁸

Analysis

Transparency and accountability

40. I have considered whether disclosing the personal information of third party individuals could reasonably be expected to enhance QPS's transparency⁴⁹ and accountability⁵⁰ by allowing the applicant to verify that the officers of QPS carried out their policing duties in accordance with their obligations to uphold the law and serve the community.
41. The applicant has been given access to the vast majority of material held by QPS about the applicant. The information of third party individuals comprises a small component of these records. I consider that the information already disclosed to the applicant significantly satisfies the public interest factors identified above.
42. Given the relatively small amount of Third Party Information, I am satisfied that its disclosure wouldn't advance these public interest factors to any significant degree. Accordingly, while I find the factors mentioned above are relevant, I afford them low weight in the circumstances.

⁴² Under section 47(3)(e) of the RTI Act.

⁴³ Section 52(1)(a) and (b) of the RTI Act.

⁴⁴ That is, parts of the 43 pages located in processing the applicant's access application and the nine pages located on internal review.

⁴⁵ Under sections 47(3)(b) and 49 and schedule 4, part 4, section 6 of the RTI Act.

⁴⁶ Section 12 of the IP Act defines 'personal information' as *information or an opinion ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

⁴⁷ Section 47(3)(b).

⁴⁸ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

⁴⁹ Section 49, schedule 4, part 2, item 3 of the RTI Act.

⁵⁰ Section 49, schedule 4, part 2, item 1 of the RTI Act.

Personal information and privacy of third parties

43. As mentioned in paragraph 25, the applicant informed OIC that the main information she was seeking included domestic violence documents. In its internal review decision, QPS addressed the domestic violence documents as follows:

...inquiries have revealed that the application was made privately by a third party and was struck out and therefore no further action resulted ... any further information relating to this matter is the personal information of a person other than yourself and therefore cannot be disclosed to you accordingly.

44. The applicant submits:

An amount of substantive information has also been secreted, this is also particularly evident with regards to the domestic violence report. Additional documentation was identified and the substance of the complaint has been removed... I have no effective way of challenging, amending or annotating the file as the police have removed the perpetrators information and the substance of the complaint.⁵¹

45. In this case, the applicant has been given access to the context of the information surrounding the third party individuals' personal information, including the domestic violence complaint information and other information held by police. I therefore consider that the extent of the public interest harm that could reasonably be anticipated from disclosure of the information about third party individuals that the applicant was refused access to, is significant, and particularly so regarding the domestic violence complainant.⁵² Similarly, I am satisfied that disclosure could reasonably be expected to prejudice the individuals' privacy,⁵³ and that this factor should, in the circumstances, be given significant weight.⁵⁴

Prejudice flow of information to police

46. A factor in favour of nondisclosure arises where disclosure of information is reasonably expected to prejudice the flow of information to the police.⁵⁵ A lot of the work that police do relies on information being provided to them by members of the public. If information provided by individuals under these circumstances is disclosed under the RTI Act, individuals may be discouraged from providing information, thus impeding the police's ability to effectively carry out their role.
47. Having carefully assessed the information in issue, I am satisfied that the information was given by individuals to assist the police to carry out their duties. I therefore consider that this factor weighs heavily against disclosure.

Conclusion - balancing the public interest

48. While there is a public interest in the government's transparency and accountability, the particular circumstances of this case give rise to a number of strong factors favouring nondisclosure as follows:
- protecting the privacy of other individual's personal information; and
 - protecting the free flow of information by individuals to police.

⁵¹ The applicant's email to OIC, received on 2 March 2015.

⁵² Section 49, schedule 4, part 4, section 6 of the RTI Act.

⁵³ Section 49, schedule 4, part 3, item 3 of the RTI Act.

⁵⁴ I also note that, in its internal review decision, QPS provided the applicant with information about applying for amendment to information. OIC was informed by QPS on 25 July 2014 that an application for amendment had not been received from the applicant to date.

⁵⁵ Section 49, schedule 4, part 3, item 13 of the RTI Act.

49. Having carefully balanced the relevant factors in this case, I consider the public interest in favour of nondisclosure outweighs the public interest in favour of disclosure of the Third Party Information.
50. On this basis, I find that:
- disclosing the Third Party Information would, on balance, be contrary to the public interest under section 49 of the RTI Act; and
 - QPS is therefore entitled to refuse access to the Third Party Information under section 47(3)(b) of the RTI Act.

DECISION

51. For the reasons set out above, I affirm QPS's decision that the Third Party Information can be refused under section 67 of the IP Act and section 47(3)(b) of the RTI Act, on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
52. I also find that the Additional Information can be refused under section 67 of the IP Act and section 47(3)(e) of the RTI Act, on the basis that it is nonexistent or unlocatable under section 52(1) of the RTI Act.
53. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Acting Assistant Information Commissioner

Date: 10 April 2015

APPENDIX

Significant procedural steps

Date	Event
20 November 2013	QPS received the access application
21 January 2014	QPS issued its decision on the access application.
3 March 2014	QPS received the application for internal review.
19 March 2014	QPS issued its internal review decision.
13 April 2014	OIC received the application for external review.
1 May 2014	OIC informed the applicant her external review application had been accepted. OIC notified QPS of the external review application and asked QPS to provide the documents it located in processing the access application and on internal review.
5 May 2014	QPS provided OIC the documents it located in processing the access application and on internal review.
25 July 2014	OIC asked QPS for information about some of QPS's refusals.
21 October 2014	OIC asked QPS to provide information about the searches for documents undertaken while processing the access application.
10 November 2014	QPS provided OIC with information about the searches for documents undertaken while processing the access application.
9 December 2014	OIC asked QPS for additional information in relation to the searches for documents undertaken to date. OIC asked the applicant for more specific details about the information the applicant submitted was not provided to her.
7 January 2015	The applicant specified the main types of additional information she sought and declined to provide further information to OIC.
19 January 2015	OIC wrote to the applicant and confirmed that, given that the applicant had declined to provide further information, OIC would rely on submissions previously made by her to progress the review.
20 January 2015	QPS advised OIC that it had conducted additional searches and provided OIC with further information about the searches for documents undertaken by it.
16 February 2015	OIC conveyed a written preliminary view to the applicant that access to the Additional Information may be refused under section 47(3)(e) of the RTI Act on the ground that it is nonexistent or unlocatable under section 52(1) of the RTI Act and that access to the Third Party Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to public interest under section 49 of the RTI Act.
3 March 2015	OIC received the applicant's submission in response to OIC's preliminary view.
7 April 2015	OIC requested that QPS provide information regarding searches of its CRISP database.
8 April 2015	QPS provided information about CRISP.