



Decision and Reasons for Decision

Citation:	<i>Bradford and Department of Justice and Attorney-General [2018] QICmr 5 (6 February 2018)</i>
Application Number:	313307
Applicant:	Bradford
Respondent:	Department of Justice and Attorney-General
Decision Date:	6 February 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - request for information about an offender convicted of theft offences at the applicant's property - enhance accountability and transparency of corrective services agency in monitoring offenders - reveal background and contextual information to decisions relating to an offender's supervision and parole - administration of justice for victims of crime - personal information and privacy of an offender - whether disclosure of information 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)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Justice and Attorney-General (**DJAG**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) broadly seeking access to records held by Queensland Corrective Services² (**QCS**) about an individual who had previously committed offences against the applicant's property.
2. DJAG located approximately 1500 pages in response to the access application and decided to grant partial access to five pages only. DJAG refused access to the remaining information on the basis that its disclosure would, on balance, be contrary to the public interest, taking into account the significant weight in protecting the offender's privacy and personal information.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of DJAG's decision.³ The applicant emphasised his status as a victim of crime

¹ Access application dated 7 March 2017 and received by DJAG on 13 March 2017.

² At the relevant time, QCS was a business unit of DJAG. For the purpose of this decision, the correct respondent is DJAG, as the agency which made the reviewable decision.

³ Application dated 25 April 2017.

and submitted that the public interest factors concerning accountability, transparency and administration of justice should be weighted above the offender's right to privacy.⁴

4. On external review, the applicant clarified that he was only seeking access to documents relating to the offender's current parole arrangements.⁵ This served to reduce the information in issue in this review to 154 pages.
5. For the reasons set out below, I affirm DJAG's decision to refuse access to the information in issue on the basis that its disclosure would, on balance, be contrary to the public interest.⁶

Background

6. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix to these reasons.

Reviewable decision

7. The decision under review is DJAG's original decision dated 7 April 2017.⁷

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision referred to in these reasons (including footnotes and Appendix).

Information in issue

9. As noted in paragraph 4 above, information concerning the offender's current parole/supervision arrangements in relation to the offences committed at the applicant's property appear in 154 pages and are in issue in this review (**Information in Issue**).
10. I am restricted from describing the precise content of the Information in Issue.⁸ Generally, the information consists of notes, records, reports and assessments prepared by QCS officers in relation to the offender's supervision and parole arrangements, including extracts from QCS electronic databases.

Issue for determination

11. The issue for determination is whether access to the Information in Issue may be refused on the basis that its disclosure, would, on balance, be contrary to the public interest.

⁴ External review application and attached reasons, oral submissions made on 19 July 2017 and written submissions dated 31 October 2017.

⁵ In his external review application dated 25 April 2017, the applicant states: *'To avoid any confusion I am only requesting documents relating to his [the offender's] current parole, as I am a victim or one of the victims of this offending.'*

⁶ Under sections 47(3)(b) and 49 of the RTI Act.

⁷ The applicant indicated in his external review application that he believed this decision to be issued outside the statutory timeframe. However, the information available to OIC confirms that the access application was received by DJAG on 13 March 2017 and therefore, the decision dated 7 April 2017 was issued within the 25 day processing period.

⁸ By section 108(3) of the RTI Act.

Relevant law

12. Under the RTI Act, a person has a right to be given access to documents of an agency, unless giving access would, on balance, be contrary to the public interest.⁹ It is Parliament's intention that a pro-disclosure bias is adopted in applying the RTI Act.¹⁰
13. The right of access is however, subject to some limitations and exclusions, including the grounds for refusing access to information set out in section 47 of the RTI Act. One ground for refusing is where disclosure would, on balance, be contrary to the public interest.¹¹
14. The term '*public interest*' 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
15. The RTI Act identifies many factors that may be relevant in deciding where the balance of the public interest lies¹², and explains the steps a decision-maker must take¹³ as follows:
 - identify any irrelevant factors and disregard them¹⁴
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
16. The RTI Act specifically recognises that disclosure of another individual's '*personal information*' is a factor favouring nondisclosure¹⁵ which could reasonably be expected to lead to a public interest harm.¹⁶ The term '*personal information*' is defined in section 12 of the IP Act as follows:

information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Findings

Factors favouring disclosure

17. The applicant submitted that the offender's supervision and monitoring by QCS represents a '*public exercise by a government agency and should be open to some public scrutiny*'.¹⁷ In the applicant's view, there is a public interest in the community knowing whether an offender is under supervision at the time they commit other offences,

⁹ Sections 6 and 23 of the RTI Act.

¹⁰ Section 44 of the RTI Act.

¹¹ Section 47(3)(b) of the RTI Act.

¹² However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

¹³ Section 49(3) of the RTI Act.

¹⁴ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

¹⁵ Schedule 4, part 3, item 3 of the RTI Act.

¹⁶ Schedule 4, part 4, section 6 of the RTI Act.

¹⁷ External review application.

and disclosure would thereby, aid in the transparency and accountability of QCS in performing its functions.¹⁸

18. I accept that there is public interest in QCS being accountable and transparent in terms of how it supervises and monitors offenders after being released from prison. To this end, I am satisfied that disclosing the Information in Issue would serve to enhance the accountability and transparency of QCS and inform the community of some of the methods adopted by QCS in supervising offenders.¹⁹ I also accept that robust supervision of offenders is a matter of serious interest to the community and therefore, I am satisfied that disclosure of the Information in Issue could reasonably be expected to contribute to positive and informed debate on this issue.²⁰ Given the nature of the Information in Issue, I also consider that disclosure could reasonably be expected to reveal background and contextual information that has informed certain decisions which have been made by QCS about the offender's supervision arrangements.²¹
19. The type of documents which comprise the Information in Issue all personally relate to the offender. Overall, the documents are procedural in nature and while they record the steps/actions taken by QCS officers in relation to the offender's supervision, they do not reveal any comprehensive reasons or detailed explanations as to why QCS chose to adopt a particular course of action. For these reasons, I am satisfied that the factors discussed in the preceding paragraph each carry moderate weight in favour of disclosure.
20. The applicant also considers that disclosure of the Information in Issue would allow him to critique whether QCS is implementing adequate supervision measures in relation to the offender.²² The applicant believes that the offender has engaged in offending while he has been under parole and/or supervision orders, and argues that this reflects a shortcoming in QCS' monitoring role.²³ The RTI Act recognises that where disclosure of information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency, this will weigh in favour of disclosure.²⁴ For this factor to apply, it is only necessary for a reasonable expectation that disclosure would '*allow or assist inquiry into possible deficiencies*'. As such, it is not necessary for a decision maker to reach any conclusions as to whether conduct has actually been deficient. Therefore, to the extent that disclosure of the Information in Issue could allow the applicant to inquire as to the conduct of QCS in supervising the offender, I afford this factor moderate weight in favour of disclosure.
21. In his submissions, the applicant has repeatedly emphasised that he is a victim of crime and the negative impact this has had on him personally, his business and his family. I consider that the submissions made by the applicant in this regard raise for consideration the public interest factors concerning administration of justice and procedural fairness.²⁵
22. The information available to OIC demonstrates that the offender was charged, convicted and sentenced for the offences in connection with the applicant's property, and also, that the offender has served the requisite period of incarceration. In view of this, I am unable to see how disclosure of the Information in Issue would contribute to administration of

¹⁸ Submission dated 31 October 2017.

¹⁹ Schedule 4, part 2, items 1 and 3 of the RTI Act.

²⁰ Schedule 4, part 2, item 2 of the RTI Act.

²¹ Schedule 4, part 2, item 11 of the RTI Act.

²² External review application.

²³ Submission to OIC dated 31 October 2017.

²⁴ Schedule 4, part 2, item 5 of the RTI Act.

²⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act. These factors were considered by the Information Commissioner in *Willsford and Brisbane City Council* (1996) 3 QAR 368, cited in relation to the RTI Act in *Tomkins and Rockhampton Regional Council* [2016] QICmr 3 (22 January 2016) at [21].

justice for the applicant, or generally. At the time of sentencing the presiding judge or magistrate would have taken various factors and evidence into account, including any victim impact statements. While the evidence available to OIC does not confirm whether the applicant provided such a statement during the court process, that is the primary mechanism in the criminal justice system in Queensland to afford procedural fairness to a victim of crime.

23. The applicant has not submitted that he is seeking the Information in Issue to enable him to pursue any particular remedy or recourse against the offender. Rather, the applicant has explained that he is seeking to know the details of the offender's supervision arrangements to *'manage our risk and make decisions for the safety of our property and children who were given little to no consideration at sentencing'*.²⁶ The applicant has also sought to establish the legitimacy of his concerns by submitting that personal, sensitive and valuable items were stolen from his property and that this had a damaging impact on his home business. I acknowledge that the experience of being a victim of crime has been extremely stressful and upsetting for the applicant and his family. However, I do not consider that the applicant's personal circumstances can serve to enhance the public interest factor in procedural fairness to any significant degree.
24. For these reasons, I afford the administration of justice factors low weight in favour of disclosure.

Factors favouring nondisclosure

25. The RTI Act recognises that disclosure of another individual's personal information²⁷ could reasonably be expected to cause a public interest harm and that this is a factor weighing in favour of nondisclosure.²⁸ The Information in Issue forms part of the offender's file that is held by QCS. On this basis, and having examined each page comprising the Information in Issue, I am satisfied that the entirety of the Information in Issue comprises the offender's personal information and that therefore, the public interest harm factor applies in this case.
26. By virtue of the Information in Issue forming part of the offender's QCS file, I consider it falls towards the higher end of the spectrum in terms of sensitivity. While I am limited in the extent to which I can describe its particular content, the Information in Issue includes details about the offender's personal circumstances and offending history relevant to the terms of his supervision, including health, family and accommodation status. In considering the weight to be afforded to this factor, I have taken into account the particular nature of the Information in Issue and the purpose of the parole system which is to aid offender rehabilitation and foster reintegration of offenders into society. In the circumstances of this case, I am satisfied that the public interest harm that could arise from disclosure of this type of information is high and afford this factor significant weight.
27. The RTI Act also recognises a factor favouring nondisclosure where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.²⁹ The concept of *'privacy'* is not defined in the RTI Act, but can essentially be viewed as the right of an individual to preserve their *'personal sphere'* free from interference from others.³⁰ I find that this factor applies and note that the applicant has acknowledged that the offender is *'entitled to some degree of personal privacy'*.³¹

²⁶ Submission to OIC dated 31 October 2017.

²⁷ See definition quoted at paragraph 16 of these reasons.

²⁸ Schedule 4, part 4, section 6 of the RTI Act.

²⁹ Schedule 4, part 3, item 3 of the RTI Act.

³⁰ 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 May 2008, at paragraph 1.56.

³¹ Attachment to external review application.

28. The applicant has submitted that the offender's status as a prisoner (on parole) somewhat diminishes his right to privacy. There is however, authority for the opposite view³² and accordingly, I do not consider this reduces the weight of this factor to any degree. The applicant further submitted that the offender's QCS file would have been disclosed in open court during sentencing. While I accept that some of the offender's details would have been available to the presiding judge or magistrate during sentencing and may appear in sentencing remarks, there is no evidence available to OIC to establish that the entirety of the Information in Issue was presented, deliberated over, or published in court proceedings or court documents. I have therefore, not reduced the weight of the privacy nondisclosure factor on account of this argument.
29. The applicant suggested that the Information in Issue could be redacted or deidentified to reduce the public interest harm and intrusion into the offender's privacy.³³ However, I am satisfied that even if the offender's name and other personal details were redacted from the documents, I consider the level of public interest harm arising from disclosure and intrusion into the offender's personal sphere would remain significant because the applicant knows the offender's identity, and by virtue of the documents having been located in response to the access application which included the offender's name.
30. Having carefully considered the nature of the Information in Issue and taking into account the inherently personal nature of details held on the offender's QCS file, I find that the public interest in protecting the offender's privacy should be afforded significant weight in favour of nondisclosure.

Balancing the relevant public interest factors

31. In addition to the pro-disclosure bias, I am satisfied that the numerous public interest factors aimed at enhancing QCS accountability and transparency carry moderate weight in the circumstances of this case. I have also attributed moderate weight to the public interest in allowing inquiry into the conduct of QCS. There is also weight to be given to public interest in affording a victim of crime administration of justice and procedural fairness, however, it is low in this case. These public interest factors present a strong case in favour of disclosure. However, the crux of this case is that the Information in Issue forms part of the offender's QCS file, which, by its very nature, contains highly personal details and inherently private information about the offender. I am satisfied that the public interest in safeguarding the offender's personal information and protecting the offender's privacy can only be achieved by affording significant and determinative weight in favour of nondisclosure.
32. I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and that therefore, access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act.

³² See *XY and Department of Corrective Services* (Unreported, Queensland Information Commissioner, 23 October 2006) which confirmed the approach taken in *Re Lapidos and Officer of Corrections (No. 2)* (Unreported, Victorian Administrative Appeals Tribunal, 19 February 1990) in finding that information concerning what happens to a prisoner while in prison concerns the personal affairs of a prisoner.

³³ Submission to OIC dated 31 October 2017.

DECISION

33. I affirm DJAG's decision to refuse access to information under section 47(3)(b) of the RTI Act. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 6 February 2018

APPENDIX**Significant procedural steps**

Date	Event
25 April 2017	OIC received the external review application.
26 April 2017	OIC asked DJAG to provide relevant procedural documents.
28 April 2017	OIC received the requested procedural documents from DJAG.
5 May 2017	OIC notified DJAG and the applicant that the external review application had been accepted, and asked DJAG to provide the documents located in response to the access application. OIC received a copy of the located documents from DJAG.
23 June 2017	OIC provided the applicant with an update on the status of the external review.
19 July 2017	OIC spoke to the applicant and conveyed an oral preliminary view that disclosure of the requested information would, on balance, be contrary to the public interest under the RTI Act.
11 August 2017	The applicant requested an update and a written preliminary view from OIC and OIC provided the applicant with an update on the status of the external review.
6 October 2017	OIC conveyed a written preliminary view to the applicant, confirming that disclosure of the requested information would, on balance, be contrary to the public interest, and invited him to provide submissions supporting his case.
24 October 2017	OIC granted the applicant an extension of time within which to provide submissions supporting his case.
31 October 2017	The applicant advised that he did not accept OIC's preliminary view and provided submissions to OIC in support of his case.
3 November 2017	OIC provided the applicant with an update on the status of the external review.
19 December 2017	OIC provided the applicant with an update on the status of the external review.
9 January 2018	OIC provided QCS with an update on the status of the external review.