



Decision and Reasons for Decision

Citation:	<i>Isles and Queensland Police Service [2018] QICmr 27 (7 June 2018)</i>
Application Number:	313449
Applicant:	Isles
Respondent:	Queensland Police Service
Decision Date:	7 June 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - applicant submits further documents would have been created by police in investigating allegations against him - agency relies on explanation of its recordkeeping practices to explain nonexistence of further documents - whether there are reasonable grounds to be satisfied that further documents do not exist - whether access may be refused to nonexistent documents under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to the '*Full Case Summary Report including date initiated for QPRIME Occurrence*' involving an historical allegation against him.¹
2. QPS located an eight page Intelligence Log Summary and decided to refuse access to information on five pages on the basis that its disclosure would, on balance, be contrary to the public interest.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' refusal of access decision.³ In his external review application, the applicant raised concerns about sufficiency of search, submitting that an '*associated QPRIME Occurrence*' should exist.

¹ Access application dated 9 July 2017. QPRIME, the Queensland Police Records and Information Management Exchange, is the database used by QPS to capture and maintain records for all police incidents, intelligence and activities in Queensland.

² Decision dated 11 August 2017, refusing access to information under section 67 of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

³ External review application dated 15 August 2017.

4. For the reasons set out below, I find that access to the further documents sought by the applicant may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.⁴

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. During the review, QPS agreed to release some of the information in the Intelligence Log Summary to which access had originally been refused. QPS also located further QPRIME documents and agreed to release these to the applicant.⁵ The applicant also agreed not to pursue access to a small amount of personal information of other individuals, and accepted that two attached witness statements (which were not originally located by QPS) were already in his possession.
7. As a result of the informal resolution reached between the parties on those issues, no redacted information remains in issue in this review—the issue of nonexistent documents set out in paragraph 13 below is the sole issue for determination.

Reviewable decision

8. The decision under review is QPS' decision dated 11 August 2017.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix). In particular, I have read the Intelligence Log Summary in its entirety.
10. The applicant provided OIC with written submissions on multiple occasions during the review. Some of the applicant's submissions concern issues beyond the scope of this review and therefore, they are not addressed in these reasons for decision. I have however, thoroughly examined all of the applicant's submissions, and to the extent they are relevant to the issue for determination, I have taken them into account in reaching my findings in this review.

Issue for determination

11. The applicant asserts⁶ that three log entries in the Intelligence Log Summary refer to the existence of additional documentation, as set out below:

Log Entry	Reference to further documentation
5	Flyer information added to supplementary report
8	Occ# Q11000131412
13	Supplementary submitted with new information

⁴ This effectively affirms QPS' refusal of access decision, notwithstanding that the refusal ground relied on by QPS in its decision, section 47(3)(b) of the RTI Act, was not an issue requiring final determination in this review, as informal resolution was reached with the participants on that issue.

⁵ Including eight pages comprising a QPRIME 'Events Tab' and two pages comprising a QPRIME 'Tasks/Flags Tab'. These were released to the applicant without redaction.

⁶ Submission to OIC dated 12 February 2018.

12. The applicant submits⁷ that the above log entries:

...are actions with substance and documents created as a result of those actions. "Flyer information", "supplementary report" and "supplementary submitted with new information" all extend to inclusion of additional documentation resultant from said action and incur a presumption for provision in line with principles of natural justice and RTI and IP legislation...

13. On the basis of the above, the issue for determination in this review is whether access can be refused to the further documents, that the applicants submits are referred to in the log entries, on the grounds that they do not exist.⁸

Relevant law

14. The IP Act confers on an individual a right to access documents of an agency, to the extent they contain the individual's personal information.⁹ This right of access is subject to limitations, including grounds for refusal of access.¹⁰ Relevantly, access to information may be refused where documents are nonexistent.¹¹

15. To be satisfied that a document does not exist¹², the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:

- the administrative arrangements of government
- the agency's structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
- the agency's practices and procedures (including, but not limited to, its information management approaches); and
- 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.¹³

16. By considering the above factors, an agency may determine that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained.

Submissions

17. The applicant referred to his previous employment with the Northern Territory Police Force¹⁴ and submits that it is *'important to consider that my background in policing*

⁷ Submission to OIC dated 8 April 2018.

⁸ Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

⁹ Section 40 of the IP 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'.

¹⁰ Grounds for refusal of access are set out in section 47 of the RTI Act. Section 67 of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

¹¹ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹² Under section 52(1)(a) of the RTI Act.

¹³ *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE*. See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11] for a recent application of *PDE*.

¹⁴ Submission to OIC dated 12 February 2018.

incorporates delegation as a Regional Intelligence Officer'.¹⁵ Specifically, the applicant submitted that:¹⁶

... the entries in question are not simply log entries. From my previous employment as a police intelligence officer, I am aware these so-called actions, once completed, result in documentation. During my time employed in policing, I was a signatory to the telecommunications providers and I was Comfit qualified and responsible for the collaboration of photo-boards, alerts for image construction of perpetrators or witnesses and circulars for dissemination including 'Be on the lookout for' (BOLOFs). BOLOFs, for example, are not dissimilar to "flyers" and result in a tangible document.

18. In response, QPS submitted that log entries 5, 8 and 13 are not references to separate or additional documents, but are references to *actions* completed by officers in connection with the Intelligence Log Summary, eg when adding further information obtained in relation to allegations, or allocating/undertaking tasks associated with the investigation. QPS further explained that the Intelligence Log Summary was not generated, or completed, in one sitting. Rather, it is a document which developed over a period of time, and was electronically contributed to by numerous QPS officers involved in investigating the allegations, and taking actions in relation to the matter.
19. With respect to the log entries in question, QPS provided the following explanation to demonstrate how particular information is recorded in the Intelligence Log Summary:
 - each time the Intelligence Log Summary is opened by a QPS officer on their computer screen, eg to add newly acquired information, an entry noting '*report unlocked*' is recorded in the Activity Log section—this is evidenced at log entry 8;
 - QPS officers create tasks, as demonstrated by log entries 5 and 13, and details of completion of these tasks appear in the same Activity Log entry, and the corresponding entry in the *Involved tasks* section;¹⁷ and
 - the '*supplementary*' or '*supplementary report*' referred to in log entries 5, 8 and 13 is a reference to the Intelligence Log Summary itself to demonstrate that further or 'supplementary' information was added on a particular date.

Findings

20. I recognise that the applicant has previous experience working as a police officer in another jurisdiction, and would therefore, be familiar with the processes used *in that jurisdiction*, in creating documentation associated with a police investigation. However, there is no evidence available to OIC to suggest that QPS follows the same processes or adopts the same recordkeeping practices. Accordingly, I do not consider the applicant's submissions in this regard establish reasonable grounds to believe further documents exist. To the contrary, I find that QPS has the requisite working knowledge of its recordkeeping practices, and understands the meaning of the terms that have been used in the log entries in question.
21. I acknowledge however, that the words used in log entries 5, 8 and 13 could reasonably be interpreted, on their face, as referring to the existence of additional documents. For example, log entry 5 refers to a '*supplementary report*'. I consider it was reasonable for the applicant to believe that this may have referred to the existence of an additional document. However, having considered the entirety of the Intelligence Log Summary and QPS's submissions about how information is recorded over a period of time, and by multiple officers contributing to the electronic document, I am satisfied that any further

¹⁵ Submission to OIC dated 23 March 2018. He does however, acknowledge that he has never been employed by the Queensland Police Service in his submission to OIC dated 12 February 2018.

¹⁶ Submission to OIC dated 8 April 2018.

¹⁷ The *Involved tasks* section appears in the document released to the applicant on page labelled '*RTI/21147 PAGE 2*'.

information generated in connection with the log entries in question, is recorded **within** the Intelligence Log itself, and not in a separate document.

22. In my view, QPS's submissions at paragraph 18 to 19 can be understood by considering the content of other relevant sections of the Intelligence Log Summary. Notably, there are internal numbering consistencies within the document that serve to reinforce the view that additional information has been recorded **within** the document itself, rather than in separate documents as submitted by the applicant. For example:
- the reference in log entry 8 to *Occ# Q11000131412* matches the number of the Intelligence Log Summary. I consider it is reasonable to conclude that *Occ# Q11000131412* is a reference to the occurrence/allegations which form the subject matter of the Intelligence Log Summary, and the related QPRIME tabs (which have been released to the applicant)
 - the task numbers in log entries 5, 8 and 13 correspond with those in the *Involved tasks* section. I find it is reasonable to conclude that the outcomes of those log entries (including any information gathered by the relevant QPS officer) is recorded in the *Involved tasks* section; and
 - activity log entry 5 refers to *Task: T1000369648* and states '*Flyer information added to supplementary report*'. The corresponding entry in the *Involved tasks* section refers to the subject matter of a 'flyer' concerning the applicant. I am satisfied that the *Involved tasks* section entry is the supplementary report of the 'flyer information'.
23. The terminology used within the subject parts of the Intelligence Log Summary is brief or 'short form'. As noted above, I find that QPS has the requisite working knowledge to understand the meaning of the terms that have been used in the log entries in question. I also consider the language used in the log entries reflects the particular nature of the document that is developed over time, and contributed to electronically by numerous officers to record various actions, and outcomes, in a QPS investigation. When the Intelligence Log Summary is considered as a whole, it is apparent that other sections are more comprehensively worded.¹⁸ I consider this serves to further demonstrate that the outcome of actions taken by QPS officers on the matter have been recorded internally within the Intelligence Log Summary.
24. On the basis of the above, I find there are reasonable grounds to be satisfied that the further documents sought by the applicant are nonexistent under section 52(1)(a) of the RTI Act. Accordingly, access to those further documents may be refused under section 47(3)(e) of the RTI Act.

DECISION

25. I affirm QPS' decision and find that access to further documents may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis that they are nonexistent.
26. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 7 June 2018

¹⁸ For example, pages 3 to 7 contain sections titled '*Precis of Original Information*', '*Verification Checks completed*' and '*Assessment*'.

APPENDIX

Significant procedural steps

Date	Event
15 August 2017	OIC received the external review application. OIC notified QPS and the applicant that the external review application had been received and requested procedural documents from QPS.
30 August 2017	OIC received the procedural documents from QPS.
4 September 2017	OIC notified QPS and the applicant that the external review application had been accepted for review, and asked QPS to provide a copy of the Intelligence Log Summary.
5 and 6 September 2017	OIC received further submissions from the applicant.
15 September 2017	OIC received a copy of the Intelligence Log Summary from QPS.
13 October 2017	OIC asked QPS to provide copies of witness statements and additional QPRIME documents.
1 November 2017	OIC received the witness statements from QPS.
3 November 2017	OIC asked QPS to provide a copy of any relevant QPRIME documents.
14 November 2017	The applicant wrote to OIC raising concerns about the external review procedure and the time taken to process his application.
15 November 2017	OIC responded to the applicant's concerns in writing.
16 November 2017	OIC received further submissions from the applicant. OIC wrote to the applicant regarding the issue of sufficiency of search.
17 November 2017	OIC conveyed a preliminary view to QPS that further QPRIME documents fell within scope of the application and requested a copy of such documents be provided to OIC.
27 November 2017	QPS contacted OIC to clarify the nature of the further QPRIME documents. OIC asked QPS to provide copies of the 'Events' and 'Tasks/Flags' tabs in QPRIME relating to the allegations in the Intelligence Log Summary.
30 November 2017	OIC received copies of the QPRIME tabs from QPS and provided the applicant with an update on the status of the external review. OIC received further submissions from the applicant.
19 December 2017	OIC provided the applicant with an update on the status of the review.
21 December 2017	OIC conveyed a preliminary view to QPS that the QPRIME tabs and some further information in the Intelligence Log Summary could be released to the applicant.
24 January 2018	QPS agreed to release the information to the applicant in accordance with OIC's preliminary view.
2 February 2018	OIC provided the applicant with an update on the status of the review.
5 and 8 February 2018	OIC received further submissions from the applicant.
9 February 2018	QPS released the additional information to the applicant in accordance with OIC's preliminary view.
12 February 2018	The applicant provided further submissions to OIC, raising sufficiency of search concerns in relation to log entries 5, 8 and 13 in the Intelligence Log Summary.

Date	Event
20 February 2018	QPS provided OIC with oral submissions about how information was recorded by QPS in the Intelligence Log Summary. OIC provided the applicant with an update on the status of the review, and sought his response in relation to pursuing access to certain information.
21 February 2018	OIC wrote to QPS to confirm its oral submissions regarding its recordkeeping practices.
23 February 2018	QPS agreed to OIC conveying its oral submissions regarding its recordkeeping practices to the applicant.
28 February 2018	The applicant sought an extension of time within which to respond to OIC's 20 February 2018 correspondence, to which OIC consented.
6 March 2018	The applicant provided further submissions to OIC, and agreed to exclude particular information from further consideration in the review. OIC wrote to the applicant confirming that the only remaining issue for determination in the review was sufficiency of QPS' searches, with respect to log entries 5, 8 and 13 of the Intelligence Log Summary.
23 March 2018	OIC conveyed a preliminary view to the applicant that there were reasonable grounds to be satisfied that the further requested documents were nonexistent and therefore, access to such documents could be refused on that basis.
8 April 2018	OIC received further submissions from the applicant, contesting the preliminary view.
24 April 2018	OIC provided the applicant with an update on the status of the review.