



## Decision and Reasons for Decision

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<b>Citation:</b>	<i>P06DKS and Queensland Police Service [2018] QICmr 29 (15 June 2018)</i>
<b>Application Number:</b>	313471
<b>Applicant:</b>	<i>P06DKS</i>
<b>Respondent:</b>	Queensland Police Service
<b>Decision Date:</b>	15 June 2018
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - car registration details - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST - car registration details - whether disclosure 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)</b>

### REASONS FOR DECISION

#### Summary

1. The access applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents relating to a motor vehicle accident at a specified location, date and time.<sup>2</sup> The access applicant was seriously injured in the motor vehicle accident and the access application was made in the context of a claim for damages on his behalf for personal injuries.
2. QPS located 195 documents and 3 CCTV recordings and decided to refuse access to certain third party information. The access applicant applied for internal review of QPS's decision, and submitted that certain third party information was required *'to properly assess the circumstances of the accident and to ensure the administration of justice for all parties involved in the claim'*.<sup>3</sup> QPS then consulted with a number of third parties identified in the documents, including the review applicant in this external review. The review applicant objected to disclosure, primarily raising concerns about the impact on his privacy.

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<sup>1</sup> Through his agent.

<sup>2</sup> Access application dated 14 March 2017.

<sup>3</sup> Internal review application dated 29 June 2017.

3. In its internal review decision,<sup>4</sup> QPS varied its original decision and decided to grant access to the review applicant's full name, address and car registration details appearing in the documents, contrary to the review applicant's objections.
4. The review applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's disclosure decision.<sup>5</sup>
5. For the reasons set out below, I affirm QPS's decision and find that access to the review applicant's car registration details cannot be refused under the RTI Act, as it is not exempt information and nor would its disclosure, on balance, be contrary to the public interest.

## 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 decision dated 31 July 2017 to disclose information in a document contrary to the views of a relevant third party (the review applicant).

## Evidence considered

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

## Information in issue

9. During the course of the external review, the access applicant narrowed the scope of the information sought.<sup>6</sup> Accordingly, the only information in issue is the review applicant's car registration details appearing in a QPS Forensic Crash Unit incident summary sheet (**Registration Details**).<sup>7</sup>

## Issues for determination

10. QPS decided to release the Registration Details contrary to the views of the review applicant. If a decision under review is a '*disclosure decision*'<sup>8</sup> the participant in the external review who opposes the disclosure decision has the onus of establishing that a decision not to disclose the information is justified, or that the Information Commissioner should give a decision adverse to the person who wishes to be given access to the information.<sup>9</sup> Accordingly, the review applicant bears the onus of establishing that a decision not to disclose the Registration Details is justified or that the Information Commissioner should give a decision adverse to the access applicant.

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<sup>4</sup> To the access applicant dated 31 July 2017.

<sup>5</sup> Application for external review dated 22 August 2017.

<sup>6</sup> In a telephone call between OIC and access applicant's legal representative on 16 November 2017.

<sup>7</sup> Specifically, a particular registration number appearing on page 113 of the information located by QPS in response to the access application.

<sup>8</sup> Under section 87(3) of the RTI Act, 'disclosure decision' relevantly includes a decision to disclose information contrary to the views of a relevant third party obtained under section 37.

<sup>9</sup> Section 87(2) of the RTI Act.

11. In this external review, the issues for determination are whether:
- the Registration Details are exempt on the basis that disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation;<sup>10</sup> or
  - disclosure of the Registration Details would, on balance, be contrary to the public interest.<sup>11</sup>

## Serious act of harassment or intimidation

### Relevant law

12. Under section 23 of the RTI Act a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.<sup>12</sup>
13. Access can be refused under the RTI Act to the extent that a document comprises exempt information.<sup>13</sup> Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, under schedule 3, section 10(1)(d) of the RTI Act, information is exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation (**Harassment or Intimidation Exemption**).
14. The RTI Act does not define ‘a serious act of harassment or intimidation’. Therefore, the terms are given their ordinary meanings.<sup>14</sup> In this regard, the Information Commissioner has previously accepted the following definitions:<sup>15</sup>
- ‘harass’ includes ‘to trouble by repeated attacks, ... to disturb persistently; torment’; and
  - ‘intimidate’ includes ‘to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear’.
15. The expected harassment or intimidation must be ‘serious’ in nature before the Harassment or Intimidation Exemption will apply.<sup>16</sup> The exemption is not invoked if the expected harassment or intimidation does not meet the serious threshold. This indicates that it was Parliament’s intention, when passing this provision, that some degree of low level harassment or intimidation would be tolerated before the exemption could be

<sup>10</sup> Under section 47(3)(a), section 48, and schedule 3, section 10(1)(d) of the RTI Act. In his consultation response to QPS, the review applicant also noted that he believed release of his information would ‘be against any confidence’. The review applicant appears to raise this issue in the broad sense that he considers the Registration Details to be confidential (i.e. private) rather than in the context of an equitable action for breach of confidence under schedule 3, section 8 of the RTI Act (**Breach of Confidence Exemption**). In any event, given the nature of the review applicant’s submissions on external review, and the content of the information in issue (i.e. Registration Details appearing in an internal QPS document), I am satisfied that the Breach of Confidence Exemption does not arise for consideration in this review.

<sup>11</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>12</sup> As set out in section 47(3) of the RTI Act.

<sup>13</sup> Sections 47(3)(a) and section 48 of the RTI Act.

<sup>14</sup> *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [188]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as this provision, and the reasoning in *Sheridan* has since been cited with approval in relation to the RTI Act, in decisions including *Mathews and Department of Transport and Main Roads* [2014] QICmr 37 (19 September 2014) and *Bowmaker Realty and Department of Justice and Attorney-General; Andrews* [2015] QICmr 19 (17 August 2015) (**Bowmaker**).

<sup>15</sup> *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) at [13], *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13], applying the *Macquarie Dictionary Online* (Fourth Edition) definitions referred to in *Sheridan* at [194]-[200].

<sup>16</sup> ‘Serious’ relevantly means ‘weighty or important’, ‘giving cause for apprehension; critical’: *Macquarie Dictionary Online* (accessed 2 March 2018).

invoked.<sup>17</sup> Being competitive, disparaging, unpleasant or *'irksome and annoying'* is not sufficient to establish the exemption.<sup>18</sup>

16. The term *'could reasonably be expected to'* requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,<sup>19</sup> nor merely a possibility.<sup>20</sup> Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.<sup>21</sup> Factors that might be relevant in considering whether an event could reasonably be expected to occur include, but are not limited to:<sup>22</sup>
- past conduct or a pattern of previous conduct
  - nature of the information in issue
  - nature of the relationship between the parties and/or relevant third parties; and
  - relevant contextual and/or cultural factors.
17. Finally, the expectation of serious intimidation or harassment must arise as a *result of disclosure*, rather than from other circumstances.<sup>23</sup> Accordingly, for the Harassment or Intimidation Exemption to apply, I must be satisfied that the disclosure of the Registration Details, rather than pre-existing circumstances, could reasonably be expected to cause the serious act of harassment or intimidation.

### Findings

18. The review applicant submits that he has been *'accused and harassed in public by immediate family members'* of the access applicant and an individual who was an occupant of the access applicant's car at the time of the accident.<sup>24</sup> He states that, in one instance, he and his family were stopped in a shopping centre, he was shown a photo of himself on a mobile telephone and then questioned about the accident. The review applicant states he felt threatened and interrogated by the interaction and reported it to QPS. In his further submissions, the review applicant submits that in addition to the shopping centre incident, *'the harassment and intimidation has been repeated by [the access applicant's] direct family by requesting [his] details from individuals/friends'*.<sup>25</sup>
19. Having considered the evidence available to me in this matter,<sup>26</sup> I am not satisfied that one incident in a shopping centre and direct requests made to individuals/friends of the review applicant for his details demonstrates a pattern of harassing or intimidating conduct. I accept that the review applicant may have *felt* threatened and intimidated after the shopping centre incident, but on the evidence before me, I am unable to find that that the review applicant has been troubled by *'repeated attacks'*, disturbed persistently, tormented or made timid, inspired with fear, overawed or forced into or deterred from any action by fear. While the review applicant may feel *concerned* or *worried* that releasing the Registration Details will result in legal action against him that

<sup>17</sup> *Sheridan* at [187] and [294].

<sup>18</sup> *Bowmaker* at [31].

<sup>19</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 at [106].

<sup>20</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [44] citing *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at 339-341.

<sup>21</sup> *Murphy* at [45]-[47]. In reaching a finding, it is not necessary for a decision-maker *'to be satisfied upon a balance of probabilities'* that disclosing the document will produce the anticipated prejudice, or, in this case, serious harassment or intimidation: see *Sheridan* at [192].

<sup>22</sup> *Sheridan* at [193], cited more recently in *Edmestone and Blackall-Tambo Regional Council* [2016] QICmr 12 (15 April 2016).

<sup>23</sup> *Watson v Office of Information Commissioner Qld & Ors* [2015] QCATA 95 per Thomas J at [19].

<sup>24</sup> Application for external review dated 22 August 2017.

<sup>25</sup> Submission to OIC dated 12 February 2018.

<sup>26</sup> Some of the information before OIC is sensitive in nature and cannot be set out in detail in these reasons under section 107 of the RTI Act. However, in reaching this finding, I have considered the relevant law, the information in issue, the review applicant's submissions and QPS's submissions.

will consume his time and effort, in the circumstances, the threat of legal action alone<sup>27</sup> is not sufficient to amount to a pattern of harassment or intimidation in the relevant sense.

20. For the Harassment or Intimidation Exemption to apply, the relevant conduct must '*reasonably be expected to occur*', in the sense that the expectation must be reasonably based, and not be irrational, absurd or ridiculous, or merely a possibility. I have considered the review applicant's submissions as to the pattern of conduct,<sup>28</sup> the nature of the information in issue, and the nature of the relationship between the relevant individuals. I have also considered that the Registration Details are sought in the context of a claim for damages for personal injuries. Based on this evidence, I am not satisfied that harassment or intimidation of the review applicant '*could reasonably be expected*' to arise as a result of the disclosure of the Registration Details.
21. Finally, even if I was satisfied that the past conduct outlined above did amount to serious harassment or intimidation, I am not satisfied that further similar behaviour would arise *from the disclosure* of the Registration Details. That is, I do not consider that there is the necessary nexus between disclosure of the Registration Details and any reasonable expectation of serious harassment or intimidation occurring in the future. The incident in the shopping centre (and any future similar behaviour) could more properly be described as arising from the motor vehicle accident itself, than from the release of information.
22. In these circumstances, I find that the Registration Details are not exempt under Schedule 3, Section 10(1)(d) of the RTI Act.<sup>29</sup>

### **Contrary to the public interest**

#### ***Relevant law***

23. Another ground to refuse access to information is where disclosure would, on balance, be contrary to the public interest.<sup>30</sup>
24. 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, 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 concerns purely private or personal interests.
25. The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of the public interest and explains the steps a decision-maker must take<sup>31</sup> in deciding where the public interest lies, as follows:
  - identify any irrelevant factors and disregard them
  - 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.

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<sup>27</sup> In *Toogood and Cassowary Coast Regional Council* [2018] QICmr 13 (22 March 2018), it was held that voluminous and wide ranging unsubstantiated threats of legal action, may, in some circumstances, be *part* of a pattern of behaviour that constitutes harassment. However, I do not consider that the threat of legal action in relation to a particular defined incident alone is sufficient.

<sup>28</sup> Outlined in paragraph 18 above.

<sup>29</sup> As I do not consider the Harassment and Intimidation Exemption applies in the circumstances of this case the exceptions to the exemption contained in schedule 3, section 10(2) of the RTI Act are not relevant.

<sup>30</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>31</sup> Section 49(3) of the RTI Act.

## Findings

### Irrelevant factors

26. The review applicant submits that he is currently studying at University and would like to concentrate on his studies, and receiving further correspondence about the accident may consume his time and efforts.<sup>32</sup>
27. I do not consider the above submissions raise any relevant public interest factors. Therefore, I have not taken it, or any other irrelevant factors, into account in making this decision.

### Factors favouring disclosure

28. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to contribute to the administration of justice generally or for a person.<sup>33</sup> In *Willsford and Brisbane City Council*<sup>34</sup> the Information Commissioner found that this factor arises if the applicant demonstrates:
  - they have suffered loss, damage or some kind of wrong, in respect of which a remedy is, or may be available under the law
  - there is a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
29. In this case, the access applicant suffered serious injuries in a motor vehicle accident involving a collision with another motor vehicle. On the night of the accident, the review applicant:
  - was driving the subject vehicle (of which the Registration Details are sought)
  - was involved in a hostile interaction with the occupants of one of the vehicles involved in the accident prior to the accident occurring;<sup>35</sup> and
  - arrived on the scene shortly after the accident occurred.
30. The access applicant is seeking to lodge a claim for damages for personal injuries against the insurers of the two vehicles involved in the accident – one of the vehicles belongs to the review applicant. The claim is governed by the relevant provisions of the *Motor Accident Insurance Act 1994* (Qld) (**MAIA**). One of the objects of the MAIA is to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents.<sup>36</sup> Without access to the Registration Details of the review applicant, the access applicant is unable to conduct a search to ascertain which insurer to serve notice upon to commence a claim for damages for personal injury.
31. On the evidence before me, I am satisfied that the access applicant has suffered an actionable wrong, has a reasonable basis for seeking to pursue a remedy for personal injuries, and disclosure of the Registration Details would assist him to pursue the

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<sup>32</sup> Application for external review dated 22 August 2017.

<sup>33</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>34</sup> (1996) QAR 368 (*Willsford*). This decision considered the public interest in a person suffering an actionable wrong having access to information which would assist in pursuing a remedy, and was made under the repealed *Freedom of Information Act 1992* (Qld). The context of that decision was an action for property damage in relation to a car colliding with a dog. This decision has since been cited and applied in relation to the RTI Act, most recently in *Lester and Department of Justice and Attorney-General* [2018] QICmr 6 (7 February 2018) at [27]-[32].

<sup>35</sup> In reaching this finding of fact, I have considered the information located by QPS in response to the access application, and I have taken into account the review applicant's submissions that the hostile interaction was not 'created' by him.

<sup>36</sup> Section 3(e) of the MAIA.

remedy.<sup>37</sup> During the course of the external review, the review applicant made submissions that the vehicle he was driving was not involved in the accident, nor was it involved in the lead-up to the accident and, as such, details about his car and his insurance are not relevant.<sup>38</sup> My role is not to determine questions of legal liability. For the relevant factor favouring disclosure to apply, I am not required to be satisfied that there are strong prospects in any claim. Rather, there need only be a ‘reasonable basis’ for seeking to pursue a remedy.<sup>39</sup> The access applicant is not required to present a fully formed claim in order for the factor to apply.<sup>40</sup>

32. While I accept the review applicant’s vehicle was not involved in the collision, the information before me details the review applicant’s involvement in a series of events leading up to the accident. I am satisfied that there is a reasonable basis for the access applicant to pursue a remedy for personal injuries, and that refusing disclosure of the Registration Details may deny the access applicant the opportunity to pursue this remedy against the review applicant’s insurer, or to evaluate whether this remedy is worth pursuing. I also consider it is in the public interest to ensure that the object of the MAIA to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents is supported.<sup>41</sup>
33. On this basis, I afford the factors favouring disclosure relating to administration of justice significant weight.

#### **Factors favouring nondisclosure**

34. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual’s right to privacy;<sup>42</sup> and
  - disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person whether living or dead.<sup>43</sup>
35. The review applicant’s identity can reasonably be ascertained from the Registration Details,<sup>44</sup> and within the context of the information available to the access applicant, disclosure of the Registration Details would reveal information about the review applicant (i.e. that the applicant is the owner of the relevant vehicle, and that the applicant was involved in the series of events leading up to the accident). On this basis, I am satisfied that the Registration Details comprise his personal information.
36. The review applicant submits that the disclosure of the Registration Details would be a breach of his privacy<sup>45</sup> and reveal his personal information.<sup>46</sup> I consider the Registration Details themselves are not particularly sensitive information,<sup>47</sup> and are only capable of confirming (rather than revealing) the review applicant’s identity. The review applicant’s identity as an individual involved in the lead-up to the accident is already known to the

<sup>37</sup> Including through the processes set out in Part 4 of the MAIA.

<sup>38</sup> External review application dated 22 August 2017 and email to OIC dated 12 February 2018.

<sup>39</sup> *Willsford* at [20].

<sup>40</sup> *1OS3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [19]-[21].

<sup>41</sup> Giving rise to the factor in schedule 4, part 3, item 17 of the RTI Act.

<sup>42</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>43</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>44</sup> Through a search of the Queensland Motor Vehicle Register available at: <<https://www.service.transport.qld.gov.au/checkrego/public/Welcome.xhtml?dswid=9177>>.

<sup>45</sup> Applicant’s response to the consultation letter dated 26 July 2017.

<sup>46</sup> Email to OIC dated 12 February 2018.

<sup>47</sup> When compared to the range of personal information held by government agencies (e.g. medical records of an individual).

access applicant.<sup>48</sup> This reduces the privacy interests of the review applicant to an extent, but not entirely.

37. Based on the review applicant's submissions, I consider that he may encounter further uncomfortable interactions with the family of the access applicant as a result of disclosure of the Registration Details. However, as noted above, release of the Registration Details will only confirm (rather than reveal) his identity as an individual involved in the lead-up to the accident. For these reasons, I consider that the extent of the intrusion, and the anticipated harm, that could be expected to result from disclosing the Registration Details is limited.
38. I attribute low weight to the nondisclosure factors relating to personal information and privacy.

#### **Balancing the relevant public interest factors**

39. On balance, I consider that the factors favouring nondisclosure concerning personal information and privacy do not override the significant weight I have afforded to the factors favouring disclosure relating to the administration of justice for a person.
40. Accordingly, I am satisfied that disclosure of the Registration Details would not, on balance, be contrary to the public interest, and access may not be refused under section 47(3)(b) of the RTI Act.

#### **DECISION**

41. For the reasons set out above, I affirm QPS's decision and find that access to the Registration Details cannot be refused under the RTI Act, as it is not exempt information and nor would its disclosure, on balance, be contrary to the public interest.
42. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act

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**S Shanley**  
**Acting Assistant Information Commissioner**

**15 June 2018**

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<sup>48</sup> As noted in the review applicant's external review application dated 22 August 2017, they have been approached and questioned about the incident by certain individuals.



## APPENDIX

### Significant procedural steps

Date	Event
23 August 2017	OIC received the external review application.
25 August 2017	OIC requested relevant procedural documents from QPS.
7 September 2017	OIC received the requested procedural documents from QPS.
13 September 2017	OIC notified the review applicant and QPS that the external review had been accepted. OIC requested further information from QPS. OIC received the requested information from QPS.
10 October 2017	OIC spoke to QPS, received additional information and provided an update on the status of the review.
11 October 2017	OIC spoke to QPS and requested additional information.
17 October 2017	OIC spoke to QPS and received the requested information.
13 November 2017	OIC spoke to the review applicant and provided an update on the status of the review.
16 November 2017	OIC spoke to the access applicant's legal representative and provided an update on the status of the review. The access applicant's legal representative agreed to narrow the information sought to the Registration Details. OIC provided QPS with an update on the status of the review.
15 December 2017	OIC provided the review applicant with an update on the status of the review.
9 January 2018	OIC provided QPS with an update on the status of the review.
6 February 2018	OIC spoke to the access applicant's legal representative and provided an update on the status and next steps in the review.
8 February 2018	OIC conveyed a preliminary view to the review applicant and requested submissions in response.
12 February 2018	OIC received the requested submissions from the review applicant
22 February 2018	OIC spoke to the review applicant and QPS and provided them with an update on the status of the review.
29 March 2018	OIC provided the review applicant with an update on the status of the review.