



Decision and Reasons for Decision

Citation:	<i>0Q3KKM and Queensland Police Service</i> [2019] QICmr 20 (11 June 2019)
Application Number:	314050
Applicant:	0Q3KKM
Respondent:	Queensland Police Service
Decision Date:	11 June 2019
Catchwords:	<p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION - REFUSAL TO DEAL - personal information of the applicant in a police database - whether application is expressed to relate to all information of a stated kind - whether all requested documents would comprise exempt information - whether section 59 of the <i>Information Privacy Act 2009</i> (Qld) applies</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - INVESTIGATION BY PRESCRIBED CRIME BODY - request for complaint information - whether documents exempt - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant contends agency did not locate all relevant documents - whether agency has taken all reasonable steps to locate documents but the documents cannot be found or do not exist - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking documents relating to two of his complaints and the names of police officers who accessed QPRIME² records about him since 2012 (**QPRIME Information**).

¹ Application dated 16 April 2018.

² QPRIME is the Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

2. QPS failed to make a decision within the timeframe prescribed in the IP Act and was therefore taken to have made a decision refusing access to the requested information.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision QPS was deemed to have made.⁴
4. The decision QPS is deemed to have made refusing access to all relevant information is set aside. For the reasons explained below, I have decided that:
 - section 59 of the IP Act applies to part of the application which seeks access to a class of documents which would, if they exist, comprise exempt information under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**); and
 - access may be refused to information on the grounds that it is exempt information or it is nonexistent.

Background

5. In 2015, the applicant made a complaint to the Crime and Corruption Commission (**CCC**) about a police officer (**2015 Complaint**). On 19 June 2015, QPS's Ethical Standards Command notified the applicant:
 - that the complaint had been referred to QPS to deal with
 - of the action taken by QPS in respect of the complaint; and
 - that QPS considered the matter finalised.
6. The applicant made a further complaint to QPS's Ethical Standards Command in 2017 (**2017 Complaint**). By letter dated 19 March 2018, QPS notified the applicant that the complaint had been investigated by a senior officer, that certain action had been taken by QPS regarding the complaint and the matter was considered finalised.

Reviewable decision

7. The decision under review is the decision QPS is taken to have made, under section 106(3) of the IP Act, refusing access to the requested information.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and Appendix).

Issues for determination

9. External review by the Information Commissioner is merits review, that is, an administrative reconsideration of a case.⁵ As such, the Information Commissioner⁶ can decide any matter in relation to an application that could, under the IP Act, have been decided by the agency dealing with the application.⁷

³ Under section 66(1) of the IP Act.

⁴ On 27 June 2018, after the applicant initially applied for external review, OIC allowed QPS further time to deal with the application pursuant to section 106(2) of the IP Act. However, QPS did not make a decision within that additional time and, pursuant to section 106(3) of the IP Act, QPS was taken to have affirmed the deemed decision. The applicant then made a further application to OIC for external review on 20 July 2018.

⁵ This can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision.

⁶ Or delegate.

⁷ Section 118(1)(b) of the IP Act.

10. During the review, a number of issues were resolved informally⁸ and QPS agreed to release some information concerning the 2017 Complaint (**Release Information**) to the applicant.
11. Therefore, the remaining issues to be determined are whether:
 - section 59 of the IP Act applies to the part of the applicant's application which seeks to access QPRIME Information, on the basis that the requested information comprises exempt information
 - access to information concerning the 2015 Complaint (**2015 Complaint Information**) may be refused on the ground that it comprises exempt information; and
 - QPS has taken reasonable steps to locate documents relevant to the application.
12. The significant procedural steps taken in this external review are set out in the Appendix.

Refusal to deal – QPRIME Information

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this right is subject to limitations, including grounds for refusal of access.⁹
14. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.¹⁰ One of the very few circumstances in which it would not be in the public interest to deal with an access application is set out in section 59 of the IP Act as follows:

59 Exempt Information

- (1) *This section applies if—*
 - (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
 - (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*
- (2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

15. 'Exempt information' is defined in schedule 5 of the IP Act to mean information that is exempt information under the RTI Act. Schedule 3 of the RTI Act lists information which will constitute exempt information.
16. For section 59 of the IP Act to be enlivened, I must therefore be satisfied that:

⁸ QPS accepted OIC's view that there was no basis under the IP Act to refuse access certain information relating to the 2017 Complaint. The applicant accepted OIC's view that access may be refused to portions of personal information on the ground that their disclosure would, on balance, be contrary to the public interest and that certain information fell outside the scope of, or was irrelevant to, the access application.

⁹ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

¹⁰ Section 58(1) of the IP Act.

- (i) the application, or part of it, is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind, or relate to a stated subject matter—this requires an examination of the terms of the application; and
- (ii) all the documents requested are comprised of exempt information.

Submissions

17. The applicant does not accept that his request, in item 2 of the application, to access the QPRIME Information could be refused '*due to operational type constraints*'¹¹ and he considers the refusal of that requested information is '*ridiculous*'.¹² More specifically, the applicant submitted¹³ that:
- he is a private, law abiding citizen and has no criminal record; and
 - because of his very limited dealings with QPS, he considers that any access to or input on the QPRIME records about him '*would be unlawful*'.

Findings

(i) class of documents

18. Item 2 of the application seeks access to '*The names of all police officers who have accessed QPRIME records of [the applicant's name and birth date] since 2012*'.
19. The Information Commissioner has previously considered the application of section 59 of the IP Act in relation to applications seeking to access information of a similar nature.¹⁴ While each decision on an access application must be considered on its own particular merits, I have taken these prior decisions into account, given the similarity of requested information.
20. I am satisfied that item 2 of the application is framed as a request to access all documents of a stated class which identify instances of the applicant's name and date of birth being searched in the QPRIME database. I am further satisfied that this part of the application is expressed to relate to all documents that contain information of a *stated kind*, that is, information demonstrating when the applicant's personal information in QPRIME has been accessed and by whom. On this basis, I find that the first requirement of section 59 of the IP Act is satisfied.

(ii) all documents are comprised of exempt information

21. For the reasons that follow, I am satisfied that the requested QPRIME Information would comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act (**Lawful Method or Procedure Exemption**).
22. The Lawful Method or Procedure Exemption will apply where:
- there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - disclosure could reasonably be expected to prejudice that method or procedure.

¹¹ Submissions dated 28 November 2018.

¹² Submissions dated 28 November 2018.

¹³ Submissions dated 28 November 2018.

¹⁴ *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017), *Flori and Queensland Police Service* [2017] QICmr 5 (16 February 2017), *Shelton and Queensland Police Service* [2017] QICmr 18 (29 May 2017), *Eaves and Queensland Police Service* [2017] QICmr 23 (30 June 2017).

23. When dealing with contraventions, or possible contraventions, of the law, QPS officers record information about certain individuals on QPRIME, and such information may relate to intelligence or surveillance operations, or other investigations. I note that QPS officers also access information recorded in QPRIME both during and after such activities—for example, to obtain background information and inform their decisions. Given this position, I accept that accessing information in QPRIME forms an integral part of the methods and procedures used by QPS when dealing with contraventions, or possible contraventions, of the law.
24. For any individual—whether that individual is subject to intelligence or surveillance operations or not, and whether any QPRIME information about that individual exists or not—I consider that disclosure of information about officers’ access to information about that individual in QPRIME (or, where relevant, disclosure that no such access has occurred and/or that no such QPRIME information exists) could reasonably be expected to:¹⁵
- reveal information (or an absence thereof) which enables or assists the individual to deduce the level of surveillance they may (or may not) be under; and
 - in doing so, reduce the effectiveness of QPRIME as a system for recording and exchanging information within QPS as part of conducting intelligence or surveillance operations, or otherwise dealing with contraventions, or possible contraventions, of the law.
25. Consistent with the above reasoning and the Information Commissioner’s decisions regarding access to similar information in the QPRIME database,¹⁶ I consider that disclosure of the names of police officers who have accessed QPRIME records about the applicant since 2012 (if any) could reasonably be expected to prejudice QPS’s methods and procedures which involve officers accessing QPRIME. Accordingly, I am satisfied that the information requested in item 2 of the application (if any) constitutes exempt information¹⁷ and the second requirement of section 59 of the IP Act has been met.
26. The exceptions to the Lawful Method or Procedure Exemption are set out in schedule 3, section 10(2) of the RTI Act. I am satisfied that none of the listed exceptions arise in the circumstances of this matter. In particular, while the applicant raised a concern that officer/s from a particular police station have ‘*unlawfully*’ accessed or inputted information into the applicant’s records in QPRIME,¹⁸ I do not consider that the requested information (if any)—that is, the identity of all officers who have accessed the applicant’s information in QPRIME—would *itself* objectively reveal that any particular access was unauthorised or that the scope of a law enforcement investigation has exceeded the limits imposed by law.¹⁹
27. I acknowledge the applicant considers that, as he is law abiding and does not have a criminal record, he should be able to access the QPRIME Information. However, the exemptions set out in schedule 3 to the RTI Act—including the Lawful Method or Procedure Exemption—do not require or allow consideration of public interest issues because Parliament has determined that disclosure of these categories of information

¹⁵ The requirements of the phrase ‘could reasonably be expected to’ in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

¹⁶ Most recently in *Cutts and Queensland Police Service* [2017] QICmr 39.

¹⁷ I have considered the exceptions in schedule 3, section 10(2) of the RTI Act—however, there is nothing in any of the information before me to suggest that any of these exceptions to the exemption apply.

¹⁸ Submissions dated 28 November 2018.

¹⁹ Schedule 3, section 10(2)(a) of the RTI act.

would be contrary to the public interest. Therefore, to the extent that the applicant has raised public interest considerations favouring disclosure of the QPRIME Information, I cannot take them into account.

28. For these reasons, I am satisfied that section 59 of the IP Act applies to item 2 of the access application and QPS can refuse to deal with that part of the application, on the basis it is expressed to relate to all documents containing information of a stated kind, and all those documents would comprise exempt information under the Lawful Method or Procedure Exemption.

Refusal of access – 2015 Complaint Information

Relevant law

29. Access may be refused to exempt information²⁰ and, as noted in paragraph 15, schedule 3 of the RTI Act lists information which will constitute exempt information.
30. Under schedule 3, section 10(4) of the RTI Act, information will qualify as exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body (**Prescribed Crime Body Exemption**).
31. An exception to the Prescribed Crime Body Exemption applies where the information in issue consists of information that is about the applicant *and* the investigation has been finalised.²¹

Findings

32. The applicant lodged the 2015 Complaint with the CCC. The CCC determined that the allegations would, if proven, amount to police misconduct and referred the matter to the Ethical Standards Command at QPS to deal with.²²
33. For the purpose of the Prescribed Crime Body Exemption:
- the CCC is a prescribed crime body under the RTI Act²³
 - one of the CCC's prescribed functions is its corruption function²⁴
 - the CCC's corruption function includes ensuring that complaints involving corruption²⁵ are dealt with in an appropriate way *'having regard to the principles set out in section 34'*.²⁶
34. On the information before me, I am satisfied that the 2015 Complaint Information was obtained, used or prepared for the purpose of investigating the 2015 Complaint.

²⁰ Under section 47(3)(a) and 48 of the RTI act.

²¹ Schedule 3, section 10(6) of the RTI Act.

²² This was confirmed to the applicant when he was notified about the investigation outcome.

²³ Schedule 3, section 10(9) of the RTI Act.

²⁴ Schedule 3, section 10(9) of the RTI Act. The CCC's corruption function defined in section 33 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

²⁵ *'Corruption'* is defined in schedule 2 of the CC Act to include police misconduct.

²⁶ These principles include the principle of *devolution*—which specifies that action to deal with corruption in a unit of public administration should generally happen within the unit (see section 34(c) of the CC Act). The principle of devolution is enabled by certain provisions of the CC Act which specify how the CCC may perform this function. Relevant to this review, the CCC may refer complaints about corruption within a unit of public administration to a relevant public official to be dealt with (section 35(1)(b) of the CC Act). The CCC also has responsibility for monitoring how the commissioner of police deals with police misconduct (section 45 of the CC Act) and may perform this monitoring role by taking one of the actions specified in section 47(1) of the CC Act. Accordingly, referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official and performing its monitoring role for police misconduct under section 47(1) are some of the ways in which the CCC performs its corruption function (sections 35(1)(b) and (c) of the CC Act).

35. Where the CCC refers a complaint back to an agency to be dealt with, as was the case here, all information obtained used or prepared by the agency as part of that investigation will also be exempt information under the Prescribed Crime Body Exemption. Accordingly, in the circumstances of this matter, I am also satisfied that the 2015 Complaint Information is information obtained, used or prepared by QPS in the performance of the CCC's prescribed functions.
36. The 2015 Complaint Information therefore meets the requirements for the Prescribed Crime Body Exemption, subject to the application of the exception contained in schedule 3, section 10(6) of the RTI Act.
37. The applicant submitted²⁷ that this exception applies because the investigation is finalised and the 2015 Complaint Information '*relates to [his] complaint regarding [him]*'.
38. As noted in paragraph 5, investigation of the 2015 Complaint has been finalised.
39. However, I am satisfied that the 2015 Complaint Information is not 'about' the applicant. In considering the meaning of 'about' in schedule 3, section 10(6) of the RTI Act, the Information Commissioner has previously determined²⁸ that although information may be created as a result of a complaint, such information was about the persons who were the subject of the allegations and related investigation, and not the complainant. This interpretation of 'about' in schedule 3, section 10(6) of the RTI Act was confirmed by the Queensland Civil and Administrative Tribunal in *Darlington v Office of the Information Commissioner & Queensland Police Service*.²⁹
40. I acknowledge the applicant is disappointed at being refused access to the 2015 Complaint Information. He submitted that:
- the information relates to '*serious criminal offence allegations*' against police officers and he is concerned about '*further criminal activities*' by QPS officers to '*cover their tracks*'³⁰
 - he was seeking this information '*to be able to comprehensively lodge information to the QPS regarding criminal behaviour by police officers*'³¹ and lodge a formal complaint with the CCC;³² and
 - '*there are certainly NO public interest concerns in asking for this information and as such [he is] entitled to view those documents*'.³³
41. These submissions can be regarded as public interest considerations. However, as previously noted, when information qualifies as exempt information—as is the case here with respect to the 2015 Complaint Information—I am precluded from taking public interest considerations into account because Parliament has determined that disclosure of exempt information would, on balance, be contrary to the public interest in all instances.³⁴ Further, while an agency such as QPS may exercise its discretion to release

²⁷ Submissions dated 28 November 2018.

²⁸ In *Taggart and Queensland Police Service* [2015] QICmr 16 at [35]-[37].

²⁹ [2015] QCATA 167 at [46]-[58].

³⁰ Submissions dated 31 July 2018. The applicant made similar submissions on 25 October 2018.

³¹ Submissions dated 3 September 2018.

³² Submissions dated 25 October 2018.

³³ Submissions dated 28 November 2018.

³⁴ Section 48(2) of the RTI Act.

information found to be exempt,³⁵ the Information Commissioner has no discretion to release information that satisfies the requirements for exemption.³⁶

42. For the reasons set out above, I am satisfied that access to the 2015 Complaint Information may be refused, as it comprises exempt information under the Prescribed Crime Body Exemption.

Nonexistent or unlocatable documents

43. Before receiving the Release Information, the applicant submitted³⁷ that:
- (a) OIC did not identify in its correspondence to him whether internal reports relating to the 2017 Complaint were included in the Release Information (**internal reports**)
 - (b) as the complainant, he had a right to information regarding the 2017 Complaint and how it was dealt with; and
 - (c) he required the '*mandatory correspondence*' informing the CCC about the 2017 Complaint (**CCC correspondence**).³⁸
44. Once the Release Information had been provided to the applicant, OIC tried³⁹ to obtain confirmation from the applicant about whether he continued to assert that further documents, including additional internal reports and the CCC correspondence, existed and had not been located by QPS.

Relevant law

45. Another ground for refusal of access to information under the RTI Act is where a document is nonexistent or unlocatable.⁴⁰ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁴¹ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.⁴²
46. To be satisfied that a document is *nonexistent*, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:⁴³
- 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)

³⁵ Under section 48(3) of the RTI Act.

³⁶ Section 118(2) of the IP Act. Refer also to the comments of the Honourable Member Cullinane in *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [13].

³⁷ Submissions dated 28 November 2018.

³⁸ The applicant described the 2017 Complaint as concerning '*serious criminal offences*' alleged against a police officer.

³⁹ On 30 January 2019.

⁴⁰ Sections 47(3)(e) and 52 of the RTI Act.

⁴¹ Section 52(1)(a) of the RTI Act.

⁴² Section 52(1)(b) of the RTI Act.

⁴³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (**PDE**). 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* and, therefore, the Information Commissioner's findings in *PDE* are relevant here and have recently been adopted in *DJ6G7Y and Queensland Police Service* [2019] QICmr 4 (18 February 2019) at [14] and *5B3NGA and Department of Education* [2019] QICmr 10 (2 April 2019) at [15].

- the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
47. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. This is the case in circumstances where it is ascertained 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 by the agency.
48. Searches may also be relied on to satisfy the decision-maker that a document does not exist. If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.⁴⁴ What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
49. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.⁴⁵ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.⁴⁶
50. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁴⁷ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.⁴⁸ A suspicion or mere assertion is not sufficient to satisfy this onus.

Findings

51. I note that:
- the applicant made the 2017 Complaint on 3 November 2017 and, on 19 March 2018, QPS notified the applicant that the 2017 Complaint had been investigated and that QPS considered the matter finalised
 - disclosure of the Release Information has provided the applicant with some understanding of how the 2017 Complaint was dealt with by QPS; and
 - some of the Release Information could be characterised as internal reports.

⁴⁴ As set out in *PDE* at [49]. See also section 130(2) of the RTI Act.

⁴⁵ Section 52(1)(b) of the RTI Act.

⁴⁶ *Pryor* at [21].

⁴⁷ Section 100(1) of the IP Act.

⁴⁸ Section 108 of the IP Act provides that the procedure to be followed on an external review is within the discretion of the Information Commissioner. Under section 109 of the IP Act, any participant must comply with a reasonable request made by the Information Commissioner for assistance, even where that participant does not have the onus under section 100 of the IP Act.

52. During the review, at OIC's request, QPS conducted searches for documents responsive to the application. Those searches were conducted of records held in the Gympie Police District and Ethical Standard Command.
53. Given QPS has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether QPS has taken *all reasonable steps* to locate documents responsive to the access application.
54. Most of the information located in respect of the 2017 Complaint has been released to the applicant and I consider that information does not point to the existence of any additional documents. Based on the terms of the application, I consider it is reasonable to expect that the requested documents would be located in the records that QPS searched and I am unable to identify any additional searches that the QPS could reasonably be required to perform in response the particular terms of the access application.
55. I acknowledge the applicant may have believed, prior to receiving the Release Information, that QPS held certain types of documents about the 2017 Complaint. However, after receiving the Release Information, despite a request to do so, the applicant did not provide submissions to support his belief that additional information concerning the 2017 Complaint existed and had not been located by QPS. Therefore, aside from the applicant's initial assertions that additional documents regarding the 2017 Complaint should be held by the QPS, there is no objective evidence before me that indicates the existence of such additional documents.
56. Further, in relation to the CCC Correspondence, I do not consider it is necessary, nor appropriate, for me to make any finding about whether such information exists as I am satisfied that, if it did exist, it would be exempt information, for the reasons set out above in respect of the 2015 Complaint Information.
57. In these circumstances, I am satisfied that:
- QPS has taken all reasonable steps to locate documents relevant to the access application (including documents concerning the 2017 Complaint); and
 - there are reasonable grounds to be satisfied that further documents responsive to the application do not exist and such information may be refused on this basis.⁴⁹

DECISION

58. I set aside the decision under review and find that:
- section 59 of the IP Act applies to item 2 of the application, which seeks access to the QPRIME Information,⁵⁰ and QPS can refuse to deal with that part of the application
 - access to the 2015 Complaint Information may be refused⁵¹ on the ground that it is exempt information;⁵² and
 - additional information the applicant contends should have been located by QPS may be refused on the ground that it does not exist.⁵³

⁴⁹ Under sections 47(3)(e) and 52 of the RTI Act.

⁵⁰ Which comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.

⁵¹ Under section 67(1) of the IP Act and section 47(3) of the RTI Act.

⁵² Under schedule 3, section 10(4) of the RTI Act.

⁵³ Under section 47(3)(e) of the RTI Act.

59. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 11 June 2019

APPENDIX**Significant procedural steps**

Date	Event
20 July 2018	OIC received the application for external review.
31 July 2018	OIC notified the applicant and QPS that it had accepted the external review application and asked QPS to provide information.
8 August 2018	OIC received the requested information from QPS.
3 September 2018	The applicant requested an update on the status of the review and provided submissions.
4 September 2018	OIC provided the requested update to the applicant.
18 September 2018	OIC received additional information from QPS.
15 October 2018	OIC received additional information from QPS.
25 October 2018	The applicant requested an update on the status of the review and provided further submissions.
30 October 2018	OIC provided the requested update to the applicant.
1 November 2018	OIC conveyed a preliminary view to QPS and requested that QPS provide further information.
23 November 2018	QPS notified OIC that it accepted the preliminary view and provided the requested information.
26 November 2018	The applicant requested an update on the status of the review.
27 November 2018	OIC conveyed a preliminary view to the applicant.
28 November 2018	OIC received the applicant's further submissions.
30 January 2019	OIC conveyed a further preliminary view to the applicant and invited the applicant to make further submissions.